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## **New York State Bar Association Committee on State Constitution: Summary of 1993 Activities**

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## NEW YORK STATE BAR ASSOCIATION COMMITTEE ON STATE CONSTITUTION: SUMMARY OF 1993 ACTIVITIES

The Chair, Shirley Adelson Siegel, introduced and welcomed the Honorable Jerry Boone, who is succeeding her as Chair of the Committee on State Constitution.

*State of the State message.* The Chair reported that the Governor's 1993 State of the State Message made new proposals for amendment to the New York State Constitution in regard to (1) a constitutional convention and (2) a legislative initiative, but made no mention, as it had done in previous years, for amendment in regard to (3) gubernatorial inability and succession. After discussion, it was agreed to study proposals (1) and (2) when in bill form and to urge the Governor's counsel, as well as the committees which had failed to report proposal (3) in 1992, to correct a serious omission in the present Constitution. It was agreed that a study of the new proposal for a legislative initiative would be undertaken.

*State Debt.* The Chair stated that following the Governor's indication in his 1993 Budget Message, the Governor and the State Comptroller were preparing a Constitutional amendment in relation to State debt. The January 1993 Report made to the Comptroller by his Committee on Debt Planning and Financing was summarized for the committee; the report was said to

represent the Comptroller's position. The committee was particularly intrigued by the proposal to permit more than one bond issue at an election.

The Chair reported that a joint hearing had recently been held by the Senate and Assembly Finance Committees on the debt reform proposal to amend the Constitution regarding the State's borrowing practices. There was also discussion on the *Schulz*<sup>1</sup> cases which challenged the current borrowing practices.

The Committee discussed its role with respect to State borrowing: to study and report on the substance of a proposal concerning State borrowing, or only to be critical if in its opinion, a proposal for constitutional amendment is inappropriately prolix. The Chair noted that such a view affected not only the proposed amendment, not yet introduced, in relation to State debt, but also, three or four amendments which had their first legislative passage in 1992 and were the subject of this Committee's preliminary consideration in September. The Chair

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1. *See Schulz v. State of New York*, 81 N.Y.2d 336, 615 N.E.2d 953, 599 N.Y.S.2d 469 (1993). The New York Court of Appeals held that voter standing should be recognized in the suit involving a financing scheme as "the express voter referendum requirement to incur debt contained in Article VII § 11 is inextricably linked to the constitutional grant of debt incurring authority." *Id.* at 345, 615 N.E.2d at 955, 599 N.Y.S.2d at 471; *Schulz v. State of New York*, \_\_\_ A.D.2d \_\_\_, 603 N.Y.S.2d 207 (3d Dep't 1993). In this case, taxpayer plaintiffs claimed that the State Constitution was violated because the financing of a resource recovery facility by the Warren and Washington Counties Industrial Development Agency constituted state aid to a private undertaking and was a state assumption of IDA's debt obligations. *Id.* at \_\_\_, 603 N.Y.S.2d at 209. The court held that the Constitution was not violated because the monetary aid given to the counties by New York State was a gift. *Id.* at \_\_\_, 603 N.Y.S.2d at 209; *Schulz v. State of New York*, 156 Misc. 2d 169, 601 N.Y.S.2d 239 (Sup. Ct. Albany County 1993). The court held that challenged provisions of Chapter 56 which allocated monies from certain trust funds composed of revenues from gasoline and transportation taxes to be used for the financing of transportation, bridge and highway projects, were constitutional on two bases. First, the statutory provisions provided a creative method of financing in furtherance of the public interest and thus, should be accorded deference. *Id.* at 176, 601 N.Y.S.2d at 244. Second, the legislature was empowered with the authority to earmark funds to a public corporation for a public purpose. *Id.* at 177, 610 N.Y.S.2d at 244.

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also noted that the Committee on State Constitution performed a useful role in studying proposed constitutional amendments which were not the subject of study by other committees of the Association, such as court reform and election law reform. It was commented that while the Municipal Law section had a general interest in the finance articles of the Constitution, there existed the impression that the section no longer has an active bond counsel constituency and would not be studying the amendments in question.

Further, in regard to this committee's role, Professor Martin A. Schwartz reminded the committee of its concern with education of the bar and the public on the provisions of the State Constitution.

*Compilation of constitutional decisions.* Reference was made to various sources of research on State Constitutions such as, the annual review by Rutgers Law School, periodic bulletins of the Association of Attorney Generals, the compilation done by the Commission on Intergovernmental Relations and the Clark Boardman text.

