

delegates at any constitutional convention; and see *Staples v. Gilmer*,¹⁴ where the Supreme Court of Appeals of Virginia reasoned that a constitutional convention is an agency of the people to exercise the sovereign power of the people.¹⁵

The authors of leading texts in this area,¹⁶ while differing on questions calling for a close analysis of the sources of power in a republican form of government, all agree that the delegates to a constitutional convention must be elected.

Jameson, one of these authors, states:

"[The] members [of a constitutional convention] must be elected by the body invested with political functions, the electors, or by some determinate portion of it, in conformity to the laws and customs of the commonwealth. . . . [A]lthough, strictly speaking, delegates should be chosen by the entire electorate, yet were the legislature . . . to limit the right of voting for them to the electorate less certain designated classes of people deemed unfitted . . . such action . . . would be less objectionable than action which should extend the right beyond the electoral circle."¹⁷

See also Section 262(b)¹⁸ where the discussion in effect points out that between 1783 and the present (1887) all delegates to virtually all constitutional

conventions have been elected by some group of voters; and Section 263.2¹⁹ where the discussion points out that to the extent information was available the same was true for the period from 1775-1783.

With respect to the Georgia Convention of 1788, which was elected directly by the legislature, Jameson had this to say:

"In substance, then, it was the legislature, taking upon itself the work of remodeling the Constitution, from which it derived its existence and its powers—a blending of functions which is never permissible under our constitutions, and which has the sanction of no respectable authority. The body was, therefore, not legitimate as a Constitutional Convention."²⁰

Jameson argues that a constitutional convention is subordinate to the legislature. Dodd argues that a constitutional convention cannot be restricted by the legislature, but is an independent coequal organ of the state.²¹ Hoar seems to agree with Dodd that a constitutional convention is an independent organ of the state which must be free from interference from the several departments of government.²² But each of these text writers, while not dealing directly with the question at issue here, makes it clear that they assume all delegates are to be "chosen by the people of [the] state."²³

What modern authority there is assumes that the delegates to constitutional conventions will be elected by the

¹⁴ 183 Va. 613, 33 S.E. 2d 49 (1945).

¹⁵ Compare *Wells v. Bain*, 75 Pa. 39 (1873).

¹⁶ J. JAMESON, *CONSTITUTIONAL CONVENTIONS* (4th ed. 1887); W. DODD, *REVISION AND AMENDMENT OF STATE CONSTITUTIONS* (1910); and R. HOAR, *CONSTITUTIONAL CONVENTIONS* (1917).

¹⁷ JAMESON, *supra* note 16, at 258, § 260.

¹⁸ *Id.* at 260.

¹⁹ *Id.* at 262.

²⁰ *Id.* at 136, § 149.

²¹ DODD, *supra* note 16, at 80.

²² HOAR, *supra* note 16, at 80.

²³ DODD, *supra* note 16, at 79.