

1960

## Missouri Constitutional Convention in 1963, A

Robert F. Karsch

Follow this and additional works at: <http://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Robert F. Karsch, *Missouri Constitutional Convention in 1963, A*, 25 Mo. L. REV. (1960)

Available at: <http://scholarship.law.missouri.edu/mlr/vol25/iss1/8>

This Article is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized administrator of University of Missouri School of Law Scholarship Repository.

## A MISSOURI CONSTITUTIONAL CONVENTION IN 1963?\*

ROBERT F. KARSCH\*\*

Missouri has had six constitutional conventions, four of them resulting in documents that became organic law.

The convention of 1820 produced the constitution with which the state entered the Union. A second convention, called by the state legislature in 1845 in response to public dissatisfaction with legislative representation and with the manner of selecting judges, resulted in a draft constitution which was rejected by the people. The third and fourth conventions, largely political in origin, grew out of the problems and conditions of the Civil War. The convention of 1865 drafted a stern victor's constitution which was adopted, to be replaced ten years later with a more moderate document shorn of the harsh "loyalty" provisions. The fifth convention, called by popular vote in 1921, occurred primarily not as a result of public outcry or political agitation but rather in pursuance of a constitutional amendment adopted in 1920 requiring the voters to be consulted at regular twenty-year intervals on the question of holding a new constitutional convention. This fifth convention, which met in 1922-1923, submitted a series of 21 amendments rather than a total draft document. Only six of the proposals, minor ones at that, were approved by the people.

During the next twenty years miscellaneous dissatisfaction with the 1875 constitution mounted, and reached critical proportion by World War II. Although some of this may have been political, for the most part it reflected the ineptness of the old document in the face of new conditions. Its many amendments, added at the rate of nearly one a year since 1875, were not adequate to the needs. By 1940 practically every "good government" association in the state was voicing various objections to the constitution and calling for the drafting of a new one.

---

\*This is a revision of a paper presented at the Midwest Conference of Political Scientists at Oxford, Ohio, 2 May 1959.

\*\*The author is professor of political science at the University of Missouri. A.B., Westminster, 1932; M.A., Vanderbilt, 1934; Ph.D., University of Missouri, 1948; Chairman, Department of Political Science.

From the outset the revision movement was carried on by representatives of these progressive groups. Determined to succeed, their leaders made every effort to enlist the support of all major groupings, leaving as little ground as possible for opponents to stand on. Included were rural and metropolitan leaders, representatives of labor and of small and big business, Democrats, Republicans, and persons from the various geographical sections of the state.

The first statewide meeting representing this movement, on 14 November 1941, was held in centrally located Fulton, a circumstance helping stymie any rural temptation to label constitutional reform as a big city idea. The so-called rural-urban conflict, stemming from difference of interests, fancied or real, of rural and metropolitan areas, has been a potent political factor from time to time in Missouri's public life. Unsubstantial as this conflict may appear from empirical analyses of legislative votes or other processes, the fact that many people and newspapers on certain occasions believe it to exist, and act on this belief, invests the conflict with a realism which it is naive to ignore.

In the campaign period prior to the election of 3 November 1942, it appeared to many observers that the metropolitan areas were definitely more eager for a convention than were rural outstate areas, also that business interests might be more favorably disposed than labor. Political parties had little to do with the issue, though the Republican platform favored calling the convention and the Democratic platform took no stand.<sup>1</sup> Political platforms in Missouri, as elsewhere, give little clue to the actual attitudes and energies of their respective parties.

An analysis of the November vote bears out one of these pre-election impressions.<sup>2</sup> The bulk of support carrying the issue came from the metropolitan areas. The City of St. Louis, St. Louis County, and the counties containing Kansas City (Jackson) and St. Joseph (Buchanan) accounted for 61% of the "yes" vote. These same areas, the most heavily populated in the state, provided only 33% of the "no" vote. The vote figures reveal apparently no Republican-Democratic lineup or other group cleavage.

