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# Constitutional Revision in New Mexico

Allen Dale Krumm

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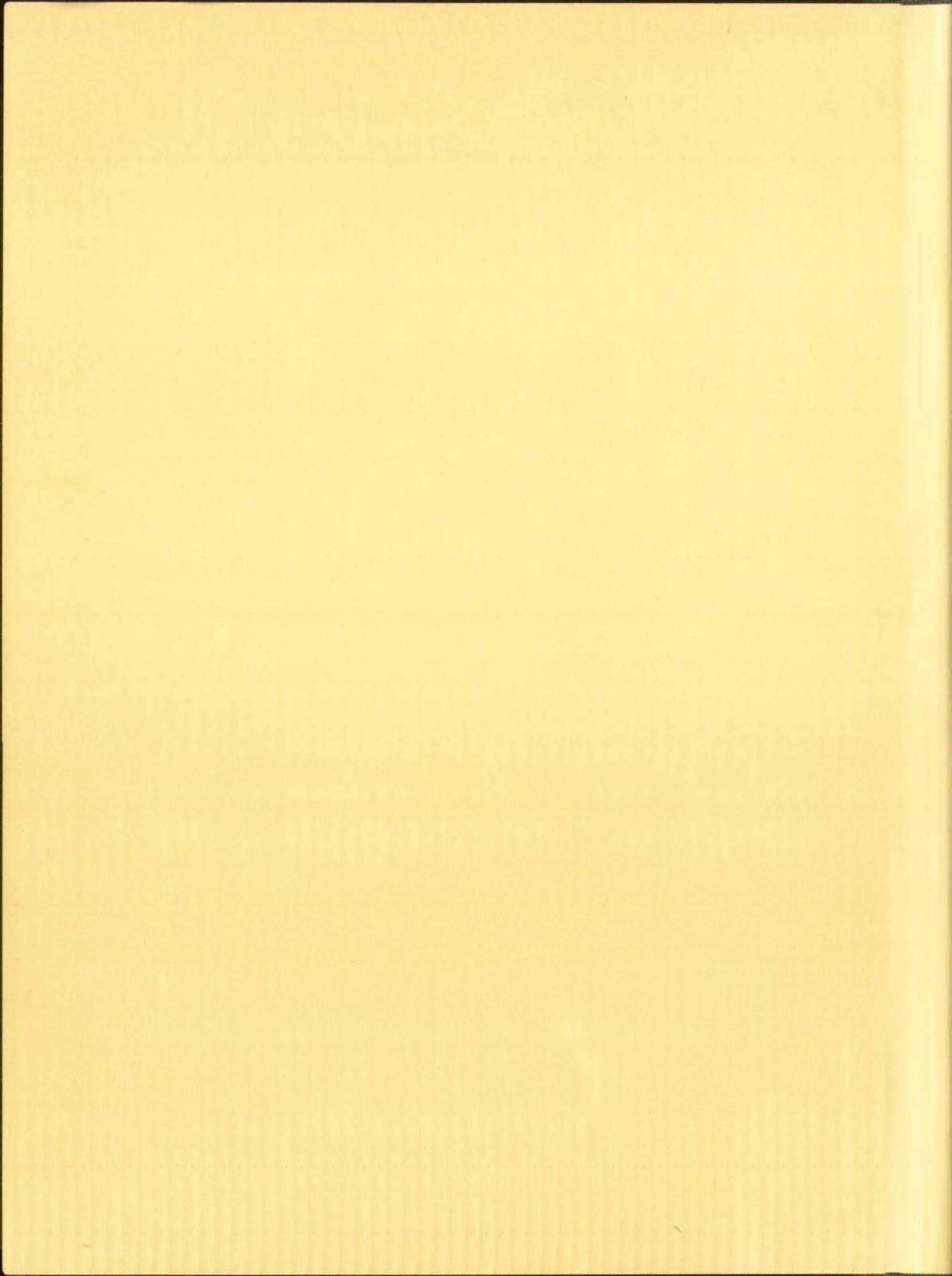


