

of a constitutional convention,⁹ the question whether a state legislature has the power to limit the powers of a state constitutional convention is not susceptible of an unconditional answer, since it depends upon a number of factors.

One of these factors is whether or not the existing constitution expressly authorizes the legislature to enact a law calling a constitutional convention. Cf. *Carton v. Secretary of State*, 151 Mich. 337, 115 N.W. 429 (1908), *infra*, IV, where in denying the power of the legislature to limit the power of a constitutional convention, the case of *Wells v. Bain*, 75 Pa. 39, 15 Am. Rep. 563 (1873), *infra*, III, in which the opposite result had been reached, was distinguished on the ground that the Constitution of Pennsylvania there involved contained no provision for the general revision thereof, while in the Michigan Constitution ample provision was made for such revision. Similarly, in the dissenting opinion in *Staples v. Gilmer*, 183 Va. 613, 33 S.E. (2d) 49 (1945), (Va.) the attempt was made to distinguish *Re Opinion to Governor*, 55 R.I. 56, 178 A. 433 (1935), *infra*, on the ground that, as contrasted with the Virginia Constitution, the Rhode Island Constitution contains no mention of a constitutional change by calling a constitutional convention.

Another, and it is believed the most important, factor is whether the law which purports to limit the powers of a

constitutional convention called thereby has or has not been approved directly by the people at an election held thereunder, or at least indirectly by being enacted before the people voted for the calling of, or elected delegates to, the constitutional convention.

This distinction seems to be the basis of *Re Opinion to Governor*, 55 R.I. 56, 178 A. 433 (1935). There, under a constitution which contained no provision for revision or change by way of calling a constitutional convention, but only by vote of a majority of all the members elected to each house and approval of their proposals by popular vote, the governor of the State of Rhode Island requested the opinion of the judges of the state supreme court upon a number of questions relating to the validity of a law for calling a constitutional convention, among them, whether it would be a valid exercise of the legislative power if the general assembly should provide therein (1) for the organization and conduct of such convention, (2) for the submission to the people, for their ratification and adoption, of any constitution or amendments proposed by such convention, and (3) for declaring the result and effect of the vote of a majority of the electors voting upon the question of such ratification and adoption. After reaching the conclusion that for the reasons expressed in the opinion a constitutional convention can be called by the general assembly to revise the existing constitution, and that its delegates must be chosen by the people and cannot be imposed upon the convention by any other authority, the judges answered question (1) in the affirmative if the question is submitted to the people and the act of the general assembly prescribing rules for organization and conduct of the convention is brought to their notice before voting on

⁹ For a case dealing with a constitutional provision expressly conferring upon a constitutional convention the "power to appoint such officers, employees, and assistants as it may deem necessary, and fix their compensation, and to provide for the printing of its documents, journals, proceedings, and a record of its debates, and to appropriate money to pay for the expenditures incurred," see *State ex rel. News Corp. v. Smith*, 353 Mo. 845, 184 S.W. 2d 598 (1945).