

WORKS PROGRESS ADMINISTRATION

HARRY L. HOPKINS, ADMINISTRATOR

CORRINGTON GILL, ASSISTANT ADMINISTRATOR

HOWARD B. MYERS, DIRECTOR
DIVISION OF SOCIAL RESEARCH

ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN THE STATE OF
NEVADA

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PREPARED BY
ROBERT C. LOWE AND DAVID S. LANDER
LEGAL RESEARCH SECTION

UNDER THE SUPERVISION OF
A. ROSS ECKLER, COORDINATOR OF SPECIAL INQUIRIES
DIVISION OF SOCIAL RESEARCH

PREFACE

This bulletin is one of a series presenting State constitutional provisions affecting public welfare, prepared to supplement the State by State digests of public welfare laws so as to provide in abstract form the basis for the public welfare services of the several States.

The provisions quoted are those concerned directly with public welfare administration and such others as may substantially affect a public welfare program, even though only indirectly related. It would be impossible to consider within the limits of this study every remotely connected constitutional provision. The indirectly related provisions included, therefore, have been restricted to those concerning finance, legislation, and the methods of constitutional amendment.

An attempt has been made, by a careful selection of the most recent cases decided by the highest courts of the States, to indicate wherever possible how these provisions have been construed. These cases are included in footnotes appended to the constitutional provisions shown.

It is hoped that these abstracts will be useful to those interested in public welfare questions in indicating how State and local public welfare administration may be affected by constitutional powers and limitations.

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Nevada

ANALYSIS OF CONSTITUTIONAL PROVISIONS
AFFECTING PUBLIC WELFARE IN NEVADA¹

I. Incidence of Responsibility for Welfare Program

A. Institutions for the benefit of the insane, blind and deaf and dumb, and such other benevolent institutions as the public good may require, shall be fostered and supported by the state, subject to such regulations as may be prescribed by law.²

B. A state prison shall be established and maintained in such manner as may be prescribed by law; and provision may be made by law for the establishment and maintenance of a house of refuge for juvenile offenders.³

II. Financial Powers and Limitations

A. Taxation and Assessments

(1) State

(a) The legislature shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, when not patented, the proceeds alone of which shall be assessed and taxed, and when patented, each patented mine shall be assessed at not less than five hundred dollars (\$500), except when one hundred dollars (\$100) in labor has been actually performed on such patented mine during the year, in addition to the tax upon the net proceeds, and also, excepting such property

¹Constitution (1864), as published by the State of Nevada (1935), and certified to by the Secretary of State; with all amendments to May 15, 1937.

The Legislature has supreme power in all matters of government where not prohibited by constitutional limitations. In re Boyce, 27 Nev. 299, 75 P. 1 (1904).

Without any express provision in the Constitution the "authority to provide for the health, safety, and welfare of the citizen is inherent in the police power of the Legislature." A statute, providing an 8-hour day for all workmen in mines, smelters, and mills for the reduction of ores. was held constitutional. Ibid.

"If the object to be accomplished is conducive to the public interest, the Legislature may exercise a large liberty of choice in the means employed to enforce an exertion of its police powers." Itcaina vs. Marble, 55 P. (2d) 625, 631 (1936).

²Constitution, Art. XIII, Sec. 1.

³Constitution, Art. XIII, Sec. 2.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

as may be exempted by law for municipal, educational, literary, scientific, or other charitable purposes.⁴

(b) The total tax levy for all public purposes including levies for bonds, within the state, or any subdivision thereof, shall not exceed five cents on one dollar of assessed valuation.⁵

(c) The legislature shall provide by law for an annual tax sufficient to defray the estimated expenses of the state for each fiscal year; and whenever the expenses of any year shall exceed the income, the legislature shall provide for levying a tax sufficient, with other sources of income, to pay the deficiency, as well as the estimated expenses of such ensuing years or two years.⁶

(d) The legislature shall provide a special tax, which shall not exceed two mills on the dollar of all taxable property in the state, in addition to the other means provided for the support and maintenance of said university and common schools.⁷

(e) The legislature shall provide by law for the payment of an annual poll tax, of not less than two nor exceeding four dollars, from each male person resident in the state between the ages of

⁴Constitution, Art. X, Sec. 1.