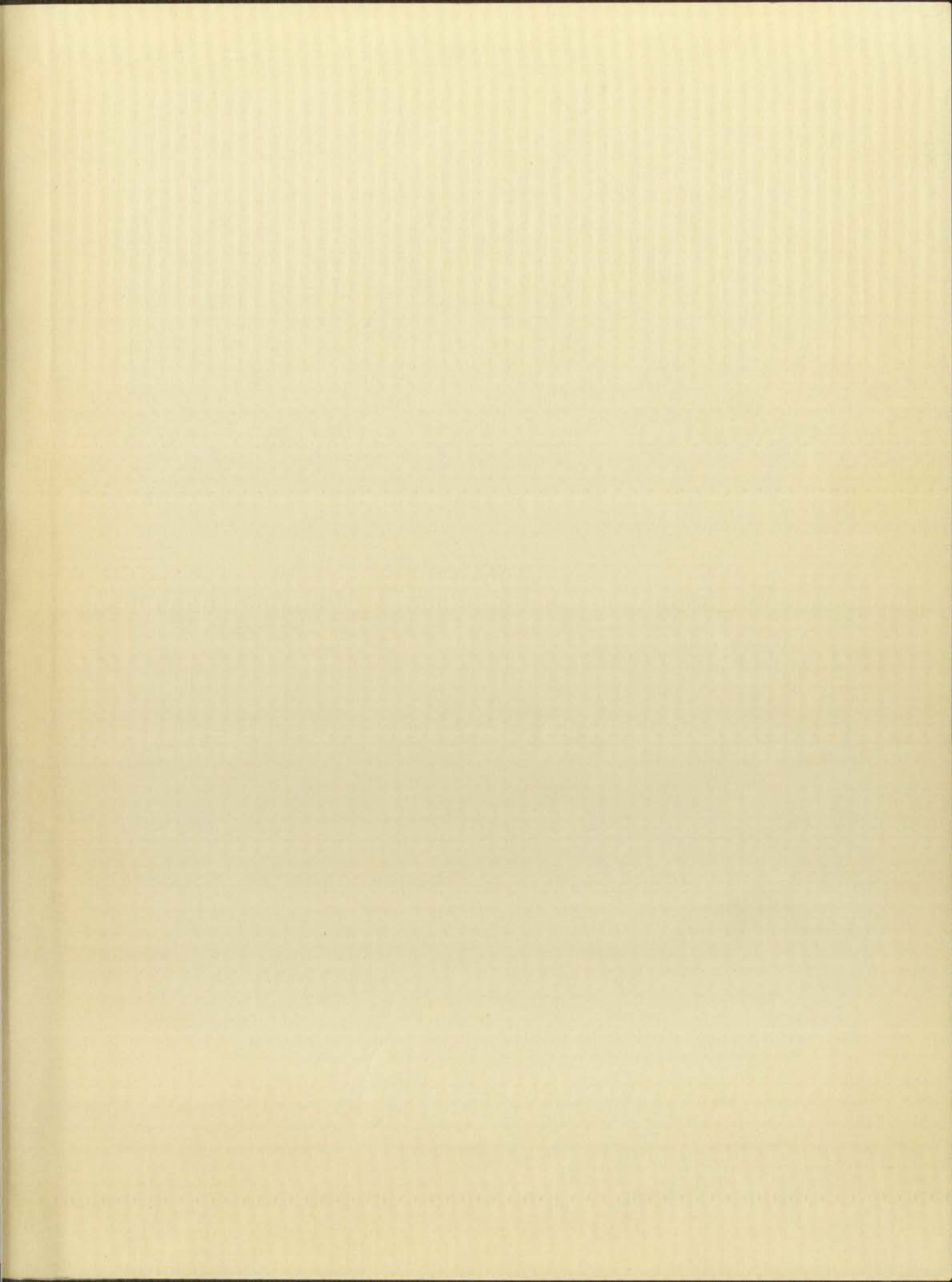
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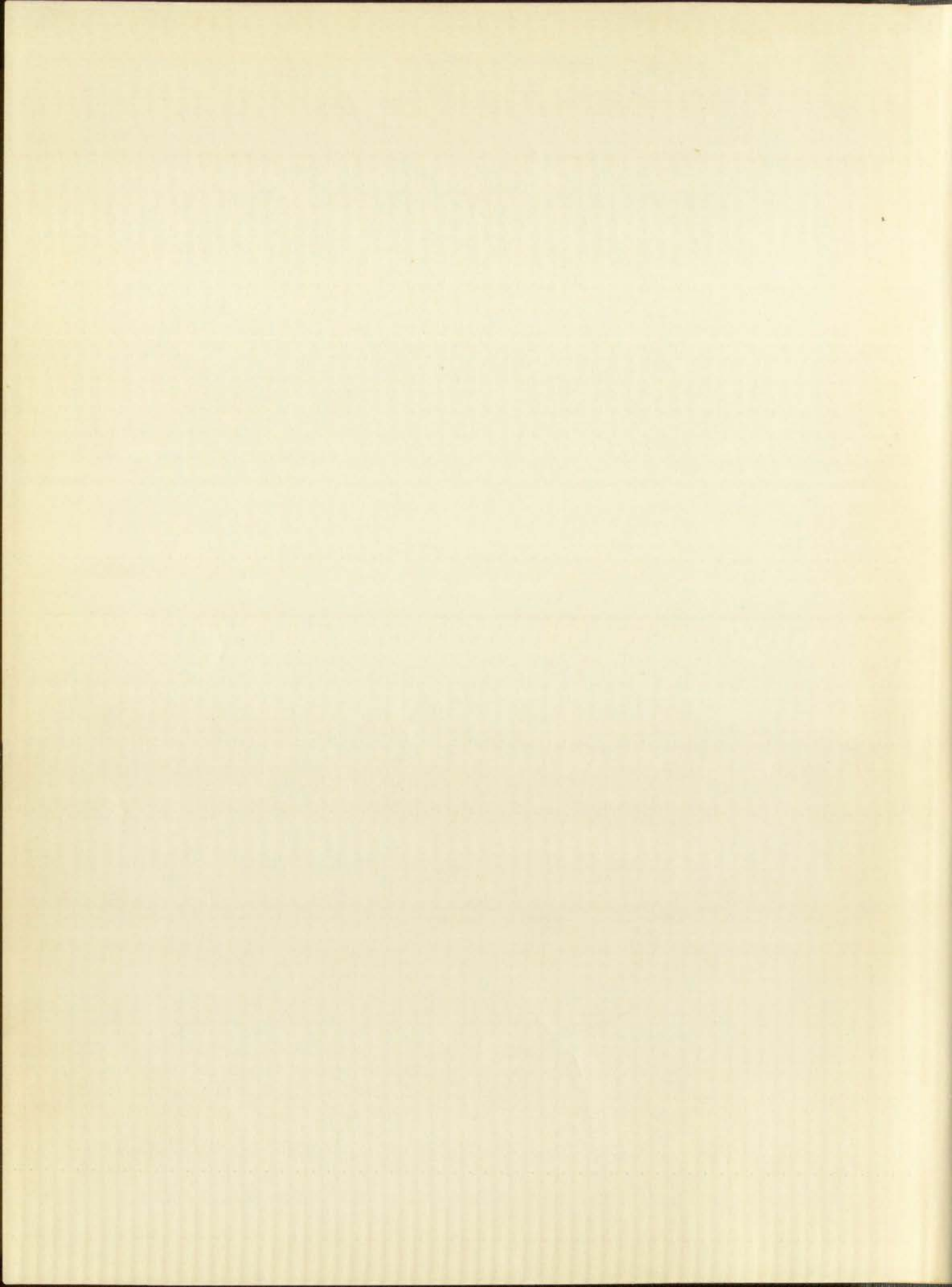
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1971