The Chair circulated the 1992 annual issue of *Touro Law Review* on New York State Constitutional Law and said that she was preparing a summary of the committee's 1992 activities for the 1993 annual issue. The question was raised whether it was timely to seek State bar sponsorship of the annual issue in lieu of the committee sponsorship. The Chair undertook to look into this.

*Gubernatorial succession.* The Chair stated that the gubernatorial succession bill had passed the Assembly (A. 6375)<sup>2</sup> and was not

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2. 1993-94 N.Y. Laws 6375-A. The bill propos[ed] an amendment to sections 5 and 6 of article 4 and section 3 of article 6 of the Constitution, in relation to gubernatorial inability and succession; and section 1 of article 5 of the Constitution, in relation to removing the prohibition on electing a comptroller or an attorney-general except at the time of electing a governor . . . .

*Id.*

in the Senate Judiciary Committee. It is in the same form as the Governor's program bill #24 with the addition of an amendment to Article 5 of the Constitution<sup>3</sup> which deletes the provision that the comptroller and the attorney general may be elected only at the time of electing the governor, and provides that these officers may be chosen at the same election as the governor and for the same term "except as otherwise provided by the legislator with respect to the filling of vacancies in such offices."<sup>4</sup>

The committee noted with satisfaction that introduction and action on the gubernatorial succession bill followed this

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3. N.Y. CONST. art. V, § 1. The amended version of Article V, § 1 provides:

The comptroller and attorney-general shall be chosen at the same general election as the governor and hold office for the same term, *except as otherwise provided by the legislature with respect to the filling of vacancies in such offices*, and shall possess the qualifications provided in section 2 of article IV. The legislature shall provide for filling vacancies in the office of comptroller and of attorney-general. No election of a comptroller or an attorney-general shall be had except at the time of electing a governor. The comptroller shall be required: (1) to audit all vouchers before payment and all official accounts; (2) to audit the accrual and collection of all revenues and receipts; and (3) to prescribe such methods of accounting as are necessary for the performance of the foregoing duties. The payment of any money of the state, or of any money under its control, or the refund of any money paid to the state, except upon audit by the comptroller, shall be void, and may be restrained upon the suit of any taxpayer with the consent of the supreme court in appellate division on notice to the attorney-general. In such respect the legislature shall define his powers and duties and may also assign to him: (1) supervision of the accounts of any political subdivision of the state; and (2) powers and duties pertaining to or connected with the assessment and taxation of real estate, including determination of ratios which the assessed valuation of taxable real property bears to the full valuation thereof, but not including any of those powers and duties reserved to officers of a county, city, town or village by virtue of sections seven and eight of article nine of this constitution. The legislature shall assign to him no administrative duties, excepting such as may be incidental to the performance of these functions, any other provision of this constitution to the contrary notwithstanding.

*Id.* (italics indicate proposed amended portion of Article V, § 1).

4. *Id.*

committee's letters in February, 1994, to the Assembly Governmental Operations Committee, the Senate Judiciary Committee and the Counsel to the Governor, transmitting the legislative report of the State Bar. Reference was made to the response to the Chair, Ms. Siegel, by Edward Cole, counsel to the Senate Judiciary Committee, that the Senate Committee would be glad to work with the Governor's office on this proposal.

*Constitutional convention.* The committee considered the Governor's special message on May 26, 1993, calling for a constitutional convention and announcing the creation of a task force chaired by Peter C. Goldmark, Jr., to study how the convention should be run and report by May 15, 1995. At the same time the committee considered the Governor's program bill #120 proposing to amend Article 19, section 2,<sup>5</sup> of the State

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5. N.Y. CONST. art. XIX, § 2. The proposed article would read:

At the general election to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question "Shall there be a convention to revise the constitution and amend the same?" shall be submitted to and decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large. *Provided, however, that no person who has served as a member of the senate or assembly or as a state or local officer of the state of New York shall be eligible to be elected as a delegate to a constitutional convention if such service occurred at any time during the calendar year in which the electors approved the holding of such convention or at any time during the calendar year immediately following such approval. For the purposes of this section, the term "state officer" includes every officer for whom all the electors of the state are entitled to vote, members of the legislature, justices of the supreme court, regents of the university, and every officer, appointed by one or more state officers, or by the legislature, and authorized to exercise his official functions throughout the entire state, or without limitation to any political subdivision of the state, except United States Senators, members of Congress, and electors for President and Vice-*

Constitution with respect to who would be eligible for election as convention delegates, their compensation and other matters. Reference was made to the statement on the floor of the Senate by Senator Volker, in response to the Governor's message, that the death penalty should be on the ballot for a vote of the people.