"Full legislative power is, save as specially restricted by the Constitution, vested in the Legislature. Taxation is a legislative power. Full discretion and control, therefore, in reference to it, is vested in the Legislature, save when specially restricted. * * * In the absence of any constitutional prohibition or restriction, it is within the undoubted power of the Legislature to impose a tax upon employments, occupations, or avocations, or to authorize municipal authorities to do so." A municipal ordinance requiring attorneys to pay a license fee the rate graduated according to income was held not to violate this section. *Ex parte Dixon*, 43 Nev. 196, 183 P. 642 (1919).

"We are of the opinion that section 1 of article X refers particularly to the levy of ad valorem taxes on all property, real and personal, which can and must be comparatively uniform and equal, and does not apply to licenses imposed for conducting any business or profession which, from the very nature of the case, cannot be made perfectly uniform and equal." A statute which required monthly payment of a fixed amount from traveling merchants without regard to the amount of income or sales made was held not to contravene this section. *Ex parte Robinson*, 12 Nev. 263 (1877).

An inheritance tax was held to be not a property tax but an excise tax, levied upon the privilege of transferring property. *Cole vs. Nickel*, 177 P. 409 (1919).

⁵Constitution, Art. X, Sec. 2, adopted November 3, 1936.

Prior to the adoption of this amendment the court had held that there was no provision in the State Constitution fixing a maximum levy beyond which the Legislature might not go. *State ex rel. Eggers vs. Esser*, 35 Nev. 429, 129 P. 557, 559 (1913).

⁶Constitution, Art. IX, Sec. 2.

⁷Constitution, Art. XI, Sec. 6.

II. Financial Powers and Limitations—Continued

A. Taxation and Assessments—Continued

(1) State—Continued

twenty-one and sixty years (uncivilized American Indians excepted), to be expended for the maintenance and betterment of the public roads.⁸

(f) All real property and possessory rights to the same, as well as personal property in this state, belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals; provided, that the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.⁹

(2) Counties

The legislature shall provide by law for the election of a board of county commissioners in each county, and such county commissioners shall, jointly and individually, perform such duties as may be prescribed by law.¹⁰

(3) Other Local Units

The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water; provided, however, that the legislature may, by general laws, in the manner and to the extent therein provided, permit and authorize the electors of any city or town to frame, adopt and amend a charter for its own government, or to amend any existing charter of such city or town.¹¹

⁸ Constitution, Art. II, Sec. 7.

The payment of a poll tax was held not a condition precedent to the exercise of the right to vote unless the Legislature makes it so. *Bryant vs. Anderson*, 24 Nev. 326, 53 P. 497 (1898).

⁹ Constitution, Art. VIII, Sec. 2.

The words "property in this state" were held to mean property taxable in the State and not property physically located in the State. Where ships had no actual situs for purposes of taxation and were owned by a Nevada Corporation, they were held to be taxable in Nevada because, since they had no situs, they were not taxable elsewhere, and so should be taxable at the domicile of the owner. *State ex rel. United States Lines Company vs. Second Judicial District Court of Nevada*, 43 P. (2d) 173 (1935).

Where an express company did both an interstate and intrastate business it was held that both its tangible and intangible property could be assessed and taxed to the extent of the actual cash value of such property used within the State. *State vs. Wells Fargo & Company*, 38 Nev. 505, 150 P. 836 (1915).

¹⁰ Constitution, Art. IV, Sec. 26.

The limitation of the amount of county taxation is fixed by statute. *State ex rel. Eggers vs. Esser*, 35 Nev. 429, 129 P. 557 (1913).

¹¹ Constitution, Art. VIII, Sec. 8.

