

first section, section 12 of Article 23A, says that pursuant to the power granted by XI-E, the following sections are enacted.

I think it is desirable, I think it is necessary, whatever the words are, that this go into at least the legislation portions of what we are doing now.

THE CHAIRMAN: Delegate Carson, may I try to paraphrase that, if I followed you?

Are you saying that the municipal corporations have no existing power with respect to amendment of their charters, except what is derived from the present Constitutional provision which you embodied in section 33B?

DELEGATE CARSON: I am, Mr. Chairman, and I am saying that the provisions of Article 23A are only procedural implementations of the power granted by Article XI-E.

THE CHAIRMAN: And you are saying that they have no power except that is derived from Article XI-E; is that correct?

DELEGATE CARSON: I am saying that in reference to charter amendments, yes, Mr. Chairman.

THE CHAIRMAN: Then I ask you about the second question, and that is, as to the right of this Convention to include it. Is it, conceding that it is a provision in the existing Constitution that is not being continued in the new constitution, is it one as to which legislation is imperative before the General Assembly can act?

DELEGATE CARSON: In my opinion, Mr. Chairman, it is.

THE CHAIRMAN: Why?

DELEGATE CARSON: I think it is, if the constitution is passed, and this language no longer exists, then the powers of the municipalities, with regard to charter amendments, may possibly be held to have gone by the wayside until the General Assembly can thereafter act, and there may be a gap. There may be a gap until the next regular legislative session, in which no legislation fills this gap.

I think, therefore, it is necessary.

THE CHAIRMAN: Delegate James.

DELEGATE JAMES: Mr. Chairman, the language, "existing powers as drawn", and interpreting the phrase, "existing powers", does that include the power of amendment?

THE CHAIRMAN: That is the point I am trying to get to.

DELEGATE JAMES: It seems to me that you leave the question open.

You carry forward the constitutional provision in the transitional schedule of legislation. By so doing you make it very clear that this existing power is intended to include the power to amend. At least you clarify any difficulty.

THE CHAIRMAN: Delegate Carson, if I may just in one more sentence try to summarize the result of the colloquy between you and the Chair: If I follow you, you justify this section on the ground (1) that the only clear, existing power of municipalities with respect to the amendment of charters exists by virtue of Article XI-E of the Constitution, and that unless that is perpetuated in this section, then between May 14, 1968, and the next session of the legislature, the power of municipalities to amend their charters, if not completely non-existent, is at least in grave doubt.

Is that your position?

DELEGATE CARSON: That is, Mr. Chairman, and in the Hitchins case, I believe it is the Hitchins case, makes it clear to me in my reading of it, and the Sobeloff Commission cited this case, that the power does emanate from this, and this alone, and did not exist prior to this being in Article XI-E.

THE CHAIRMAN: Is there further discussion?

Delegate Chabot.

DELEGATE CHABOT: May I ask a question of Delegate Carson?

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

DELEGATE CARSON: Yes, sir.

THE CHAIRMAN: Delegate Chabot.

DELEGATE CHABOT: In section 7.05, we use the word "existing" at two places: on line 18 we clearly say "existing at the effective date of the Constitution."

My question is: When we use the word "existing" on line 21, we are talking about that same date, or are we talking about at any time that a municipality wishes to take one of the acts referred to in section 7.05?

THE CHAIRMAN: Delegate Carson.