

Earlier there was a request to the staff advisor of the Committee on the Judicial Branch to review carefully the various sections of this Committee Recommendation in order to answer several questions propounded by Delegate Sherbow, which were, one, whether under the sections as amended by the Committee of the Whole this morning, could a member of the judiciary be appointed as a lay member or elected as a lawyer member of a commission and, two, if so, would the amendment eliminating the words "nonjudicial" in lines 16 and 19 of section 5.20 operate to prevent the promotion of such a judge from one level to another?

The staff advisor, Mr. William H. Adkins, advises me he has reviewed the sections carefully and he thinks the answer is in the third sentence of section 5.20 which provides as amended that a member of the commission may not hold any public office of profit, or office in a political party while a member of the commission; the judge being the holder of an office of profit would not be eligible as a member of the commission.

The second question would therefore not arise, in other words, he could not be appointed as a lay member. He could not be elected as a lawyer member.

Are there any further amendments to section 5.21? The Chair hears none, and Delegate Johnson, do you still desire to offer your amendment to section 5.22?

This will be amendment I, Amendment No. 46.

The Clerk will please read the amendment.

Will Delegate Clark please take the podium?

*(At this point, First Vice-President James Clark assumed the Chair.)*

READING CLERK: Amendment No. 46 to Committee Recommendation JB-1, by Delegates Johnson, Harkness, Hickman, Kahl, Murphy, Siewierski, Rush: On page 7 in section 5.22 Retirement of Judges strike out all of lines 7 through 10, inclusive.

DELEGATE J. CLARK (presiding): The Chair recognizes Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman and fellow delegates, the effect of this amendment which I see is being distributed to you at this time would be to provide very simply that on the retirement of

judges, "each judge shall retire at the age of 70."

Under the opinion of the minority members of the Judicial Branch, retirement, if that is a proper term, ought to be just that, retirement. If additional judges are needed because of increased case load, then additional judges should be selected. We would hope that the delegates to this Convention would agree that our state system is far different from the federal system.

On rare occasions as some of you know, unusual matters between states arise and the Supreme Court is called to arbitration. Cases of this nature have been handled by retired justices because of the uniqueness of the case and the long processes involved in adjudicating them.

Because this very unusual situation arises in the federal system in the opinion of the minority it does not mean we should subject our retired judges to additional work on a state level.

May I point out as noted in our written report, this chance for continuing retired judges in office poses some very real and very serious problems about the nature of judicial retirement.

We are greatly concerned about what the word "temporary" means. When we consider that together with the difficulty of dissension on the bench with respect to which a so-called retired judge will continue to sit and the practical administrative matter of retirement—such as whether or not a retired judge will continue with his pension or whether or not he will be paid a salary, the minority concludes that although we wish to protect constitutional flexibility with respect to judicial organization and administration, there is no real need for flexibility in this manner.

It has been my understanding that the Maryland State Bar Association has repeatedly turned down a move to have retired judges in Maryland returned to the Bench and if they have reversed that procedure I am unaware of it.

There is some real merit in the majority's proposal and they can make that a good case by saying retired judges should be used if needed. But fellow delegates, when you consider all the practical problems that a situation like this will create, I feel certain that most of you will agree with us that there is not a need to place this responsibility on our Court of Appeals and on our retired judges and therefore we urge you to vote for this amendment.