---

1. Texts of the platforms are in OFFICIAL MANUAL OF THE STATE OF MISSOURI 1943-44, at 452, 497 (1944).

2. For tabulation of vote by counties, see *ibid.*, 3397-98.

As Missouri approaches 1962, when by constitutional mandate<sup>3</sup> the electorate must again face the question of holding a convention, are there any indications of an affirmative response?

Little or nothing has thus far appeared in the press suggesting the presence of a movement urging general constitutional revision. Farmers, labor, business, metropolitan, legal, and other interests have apparently given no sign of a desire for a convention. There have been pressures for change, but these thus far appear to have been exerted toward specific and isolated amendment proposals rather than toward a general overhauling of the basic law. This would normally be expected in light of the relatively young age of the 1945 document and Missouri's traditionally liberal use of the piecemeal amending method.

If, however, there should exist sufficient miscellaneous dissatisfaction with various individual features of, or gaps in, the fundamental law, the makings of a general revision movement might be said to exist, however inchoate or formless it may be at the moment. Quite a few major criticisms have appeared and are recurring. Putting them into a pattern is a difficult problem at this early stage. A poll of leaders of interest groups such as those referred to above would hardly reveal anything significant, since the surrounding adumbrations would be numerous, and since effective interest groups choose carefully their own timing.

There do exist two fairly homogeneous and well defined groups which because of intimate connection with constitutional operation and revision may well be consulted as weather vanes on the subject. These are the elected legislators, both current and past, and the surviving members of the constitutional convention of 1943-1944. Even here the political barometer would require a number of corrective factors for precise reading. But the expressed opinions of these groups, assuming a representative sampling, would merit attention.

The present article is based upon such a survey. In February 1959 a questionnaire was mailed to (1) the surviving members of the constitutional convention of 1943-1944, (2) the surviving members of all former general assemblies that operated under the constitution of 1945, and (3) the members of the current general assembly which convened in January, 1959. All of these individuals are or have been intimately

associated with the 1945 constitution, with first-hand experience of its operation, strengths, and weaknesses. The questionnaire asked for specific answers on how well the constitution is working, what amendments are felt to be especially needed, whether to achieve these a convention is desirable and if so when, the value of alternative methods of proposing change, and whether the present method of selecting convention delegates is a good one.

The mailing to surviving members of the constitutional convention went to 50 individuals.<sup>4</sup> There were two additional delegates now serving in the current general assembly; for statistical purposes these were classified with the latter group. Surviving members of former legislatures totaled 348 as nearly as could be determined. The current general assembly would normally consist of 34 Senators and 157 Representatives; the questionnaire went to all Senators and 155 of the Representatives, there being two vacancies due to resignation. The total of all groups amounted to 587.

The return on the questionnaires, 184 or 31%, was larger than had been anticipated and may be considered a satisfactory sample. (Table 1). By far the largest proportionate return was from the convention delegates. In all groups there was a satisfactory distribution between urban and outstate elements, among the various occupations including law and farming, and among young and older persons. All replies were considered confidential, and a high degree of frankness characterized them. Many took the trouble to expand their views on additional sheets of paper though this was not requested.

TABLE 1. RESPONSE TO QUESTIONNAIRE

Group	Sent	Returned	
		#	%
Current general assembly .....	189	46	24.3
Former legislators .....	348	104	29.9
Convention delegates .....	50	34	68.0
Total .....	587	184	31.3

How well is the present constitution working, in the opinion of this sampling? (Table 2). Convention delegates, as might be expected, were overwhelmingly in agreement on the satisfactory operation of their document. Nearly two-thirds of the legislators answered "very well" or

4. There were 83 in the original group.

"reasonably well," with the percentage of current legislators who made this rating being about the same as the percentage of former legislators. Of those who said the constitution was poorly suited to the needs of the state today, none was from the St. Louis or Kansas City area, and only three of the 43 who rated the constitution as "fair" were from those areas. This underscores urban acceptance of the document.