A board or city council is a body possessed of but limited and special powers, as are especially granted by the Constitution and the Legislature, and when the

II. Financial Powers and Limitations—Continued

B. Exemptions

(1) The legislature shall provide by law for * * * assessment and taxation, * * * excepting such property as may be exempted by law for municipal, educational, literary, scientific, or other charitable purposes.¹²

(2) All real property and possessory rights to the same, as well as personal property in this state, belonging to corporations now existing or hereafter created, shall be subject to taxation the same as property of individuals; provided, that the property of corporations formed for municipal, charitable, religious, or educational purposes may be exempted by law.¹³

C. Borrowing and Use of Credit

(1) State

(a) The state may contract public debts; but such debts shall never, in the aggregate, exclusive of interest, exceed the sum of one per cent of the assessed valuation of the state, as shown by the reports of the county assessors to the state controller, except for the purpose of defraying extraordinary expenses, as hereinafter mentioned. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein; and every such law shall provide for levying an annual tax sufficient to pay the interest semiannually, and the principal within twenty years from the passage of such law, and shall specially appropriate the proceeds of said taxes to the payment of said principal and interest; and such appropriation shall not be repealed nor

statutes prescribe the mode of exercising these powers, such statutes must be followed. It was held that a city must fulfill the requirements of a statute which provided that 80 percent of the voters of the city sign a petition in order to amend the city charter. *Caton vs. Frank*, 44 P. (2d) 521 (1935).

Where a city was operating under a home-rule charter, however, adopted pursuant to the Constitution and the statutes, a provision in the charter which was inconsistent with a subsequent general statute was held to prevail over the statute.

Where the Legislature, under the Constitution, has authorized home-rule cities and towns to legislate upon particular subjects, such local legislation passed pursuant thereto was held to be exclusive within its field. *State ex rel. Owens vs. Doxey*, 55 Nev. 186, 28 P. (2d) 122 (1934). See p. 5, footnote 18.

¹²Constitution, Art. X, Sec. 1.

For the complete section, see p. 1, par. (a).

The Legislature cannot exempt any property from taxation except that which is specified in this section. A statute exempting money lent on mortgage security was held invalid because such an exemption did not come within the terms of this section. *State vs. Carson City Savings Bank*, 17 Nev. 146, 30 P. 703 (1882).

All property is subject to taxation, and the Legislature cannot exempt any taxable property except that specifically mentioned in the Constitution. *State ex rel. United States Lines Company vs. Second Judicial District Court of Nevada*, 43 P. (2d) 173 (1935).

¹³Constitution, Art. VIII, Sec. 2.

See footnote 12, above.

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(1) State—Continued

the taxes postponed or diminished until the principal and interest of said debts shall have been wholly paid. Every contract of indebtedness entered into or assumed by or on behalf of the state, when all its debts and liabilities amount to said sum before mentioned, shall be void and of no effect, except in cases of money borrowed to repel invasion, suppress insurrection, defend the state in time of war, or, if hostilities be threatened, provide for the public defense.¹⁴ * * *

(b) The state shall never assume the debts of any county, town, city, or other corporation whatever, unless such debts have been created to repel invasion, suppress insurrection, or to provide for the public defense.¹⁵

(c) The state shall not donate or loan money or its credit, subscribe to or be interested in the stock of any company, association, or corporation, except corporations formed for educational or charitable purposes.¹⁶

(2) Counties

No provision.¹⁷

(3) Other Local Units

(a) The legislature shall provide for the organization of cities and towns by general laws and shall restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, except for procuring supplies of water;¹⁸ * * *.

(b) No county, city, town, or other municipal corporation shall become a stockholder in any joint-stock company, corporation, or association whatever, or loan its credit in aid of any such

¹⁴ Constitution, Art. IX, Sec. 3.

Warrants payable out of funds not yet in the State Treasury were held not to constitute a "debt" within the meaning of this section. State ex rel. Ash vs. Parkinson, 5 Nev. 15 (1869).