STATE AND COUNTY



CONSTITUTIONAL REVISION  
IN NEW MEXICO

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A Thesis  
Presented to  
the Faculty of the Department of Government  
University of New Mexico

---

In Partial Fulfillment  
of the Requirements for the Degree  
Master of Arts

---

by  
Allen Dale Krumm  
June 1950





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This thesis, directed and approved by the candidate's committee, has been accepted by the Graduate Committee of the University of New Mexico in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

*E. H. Castetter*

DEAN

May 27, 1950

DATE

CONSTITUTIONAL REVISION  
IN NEW MEXICO

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County of New York  
In SENATE  
January 17, 1912

James C. Thompson

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Secretary of the  
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1912



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EFFICIENCY



## CHAPTER I

### INTRODUCTION

At the top of the hierarchy of state law is the state constitution. Through it, the state government is organized, the rights of the people are enumerated, and the powers of the various branches of government are defined. The state, itself, exists by virtue of its constitution.

There have been many criticisms levelled at the New Mexico constitution since its adoption thirty-eight years ago. Opponents to ratification of the document in 1910 were not satisfied with many of its features and felt that some provisions omitted should have been included. These criticisms have been renewed and added to many times.

It is the purpose of this thesis to examine the relative merits of the New Mexico constitution and inquire into the need for a general constitutional revision. The constitution has been frequently changed by the amending process, but as yet there has never been a general revision of the document. To do so would require the convening of a constitutional convention for the purpose of drafting a new document.

The organization of any work is, of necessity, arbitrarily determined. The material as presented falls into three general categories.

CHAPTER I

INTRODUCTION

At the top of the hierarchy of laws in the state constitution, the state constitution is supreme. The rights of the people are guaranteed, and the powers of the various branches of government are defined. The state itself, as a sovereign entity, is the source of all authority.

There have been many attempts to amend the constitution of Mexico since its adoption in 1917. Opponents to the constitution of the constitution in 1917 were not satisfied with any of the changes and felt that the provisions which have been adopted were not sufficient. Some have been removed and added to the constitution.

