

In line 8 the recommendation would read: "It shall be the policy of this State that the state government shall, by appropriate action, conserve, enhance, improve and protect the natural resources and environment, and scenic beauty of the State."

THE CHAIRMAN: May I state it as I have it? This is a substitute, I take it, for lines 8, 9, 10 and 11: "It shall be the policy of this State that the state government shall, by appropriate action, conserve, enhance, and protect the natural resources and environment, and scenic beauty of the State."

Is that correct?

DELEGATE HARDWICKE: Yes, Mr. Chairman.

THE CHAIRMAN: The Chair recognizes Delegate Hardwicke to speak to the amendment.

DELEGATE HARDWICKE: Mr. Chairman, Members of the Committee of the Whole: It seems to me that if the Chairman of the Committee on General Provisions had considered this to be a policy matter, I certainly would go along with him, but now we have written into the record of this Convention that the Committee considers that it is a mandate to the legislature, which if the legislature does not act, the court can frame.

Now, I think that the members of this Convention should take a rather dim view of courts enacting legislation, and it seems to me that what was really meant, or what ought to be meant is that this is a matter of policy, and is a matter of policy both in the executive branch and in the legislative branch of the government.

For that reason, in my amendment I have suggested the language, "the state government shall," which leaves it open to either the executive or the legislative branch, and the phraseology, "appropriate action," again leaves it a matter of time in the remedy that is sought so that there is maximum flexibility in the policy statement.

Now, it is true, it does not go very far with regard to compelling action, but I do not think we can go very far. I think that all that we can do is frame a declaration of principle in this area, and that is what I have sought to do in my amendment. I hope that this amendment will be favorably acted upon, Mr. Chairman, and members of the Committee.

THE CHAIRMAN: Does anyone desire

to speak in opposition to the proposed amendment?

Delegate Scanlan.

DELEGATE SCANLAN: I speak in opposition to Delegate Hardwicke's amendment, though I have some sympathy for his attempt to clarify what became unclear, I believe, in the previous discussion.

I am against both his amendment and the original proposal.

I believe in either case they are merely exhortations. They do not rise to the level of constitutional principles.

Now, there are other exhortations equally noble in their motive and in their aim that perhaps might be considered. Some might urge that we put in a statement or exhortation that the legislature shall guarantee decent housing. I would think that that would have a higher claim to the attention of this body than the one now before you. But my point is, no matter how noble the aspirations or the exhortations that the various groups have—and I certainly sympathize with the conservationists, and I hope that everything they aspire to in this statement is ultimately done by the legislature of this state—I do not believe the exhortation to that effect has any place in the constitution.

You can look at the old constitution and see exhortations, the one in which the legislature was exhorted to guarantee the purity of the election laws. I suggest that the presence of that or the absence of that exhortation had no effect whatsoever on the ultimate involvement of the present Corrupt Practices Act.

In their own way these statements of principles, these directions to the legislature that "thou shall", are almost as insulting as some of the "thou shall not's" that from time to time we suggest be laid upon the legislature.

There is no question that the legislature under the expanding judicial interpretation of the general welfare has the power to do everything that they are exhorted to do in this statement.

As for the question of judicial enforcement, I think it is perfectly clear that there would be no court in this State or in any State that would ever have the power to force the legislature to pass a law, which I gather was somewhat implied in some of the discussion that preceded the introduction of Delegate Hardwicke's amendment,