

there was a strong sentiment in the Committee to do so. However, we felt upon four or five afterthoughts and reflections that historical site was probably apropos and worthy of consideration but did not belong in the natural resources section. The intent of natural resources was to protect, conserve those matters that nature has created, birds, bees, and flowers, and things of that sort but not historical sites, which seemed to be a different basket of fruit. We did not want to become entangled in our own self-spun cobwebs, where perhaps this whole thing would be cluttered up.

THE CHAIRMAN: Delegate Hanson.

DELEGATE HANSON: Scenic beauty, then, is construed to be in this clause on scenic beauty, natural beauty?

DELEGATE BOYER: That is right.

DELEGATE HANSON: And not architectural?

DELEGATE BOYER: Not manmade.

THE CHAIRMAN: Delegate Adkins.

DELEGATE ADKINS: I would like to ask the Chairman if any consideration had been given to whether or not there is any potential conflict between this provision and the provision relating to taking property without just compensation; more specifically, since the legislature has been mandated to do these various things, would it be possible, for example, for the legislature to take extensive scenic easements over existing private property without just compensation?

DELEGATE BOYER: I think not, Judge Adkins. We got into this rhubarb and rumble about the power of eminent domain, and there were some state constitutions that had it included; but to make a long story short, after long consideration and discussion about it, we concluded that certainly our Declaration of Rights somewhere in the Constitution would prohibit taking any property without just compensation and we would not get into the problem of eminent domain in this section.

THE CHAIRMAN: Are there any further questions for purposes of clarification? Delegate Adkins.

DELEGATE ADKINS: Is it quite clear that the taking of a scenic easement is a taking of property in the sense that the language is used in the Bill of Rights?

DELEGATE BOYER: It is clear to me, Judge.

THE CHAIRMAN: Delegate Adkins, I might mention that the proposal which will probably be reported by the Committee on Personal Rights provides that no private property shall be taken or damaged for public use.

Delegate Hardwicke.

DELEGATE HARDWICKE: Mr. Chairman, I wonder if you would clarify whether you intend this to be a mandate to the legislature or whether you really are not possibly considering this as a policy statement, something to the effect that it shall be the policy of this State that these things shall be done. My question to you, following the questioning of Delegate Schneider, is whether or not if the legislature does not act, some kind of action can be taken against them; and since you apparently think not, I wonder if this is not in the policy area.

DELEGATE BOYER: Perhaps I was not on the same wave length with you, Delegate Hardwicke. It certainly is our intention to make this mandatory. "The General Assembly shall by law provide," et cetera is language requiring action. I understand to indicate in response to the previous question that there is recourse through the courts should the General Assembly fail and neglect to do so; that it is mandatory.

THE CHAIRMAN: Delegate Hardwicke.

DELEGATE HARDWICKE: How would you propose that a court would frame the decree to the legislature compelling them to pass legislation of this kind?

DELEGATE BOYER: I think you have to take the case before it, the facts of the case before it. I do not think the court can tell the legislature to make any broad catchall mandatory provision by decree. I think that in a particular case in which a citizen or a taxpayer felt aggrieved, upon application to the court for recourse, the court could then, as it has done so many times in reapportionment and other matters, compel the State, the General Assembly to do so.

THE CHAIRMAN: Delegate Hardwicke.

DELEGATE HARDWICKE: And then if the legislature did not frame an appropriate piece of legislation, would the court then be empowered to draft legislation as in the case of redistricting or reapportionment?

DELEGATE BOYER: This would be a