¹⁵ Constitution, Art. IX, Sec. 4.

¹⁶ Constitution, Art. VIII, Sec. 9.

¹⁷ By a general act of 1933 the Legislature has authorized counties to borrow money upon approval of the voters of the county. Washoe County Water Conservation District vs. Beemer, 45 P. (2d) 779, 782 (1935).

¹⁸ Constitution, Art. VIII, Sec. 8.

Where a statute required the approval of the voters to authorize a municipal bond issue, and required the bonds all to mature on the same date, a municipal election authorizing the issuance of bonds maturing at different dates was held not to give the city council power to issue any bonds, because it would be impossible to say to what extent the maturity dates as set out in the election notices influenced the voters. State ex rel. Adams vs. Allen, 55 Nev. 346, 34 P. (2d) 1074 (1934).

II. Financial Powers and Limitations—Continued

C. Borrowing and Use of Credit—Continued

(3) Other Local Units—Continued

company, corporation, or association, except railroad corporations, companies, or associations.¹⁹

D. Other Income

All lands, * * * donated for the benefit of public schools in the act of * * * Congress, * * * and all proceeds of lands that have been or may hereafter be granted or appropriated by the United States to this state, * * * all estates that may escheat to the state; all of such per centum as may be granted by Congress on the sale of lands; all fines collected under the penal laws of the state; all property given or bequeathed to the state for educational purposes, and all proceeds derived from any or all of said sources shall be * * * pledged for educational purposes, and shall not be transferred to any other funds for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties as the legislature may provide by law; * * * provided, that the interest only of the aforesaid proceeds shall be used for educational purposes,²⁰ * * *.

E. Appropriations and Expenditures

(1) No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public money shall be attached to and published with the laws at every regular session of the legislature.²¹

(2) No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes.²²

¹⁹Constitution, Art. VIII, Sec. 10.

A statute which authorized a county, in order to obtain a Federal grant to engage in a water storage project, to issue noninterest-bearing bonds of the county for \$500,000, delivering the bonds to a water conservation district, and levying and collecting taxes for their payment, was held not violative of this section. The statute was held not to authorize the loaning of the credit of the county to a corporation, but merely to allow the county to further a project for its own benefit, and issue bonds therefor. Washoe County Water Conservation District vs. Beemer, 45 P. (2d) 779 (1935).

²⁰Constitution, Art. XI, Sec. 3.

²¹Constitution, Art. IV, Sec. 19.

This section does not require that the fund out of which the appropriation is to be made should be named in the appropriation act. State ex rel. Keith vs. Westerfield, 23 Nev. 468, 49 P. 119 (1897).

²²Constitution, Art. XI, Sec. 10.

The term "sectarian purpose" in this section was held to have been intended in the popular sense to include a religious sect or a body of persons united in religious tenets differing from those of other sects or bodies of persons. An appropriation to an orphanage was held to be void as an appropriation for a sectarian purpose

III. Provisions Affecting Legislation

A. Regular Sessions of Legislature

(1) The sessions of the legislature shall be biennial, and shall commence on the third Monday of January next ensuing the election of members of the assembly, unless the governor of the state shall, in the interim, convene the legislature by proclamation.²³

(2) The first regular session of the legislature under this constitution may extend to ninety days, but no subsequent regular session shall exceed sixty days,²⁴ * * *.