TABLE 2. HOW WELL IS THE PRESENT CONSTITUTION WORKING?  
(% = percentage of replies on the question.)

Response	Legislators						Convention delegates		Totals	
	Current #	Current %	Former #	Former %	Both #	Both %	#	%	#	%
Very well	5	11.9	20	20.2	25	17.7	18	53.0	43	24.6
Reasonably well	22	52.4	44	44.4	66	46.8	15	44.1	81	46.3
Fair	13	30.9	29	29.3	42	29.8	1	2.9	43	24.6
Poorly suited	2	4.8	6	6.1	8	5.7	0	0.0	8	4.5

The feeling that the constitution is working well did not, however, deter the respondents from voicing a desire for major improvements. This was as noticeable with the convention delegates as with the legislators. Only 8 of the 184 returns had no major change or reform to suggest. The questionnaire contained specific suggestions of change, the results appearing in Table 3.

On the subject of improving Missouri's embarrassingly low legislative pay scale, or at least emancipating it from the constitutional deep freeze where it now lies,<sup>5</sup> about two-thirds of the legislators felt that here was a prime need for constitutional reform. Nearly half the convention delegates agreed. An annual legislative session arrangement, or some other relief from the present five-month biennial straight jacket,<sup>6</sup> was desired by more than half of all replying. That the governor, who is now debarred from succeeding himself,<sup>7</sup> should be permitted an immediate second term was thought desirable by nearly half the legislators and a little more than half the delegates. About 40% of each responding group reacted favorably to electing governor and top execu-

5. Mo. Constr. art. III, §§ 16, 16(a), provides a salary of \$125 per month, plus a \$10 per diem during sessions, plus \$1 per ten miles travel expense for one round trip during the session.

6. Mo. Constr. art. III, §§ 20, 20(a). A proposed amendment to establish annual sessions was defeated by the people in 1956.

tive officials, except the state auditor, in the off-years instead of the leap years.<sup>8</sup>

At the lowest point on the scale was the suggestion of a unicameral legislature. Statistics do not do justice to the intensity of some of the replies here. Frequent were comments such as "No!", "Never!", "Not under any circumstances!" Two conscientious bicameralists drafted brief essays on the subject. Possibly because unicameralism was referred to at three spots in the questionnaire one respondent concluded that the author was "hell bent for a unicameral legislature, for which I hear no out-cry." It is probably true that there is apparently no public out-cry for unicameralism. The question was before the voters on 7 November 1944 and failed by a vote of 37,106 out of a total vote of 766,694.<sup>9</sup> Since then the public has shown little interest in the question.

TABLE 3. MAJOR CHANGES DESIRED  
(% = percentage of group returning the questionnaire.)

Response	Legislators				Convention delegates				Totals	
	Current #	%	Former #	%	Both #	%	#	%	#	%
Raise legislators' pay, or make it subject to legislative determination ...	40	87.0	56	53.8	96	64.0	15	44.1	111	60.3
Annual sessions, or other liberalization of the present pattern	32	69.6	53	51.0	85	56.7	16	47.1	101	54.9
Allow governor to succeed himself.....	23	50.0	45	43.3	68	45.3	18	52.9	86	46.7
Elect auditor in presidential years and all other executive officers two years later .....	18	39.1	43	41.3	61	40.7	14	41.2	75	40.8
Constitution briefer and less detailed .....	17	37.0	36	34.6	53	35.3	18	52.9	71	38.6
Permanent constitutional revision commission ...	18	39.1	40	38.5	58	38.7	11	32.4	69	37.5
Extend nonpartisan court plan .....	14	30.4	27	26.0	41	27.3	9	26.5	50	27.2
Base lower house representation more on numbers .....	9	19.6	31	29.8	40	26.7	10	29.4	50	27.2
Unicameral legislature ...	3	6.5	6	5.8	9	6.0	3	8.8	12	6.5

