

DELEGATE J. CLARK: Mr. Chairman, ladies and gentlemen, I think the reason for this amendment is obvious. The possibility exists that perhaps no list will be forthcoming from a Commission, and I think in this eventuality we should make the provision that the governor could proceed and fill the vacancy, and for that reason I recommend adoption of this amendment.

I believe that the Chairman of the Committee would concur, at least I hope he would. Thank you.

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: Mr. Chairman, we recognize that this amendment is designed to provide for a possibility, however remote, at the beginning of the process for the selection of a judge and since it does fill the void that conceivably could come about in the event that the nominating commission did reach an impasse and failed to provide the list, the governor should then have the power to fill the vacancy from any eligible, by appointing any eligible person. We see no serious objection to the inclusion of this language in section 5.14, and unless some member of the Committee has objection, I concur in the amendment.

THE CHAIRMAN: Delegate Schneider.

DELEGATE SCHNEIDER: Mr. Chairman, I have an objection. My objection, Mr. Chairman, if I am in order to speak to this now —

THE CHAIRMAN: If you are speaking in opposition to the amendment, you may.

DELEGATE SCHNEIDER: Yes, sir. My objection is, I see this as perhaps causing the commission to reach an impasse. It leaves them a way out if they want to leave it up to the governor, and if they want to avoid their duty to make nominations, they can do it by just reaching an impasse and waiting and letting the governor fill it under this provision. I think this might also cause the governor to give more consideration to the politics of a layman he puts on because he might want to put laymen on there to try to reach an impasse. For this reason, I think this would be a bad amendment and would probably bring politics back into the nominating commission; and for that reason I am very much opposed to this, sir.

THE CHAIRMAN: Delegate Case. Do you desire to speak in favor or against?

DELEGATE CASE: I would like to ask Delegate Mudd a question, if I may.

THE CHAIRMAN: Delegate Mudd, do you yield to a question?

DELEGATE MUDD: Yes, sir.

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: Would it be possible, Delegate Mudd, under this amendment, for the governor to effectively block the procedures that you have already established, by backing or by putting people on the nominating commission who just would not act, thereby giving him the right to name anybody he would like to?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: That appears to be the point Delegate Schneider has just raised, and again I say it is an apparent possibility. Frankly, it had not occurred to me before he raised the question. I would think it is extremely remote that that would occur.

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: Would it be out of order to suggest that this amendment lay over until you have a chance to talk to the members of your Committee and your adviser to see whether or not as a matter of fact this wouldn't thwart the very thing you are trying to achieve?

THE CHAIRMAN: Delegate Mudd.

DELEGATE MUDD: I would be very happy to have the view of the members of the Committee, and that is why I invited them to speak if they had opposition to it; and if it is desirable for it to lay over, I am happy to concur in that suggestion.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: If it is in order for me to speak as a member of the Committee, I would view this amendment with considerable distrust. It seems to me that particularly now, when we have an even number on the commission, half lawyers and half laymen, it might well be that the governor — I do not say that in the near future, but we cannot tell what sort of governors we might have — we might have one in the future that would attain one way or another control of half the members and that by simply doing nothing, he would then have the complete power to circumvent the whole scheme in here; and while that may be a remote possibility, I think it is something that we should not encourage, and I see no reason for the amendment at all, as a matter of fact.

THE CHAIRMAN: Delegate James.