(3) In case of a disagreement between the two houses, with respect to the time of adjournment, the governor shall have power to adjourn the legislature to such time as he may think proper; provided, it be not beyond the time fixed for the meeting of the next legislature.²⁵

B. Special Sessions of Legislature

(1) The governor may, on extraordinary occasions, convene the legislature by proclamation, and shall state to both houses, when organized, the purpose for which they have been convened, and the legislature shall transact no legislative business except that for which they were especially convened, or such other legislative business as the governor may call to the attention of the legislature while in session.²⁶

(2) * * * no subsequent regular session shall exceed sixty days, nor any special session convened by the governor * * * twenty days.²⁷

C. Powers of Initiative and Referendum

The people reserve to themselves the power to propose laws and the power to propose amendments to the constitution and to enact or reject the same at the polls, independent of the legislature, and also reserve the power at their option to approve or reject at the polls, in the

because, although orphans of any creed were accepted, the orphanage was controlled by the Catholic Church and instruction in the Catholic faith was given. *State of Nevada vs. Hallock*, 16 Nev. 373 (1882).

²³ Constitution, Art. IV, Sec. 2.

²⁴ Constitution, Art. IV, Sec. 29.

²⁵ Constitution, Art. V, Sec. 11.

²⁶ Constitution, Art. V, Sec. 9.

The Legislature, when convened in special session, can only legislate on those subjects for which it was especially convened, and such others as may be called to its attention during the session by the Governor. *Jones vs. Theall*, 3 Nev. 233 (1867).

²⁷ Constitution, Art. IV, Sec. 29.

III. Provisions Affecting Legislation—Continued

C. Powers of Initiative and Referendum—Continued

manner herein provided, any act, item, section or part of any act or measure passed by the legislature,²⁸ * * *.

D. Legislative Enactment

(1) A majority of all the members elected to each house shall constitute a quorum to transact business, but a smaller number may adjourn, from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may prescribe.²⁹

(2) Each law enacted by the legislature shall embrace but one subject, and matter properly connected therewith, which subject shall be briefly expressed in the title; and no law shall be revised or amended by reference to its title only; but, in such case, the act as revised, or section as amended, shall be reenacted and published at length.³⁰

²⁸ Constitution, Art. XIX, Sec. 3.

This section further provides that not more than 10 percent of the qualified electors shall be required to propose any measure by initiative petition. Initiative measures take precedence over all measures of the Legislature except appropriation bills, must be enacted or rejected by the Legislature without change or amendment within 40 days, and are subject to referendum.

Ten percent or more of the voters may order a referendum on any act of the Legislature, and such act must be submitted at the next election where a State or congressional officer is to be voted for, or wherein any question may be voted on by the electors of the entire State. When an act is so voted upon and approved by a majority of the electors voting at the election it shall not be set aside in any way except by a direct vote of the people. Constitution, Art. XIX, Secs. 1 and 2.

Initiative and referendum powers are reserved to the qualified electors of each county and municipality as to all local, special, and municipal legislation of every character. Not more than 10 percent of the electors shall be necessary to order the referendum, nor more than 15 percent to propose a municipal measure by the initiative. Constitution, Art. XIX, Sec. 3.

²⁹ Constitution, Art. IV, Sec. 13.

³⁰ Constitution, Art. IV, Sec. 17.

The main test for the application of this section to a particular statute is whether the title is of such a character as to mislead the public and the members of the Legislature as to the subjects embraced in the act. The provisions of the act must correspond with the subject expressed in the title; however, if the numerous provisions contained in an act have one general subject which is indicated by the title and are logically germane to the subject expressed in the title, the act is not obnoxious to this section. This section must be construed liberally. Where an act was entitled "to provide for the inspection of hides * * * and other matters relating thereto" and the body of the act dealt with the sale of meat, it was held to violate this section. *State vs. Payne*, 53 Nev. 193, 295 P. 770 (1931).