8. The reverse prevails under Mo. CONST. art. IV, § 17.

9. OFFICIAL MANUAL OF THE STATE OF MISSOURI, 1945-46, at 408-09 (1946).

In addition to the major changes suggested on the questionnaire, the replies went on to cite other reforms deemed important. Prominent were objections to the powers and independence of some boards and commissions, particularly the conservation commission.<sup>10</sup> Other concern over executive power appeared several times in the suggestion that the legislature be allowed an opportunity to override end-of-the-session vetoes of the governor,<sup>11</sup> and in the proposal that the budget office be completely independent of the governor and of any executive department.<sup>12</sup> Also suggested was removal or reduction of some of the tax and debt limitations now hampering local governments.<sup>13</sup>

The question next asked was whether a constitutional convention would be needed to achieve these and other reforms, or whether the piecemeal amendment method would suffice (Table 4). Here there was little noticeable difference between the replies of the legislators and those of the delegates. About one-third of the responses indicated that the job could be handled by individual amendments. Another third felt that a mixed commission should be established to lay the groundwork for revision. Many in this group apparently thought the commission should be established by the current legislature in the spring of 1959 in order to be ready with its report in 1961, a possibility which quickly faded as no such bill was introduced in either chamber. The last third of the responses either preferred a constitutional convention outright, or reserved judgment as to what course of action to take. Since a mixed commission would have its largest usefulness as a prelude to a convention, and since most of those who reserved judgement doubtless considered the convention as a live possibility, overall results of this portion of the inquiry suggest a strong tendency—probably a majority—favoring a convention.

---

10. Under Mo. CONST. art. IV, §§ 40-46, the Missouri Conservation Commission enjoys what is possibly a larger measure of constitutional autonomy than possessed by any other state conservation commission. This situation was established by constitutional amendment in 1936, in the effort to protect the activity from political interference.

11. This was attempted unsuccessfully by an amendment proposal in 1956.

12. MO. CONST. art. IV, § 22 lodges the division of budget and comptroller in the Department of Revenue. In 1957 the general assembly granted the request of Governor James T. Blair, Jr., for a closer connection between his office and the budget agency, and transferred the agency practically entirely to his direction. To completely formalize the separation of the agency from the Department of Revenue, however, would probably require a constitutional amendment. At the other extreme, some legislators would prefer the budget agency to be an arm of the legislature.

13. Mo. CONST. art. VI, §§ 23-29. Some changes were made by amendment in 1948 and 1953, and Missouri amendments concerning the general assembly in 1959 to be voted on in 1960.



TABLE 4. AMENDMENT, COMMISSION, OR CONVENTION?  
 (% = percentage of total answers by that group to all four options.  
 Several respondents marked more than one option.)

Response	Current		Legislators		Both		Convention delegates		Totals	
	#	%	#	%	#	%	#	%	#	%
Better use amendment method .....	8	18.2	40	38.8	48	32.7	14	41.2	62	34.3
Set up a mixed commission to report recommendations to legislature .....	16	36.4	33	32.0	49	33.3	9	26.5	58	32.0
Better have a constitutional convention .....	13	29.5	16	15.5	29	19.7	6	17.6	35	19.3
Can't say at this time ...	7	15.9	14	13.6	21	14.3	5	14.7	26	14.4

This is borne out in the replies to the next question (Table 5) regarding the time of voting for a convention, the results indicating 100 out of 184 respondents desire to see one called in the near future. The mandatory vote will come in November 1962. It may not be impertinent to observe that every time the question of holding a constitutional convention was submitted to the voters of Missouri—in 1845, 1864, 1874, 1921, and 1942—it has been answered in the affirmative.

