IX

Amendment of the Constitution

POWER OF STATE LEGISLATURE TO LIMIT THE POWERS OF A STATE CONSTITUTIONAL CONVENTION[1]

SCOPE

The customary manner of calling constitutional conventions in the United States is by resolution of the legislature followed by a submission of the question to the electorate.[2] As stated in its title, the present annotation deals with the question whether a state legislature has power to put limitations on the powers of a state constitutional convention.[3]

It should be observed that constitutional conventions may be called into being by agencies other than a state legislature, for instance, by a proclamation of the President of the United States[4] or by an act of Congress.[5] However, this occasion of assembling a constitutional convention ordinarily occurs only at a time when a territory or a state

---

[1] Reprinted from Annot., 158 A.L.R. 512 by the written permission of Lawyers' Co-operative Publishing Co.

[2] 11 AM. JUR. *Constitutional Law* § 26.

[3] For judicial decisions relating to adoption or repeal of amendments to Federal Constitution, *cf.* Annot., 83 A.L.R. 1374, supplemented in 87 A.L.R. 1321 and 122 A.L.R. 717.

[4] For cases involving the powers of a constitutional convention assembled pursuant to a proclamation of the President of the United States, *see* Washington v. Washington, 69 Ala. 281 (1881), and Cox v. Robison, 105 Tex. 426, 150 S.W. 1149 (1912) (holding that an ordinance adopted by the Texas constitutional convention of 1866 was valid without a vote of the people, since the proclamation of President Johnson calling the convention did not require any part of its work to be submitted to the people for their ratification).

See Bradford v. Shine, 13 Fla. 393, 7 Am. Rep. 239 (1871), where with respect to a constitutional convention the delegates of which had been elected under a proclamation of a provisional governor appointed and authorized to call the convention under a quasi-military proclamation of the President of the United States, the court said that "whatever may have been the rightful authority or the legal force of this proceeding, it is certain that the authority and power of the convention so elected was limited to that delegated by the power which created and called it into being."

[5] For cases dealing with the powers of a constitutional convention as limited by the act of Congress under which it was held, *see* Plowman v. Thornton, 52 Ala. 559 (1875) (where the court "assented fully to the proposition that the power of the convention was special and limited, and that it had no legislative power"): Frantz v. Autry, 18 Okla. 561, 91 P. 193 (1907), followed in Green County *ex rel.* Thacker v. Constitutional Delegate Convention, 18 Okla. 707, 91 P. 239 (1907); McCollister v. Murray, 18 Okla. 710, 91 P. 239 (1907); Haines v. Murray, 18 Okla. 711, 91 P. 240 (1907), and Walck v. Murray, 18 Okla. 712, 91 P. 238 (1907); Quinlan v. Houston & T. C. R. Co., 89 Tex. 356, 34 S.W. 738 (1896).