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*President of the united states and the term "local officer" includes every other officer who is elected by the electors of a portion only of the state, every officer of a political subdivision or municipal corporation of the state, and every officer limited in the execution of his official functions to a portion only of the state. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation as shall then be annually payable to the members of the assembly and be reimbursed for actual traveling expenses, while the convention is in session, to the extent that a member of the assembly would then be entitled thereto in the case of a session of the legislature. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the ayes and noes being entered on the journal to be kept. The convention shall have 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, journal, proceedings and other expenses of said convention. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the state at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.*

*Id.* (italics indicate proposed amendment of Article XIX § 2).

*Reapportionment.* The Chair reported that the New York State Bar Foundation has declined to fund the Committee's proposed study of the reapportionment process as not within its current grant objectives. There has not been a response from the Bar Association's Finance Committee. However, it was suggested that the request for such appropriation of \$5,000 for students' research could be included in the committee's regular budget request in the fall.

*Legislative inaction.* The Governor's renewed proposal for an initiative process to overcome legislative inaction (program bill #129) was next considered. A report was circulated which found the proposal subject to the same objections as the bill which the committee opposed in 1991. The matter was tabled.

*State finance article.* The Chair noted that a proposed reform of certain provisions of the state finance article of the Constitution had passed the Legislature: 4359<sup>6</sup> in the Senate and 7586<sup>7</sup> in the Assembly, and awaits passage at the next session before going on the ballot.

*Proposed amendment to Article VI of the New York State Constitution.* A member of the Committee inquired of the Surrogates' Association regarding the proposed amendment of Article VI,<sup>8</sup> which passed the 1991-92 session of the Legislature,

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6. 1993 N.Y. LAWS 4359.

7. 1993 N.Y. LAWS 7586. The Senate and Assembly propos[ed] amendments to sections 2, 10, 11 and 16 of article 7 of the constitution, in relation to the submission of a capital program and financing plan, the contracting of debts during emergencies, the prohibition of certain borrowing arrangements, the authorization for the contracting of debt secured by state revenues, and the manner in which principal and interest payments are appropriated and paid . . . .

*Id.*

8. N.Y. CONST. art. VI, § 26. Subdivision (e) of § 26 was proposed to read as:

A judge of the surrogate's court in any county outside the city of New York may perform the duties of his office or hold court in any county

relating to the assignment of surrogates. It was told to the Committee that the amendment would affect only upstate surrogates, that the upstate surrogates favor it and that the surrogates in New York City oppose it.

*Individual constitutional rights.* The Chair elicited discussion regarding the status of the Committee's mission and activities. Professor Martin A. Schwartz commented that the Committee had in recent years focused more on political, financial and institutional aspects of the Constitution, rather than individual constitutional rights. He suggested that the Committee might have a greater impact if it focused on individual liberties.

Seth Agata then suggested that the Committee coordinate and work with other committees on issues of mutual concern. Mr. Agata related that the Criminal Justice Services section is looking at state constitutional guarantees of individual rights and contemplates startup of a newsletter covering these issues. The Committee was receptive to the idea of coordination and collaboration and Professor Schwartz expressly indicated that he would coordinate with Mr. Agata. Professor Schwartz suggested that the Committee could also have a greater role in the *Touro Law Review*.

*Related committees.* The Chair indicated an intention to converse with the Chairs of related committees both within the State Bar and the City and New York County Bars, to ascertain their agenda and identify areas of interest. The Chair related that he had already spoken with Larry Kahn, Chair of the New York County Lawyers' Association's Committee on the State Constitution. Mr. Kahn advised that his Committee's focus is on the State Constitutional Convention, and that his Committee contemplates holding a symposium on the convention process in

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and may be temporarily assigned to the supreme court in the judicial department of his residence or to the county court or the family court in any county *or to the surrogate's court in any county outside the city of New York* or to a court for the city of New York established pursuant to section fifteen of this article.

*Id.* (italics indicate proposed amended portion of Article 6, § 26(e)).

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the Spring of 1994. There was discussion as to the status of the Governor's temporary commission on Constitutional Revision. The Chair related that Professor Vincent Bonventre had volunteered to monitor the Commission's activities and the Chair extended an offer to other interested members to join with Professor Bonventre.

*Other amendments to the State Constitution.* The Chair distributed copies of the three amendments to the Constitution appearing on the November 2 ballot which are aimed at helping the State and localities manage their finances.

Hon. Jerry Boone, Chair  
Committee on State Constitution

Shirley Adelson Siegel, Former Chair  
Committee on State Constitution

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