Is the need for reform such that a convention, if desired at all, might comfortably be postponed five, ten or another twenty years? Or should it be held in the immediate future, that is, called by the regular 1962 vote or sooner? As noted below, more than half of all respondents indicated a preference for the convention being called not later than 1962. This is interesting in view of the fact that the present "satisfactory" constitution is only fourteen years old, and that the allegedly inept constitution of 1875 had served for seventy years before being replaced. In the present tally the largest percentage vote came from current legislators, the second largest from the convention delegates, and the third largest from former legislators.

TABLE 5. IF YOU FAVOR THE CALLING OF A CONSTITUTIONAL CONVENTION, SHOULD IT BE CALLED IN 1962 OR EARLIER?  
 (% = percentage of group returning the questionnaire.)

Time Desired	Current		Legislators		Both		Convention delegates		Totals	
	#	%	#	%	#	%	#	%	#	%
1962 .....	25	54.3	46	44.2	71	47.3	20	58.8	91	49.4
Earlier .....	4	8.7	5	4.8	9	6.0	0	0.0	9	4.9
Together .....	29	63.0	51	49.0	80	53.3	20	58.8	100	54.3

Missouri's automatic twenty-year cycle for voting on the question of holding a convention was the next subject of inquiry (Table 6). When asked if they approved this arrangement 59% of the legislators and 91% of the convention delegates answered in the affirmative. One may suppose that the respondents, subconsciously sensitive to the fact that Missouri was the first state carved out of the Louisiana Purchase, agreed with Thomas Jefferson that every generation should take a fresh look at its fundamental political institutions. The three dissenters among the convention delegates included two from small rural towns and one from the St. Louis area.

An analysis of the "no" vote revealed a preference, among this sizeable minority of 62 persons, for leaving the duty of calling a convention to the legislature (41 votes for this), with some (23) preferring popular initiative. Two replies approved both alternatives. Under the present constitution legislative call of an election on the question of holding a convention is a possibility at any time during the twenty-year period,<sup>14</sup> but there is no provision for call by popular initiative. As to the practical possibility of the general assembly taking such action, it may be observed that the Missouri legislature has not since 1874 ventured to submit such a question to the people.

TABLE 6. IS THE PRESENT ARRANGEMENT FOR CALLING  
CONSTITUTIONAL CONVENTIONS SATISFACTORY?  
(% = percentage of replies on the question.)

Response	Current		Legislators Former		Both		Convention delegates		Totals	
	#	%	#	%	#	%	#	%	#	%
Yes .....	26	57.8	58	59.2	84	58.7	31	91.2	115	65.0
No .....	19	42.2	40	40.8	59	41.3	3	8.8	62	35.0
More frequent calling desired .....	3		6		9		1		10	
Less frequent calling desired .....	2		1		3		1		4	
Leave to legislature to call .....	17		24		41		0		41	
Allow calling by popular initiative .....	4		15		19		4		23	

For proposing individual amendments three devices are available in Missouri—a constitutional convention, the state legislature, and the initiative.<sup>15</sup> It would be expected that legislators would be strongly

14. Mo. Const. art. XII, § 3.

attached to proposal by legislative act, and such was borne out in the inquiry (Table 7). In fact, it is interesting to note that a heavy majority of all groups replying to the questionnaire favored retaining all three alternative methods of proposing amendments. The somewhat smaller proportion of responses favoring proposal by convention may reflect the natural assumption that a convention is generally better suited to the task of general revision than of proposing isolated amendments.

TABLE 7. WHAT PRESENT METHODS OF PROPOSING CONSTITUTIONAL AMENDMENTS SHOULD BE RETAINED?  
(% = percentage of group returning the questionnaire.)