The Supreme Court held that a statute, the title of which read "An act providing for the withdrawal of * * * certain townships * * * from the county of Mineral, and the annexation and addition thereof to the county of Lyon," could properly include a provision that the office of any county official residing in the severed section should be declared vacant. The opinion stated that "it is only necessary in the title to express the principal subject embodied in the law, while matters properly connected therewith are not required to be mentioned." *State ex rel. Wichman vs. Gerbig*, 55 Nev. 46, 24 P. (2d) 313 (1933).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

(3) Every bill shall be read by sections on three several days in each house, unless, in case of emergency, two-thirds of the house where such bill may be pending shall deem it expedient to dispense with this rule; but the reading of a bill by sections, on its final passage, shall in no case be dispensed with, and the vote on the final passage of every bill or joint resolution shall be taken by yeas and nays, to be entered on the journals of each house; and a majority of all the members elected to each house shall be necessary to pass every bill or joint resolution, and all bills or joint resolutions so passed shall be signed by the presiding officers of the respective houses, and by the secretary of the senate and the clerk of the assembly.³¹

(4) The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: * * * regulating county and townships business; * * * for the assessment and collection of taxes for state, county, and township purposes; * * * refunding money paid into the state treasury, or into the treasury of any county; releasing the indebtedness, liability or obligation of any corporation, association, or person to the state, or to any county, town or city of this state;³² * * *.

(5) In all cases enumerated in the preceding section, (see par. 4, above) and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State.³³

(6) Every bill which may have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve it, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated, which house shall cause such objections to be entered upon its journal, and proceed to reconsider it; if, after such reconsideration, it again pass both houses, by yeas and nays, by a

³¹Constitution, Art. IV, Sec. 18.

An enrolled bill, signed by the proper officers and deposited with the Secretary of State, is conclusively presumed to have been regularly enacted; and the courts cannot look to memoranda endorsed on the bill or to the legislative journals to determine whether the bill was read on 3 several days in each house, as required by this section. State ex rel. Osburn vs. Beck, 25 Nev. 68, 56 P. 1008 (1899).

³²Constitution, Art. IV, Sec. 20.

³³Constitution, Art. IV, Sec. 21.

A statute applicable to counties which polled more than 1,500 votes at the last election, of which there was only one county at the time of the decision, was held not to violate this section as being a special law. The court stated that the Legislature could make reasonable classification in a general law and that such classification could be based on the voting population of counties as long as it was applicable in the future and would apply to any county later coming within the classification. State ex rel. Patterson vs. Donovan, 20 Nev. 75, 15 P. 783 (1887).

III. Provisions Affecting Legislation—Continued

D. Legislative Enactment—Continued

vote of two-thirds of the members elected to each house, it shall become a law, notwithstanding the governor's objections. If any bill shall not be returned within five days after it shall have been presented to him (Sunday excepted), exclusive of the day on which he received it, the same shall be a law in like manner as if he had signed it, unless the legislature, by its final adjournment, prevent such return, in which case it shall be a law, unless the governor, within ten days next after the adjournment (Sunday excepted), shall file such bill, with his objections thereto, in the office of the secretary of state, who shall lay the same before the legislature at its next session, in like manner as if it had been returned by the governor; and if the same shall receive the vote of two-thirds of the members elected to each branch of the legislature, upon a vote taken by yeas and nays, to be entered upon the journals of each house, it shall become a law.³⁴

IV. Constitutional Amendment or Revision

A. By Proposal of Legislature or People

Any amendment or amendments to this constitution may be proposed in the senate or assembly; and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the yeas and nays taken thereon, and referred to the legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislature voting thereon, such amendment or amendments shall become a part of the constitution.³⁵

B. By Constitutional Convention

If at any time the legislature, by a vote of two-thirds of the members elected to each house, shall determine that it is necessary

³⁴Constitution, Art. IV, Sec. 35.

³⁵Constitution, Art. XVI, Sec. 1.

For the proposal of amendments by initiative petition, see p. 7, par. C.

IV. Constitutional Amendment or Revision—Continued

B. By Constitutional Convention—Continued

to cause a revision of this entire constitution, they shall recommend to the electors, at the next election for members of the legislature, to vote for or against a convention, and if it shall appear that a majority of the electors voting at such election shall have voted in favor of calling a convention, the legislature shall, at its next session, provide by law for calling a convention to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the legislature.³⁶ * * *

³⁶Constitution, Art. XVI, Sec. 2.