Method	Current		Legislators Former		Both		Convention delegates		Totals	
	#	%	#	%	#	%	#	%	#	%
Proposal by legislature .....	40	87.0	90	86.5	130	86.7	28	82.4	158	85.9
Proposal by popular initiative .....	35	76.1	86	82.7	121	80.7	26	76.5	147	79.9
Proposal by constitutional convention .....	34	73.9	68	65.4	102	68.0	26	76.5	128	69.6

In a day when there is increasing evidence of the misuse of and undesirable results flowing from the initiative and referendum, it is interesting that both the legislators and the delegates heavily favored retention of the first of these for proposing constitutional amendments. Missouri's experience with the device has been mixed. Since its adoption in 1908 it has been used 37 times, but only nine of the propositions were approved. And of these, but three stand out as major reforms which probably would not have been achieved if left to the legislature to propose. These were the adoption in 1920 of the 20-year automatic pattern for voting for constitutional conventions, the reorganization of the conservation commission in 1936, and the adoption of the nonpartisan court plan in 1940.<sup>16</sup>

The last question on the form asked for an evaluation of the method of selecting delegates for the constitutional convention (Table 8). The constitution at present provides for two delegates from each of the 34 senatorial districts, and 15 delegates at large.<sup>17</sup> The two district delegates must be nominated by the two major parties in the district, and these

16. All were retained in the 1945 constitution.

17. Mo. Const. art. XII, § 3.  
<http://scholarship.law.missouri.edu/mlr/vol25/iss1/8>

have no opponents in the ensuing election. Thus the constitution requires the convention to be strictly bipartisan as far as the 68 district delegates are concerned. The fifteen elected from the state at large present a different problem. For these, in 1942, the two major parties agreed on a single slate of 7 Democrats, 7 Republicans, and one anti-New Deal Democrat. Although the League of Women Voters also put forward a slate, some names of which were also on the party slate, the combined backing received by the party slate from both parties made it easily victorious.

TABLE 8. DO YOU APPROVE OF THE PRESENT METHOD OF  
NOMINATING CONVENTION DELEGATES  
(% = percentage of replies on the question.)

Response	Current		Legislators Former		Both		Convention delegates		Totals	
	#	%	#	%	#	%	#	%	#	%
Yes .....	36	90.0	84	86.6	120	87.6	28	85.0	148	87.1
No .....	4	10.0	13	13.4	17	12.4	5	15.0	22	12.9

Replies to the questionnaire showed a widespread approval of this plan, though the failure to provide the voters with a choice in the final election of district delegates has brought the system into considerable question with various elements of the press and public. In spite of the infirmity of lack of choice, the system does have the virtue of protecting any resulting draft document from the charge of one-sided political partisanship. We sacrifice freedom of choice in the final election of delegates, but in return we get a nonpartisan constitution. Incidentally, it might be pointed out that some element of choice is possible in the earlier steps of the system—in the selection of each party's district candidates. How far this becomes a reality, however, depends on whether the party's district committee decides to call a convention for naming the nominee, or makes the selection itself. In 1942 almost all the selections were made by a party committee, and it was this that occasioned, both at the time and later, considerable public complaint of lack of real choice. Eleven of the 22 replies expressing dissatisfaction with the system gave as a reason either the partisan feature or the absence of actual popular choice.

In summary, a consultation of legislators, who have worked and are working under the constitution of 1945, and of surviving framers of that constitution reveals a significant interest in fundamental revision,

of the document, and identifies some of the points where reform is felt to be urgent. Judging from the opinions expressed on the returns, as well as from historical precedent, a constitutional convention would be not at all unexpected as a result of the forthcoming vote in 1962. If and as dissatisfaction becomes more obviously crystallized in certain interest groups, "good government" groups and the press, practical-minded politicians apparently stand ready to add their blessing to the move.

Two pressing quandaries in which the legislature has long been laboring are low salaries and the sessions straight jacket. Repeated attempts to remedy these through the amendment method have failed, though there is no reason to suppose they always will fail. The failures thus far will simply make it easier for the legislative forces to join others that may appear in an attempt to try another constitutional convention where a variety of adjustments, some major and some minor, might be embodied in a broad revision and submitted to the people.