It is the purpose of this book to show the five years of the constitution of Mexico and the need for a new constitution. The need for a new constitution has been frequently mentioned by the people, but as yet there has been no action. The document, to be revised, is the document of a new constitutional convention for the purpose of drafting a new constitution.

The organization of the book is as follows: The first chapter, "The Need for a New Constitution," is a general introduction to the subject. The second chapter, "The History of the Constitution," is a detailed account of the history of the constitution. The third chapter, "The Need for a New Constitution," is a detailed account of the need for a new constitution.



An inquiry is first made into the background of the founding of the New Mexico constitution. The methodology used here is, for the most part, historical. Various documents, periodicals, newspapers and books provided the primary sources of material.

The methods by which the constitution may be altered are next examined. The New Mexico Statutes and the state constitution were important sources of information.

The remainder of the thesis mainly comparative. Provisions of the New Mexico constitution dealing with the legislative, executive, and judicial departments plus the provisions of the initiative and the referendum are discussed and compared with those of other states and with the Model State Constitution.

No attempt is made to make specific recommendations. The provisions of the New Mexico document are discussed and compared with the generally accepted practices of the other states and those expounded by various political scientists. The major differences are pointed out and reviewed.

In this survey of the New Mexico constitution it has been necessary to omit certain pertinent information regarding the subject.

The legislative, executive, and judicial departments of the state government have been subject to frequent and severe criticism. Sections of the constitution dealing with





these departments have been too frequently amended. Therefore, this study has stressed the provisions of the state constitution affecting the three branches of the government along with the writing of the constitution and the methods by which it may be amended.

Future research should be conducted on the problem, and the results brought to the attention of the citizenry of the state.

These experiments have been for a long time. In fact, this study has stressed the provisions of the constitution affecting the three branches of the government along with the writing of state constitutions and the method by which it may be amended. Future research should be devoted to the process, and the results brought to the attention of the citizens of the state.



CHAPTER II  
FRAMING AND ADOPTION  
OF THE CONSTITUTION

The Congress of the United States is authorized by the Federal Constitution to admit new states into the Union.<sup>1</sup> Under this authority, in 1910, an Enabling Act, which was to open the doors of statehood for New Mexico, was introduced and passed by the Congress. It was subsequently signed by President Taft on June 20, 1910.<sup>2</sup>

The act set forth the procedures to be followed in becoming a state.<sup>3</sup> It provided for an election to choose delegates for a constitutional convention, fixed the number of delegates at one hundred, and provided for their apportionment throughout the state. An appropriation of one hundred thousand dollars was provided to carry out the process.

The delegates were to be apportioned among the counties according to the New Mexico Congressional vote of 1908. This was done in an orderly manner. There were few objections to the apportionment, it being a simple mathematical calculation.<sup>4</sup>

---

<sup>1</sup>Article IV, Section 3, Constitution of the United States.

<sup>2</sup>T. C. Donnelly, The Government of New Mexico (Albuquerque: The University of New Mexico Press, 1947) p. 34.

<sup>3</sup>Now Article XXIII of the Constitution of New Mexico.

<sup>4</sup>T. C. Donnelly, "The Making of the New Mexico Constitution," The New Mexico Quarterly Review, 11:435, 1942.

THE UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

The United States of America, being the  
Federal Government, do hereby certify that  
Under this authority, the 1910, as amended, act  
open the estate of the deceased, and the same  
and passed by the Congress, and the same  
President of the United States.

The act of the President of the United States  
becoming a statute, it is provided for an act  
delegated for a constitutional and statutory  
of delegates at the meeting, and the same  
elemental document and the same, and the same  
and the same, and the same, and the same  
The delegates were to be elected, and the same  
also according to the law of the United States  
This was done in an official manner, and the same  
tions to the approval of the same, and the same  
calculated.

Witness my hand and the seal of the  
Department of the Interior, at Washington, D.C.  
this 1st day of January, 1910.  
John D. Brown, Secretary of the Interior.  
The above is a true and correct copy of the  
original, as the same appears in the files of the  
Department of the Interior.



New Mexico was further required to accept certain obligations which are set forth in Article XXI of its constitution. Among its provisions was a guarantee of religious tolerance, provisions for establishing a system of public schools, incurrence of all debts and liabilities of the territory by the new state, and a provision dealing with the public lands.

### I. THE CONSTITUTIONAL CONVENTION

The proclamation calling for an election of delegates for a constitutional convention was issued by Governor Mills of the Territory of New Mexico on June 29, 1910.<sup>5</sup> The election was to be held on September the sixth. It was predominately a partisan election. T. B. Catron, a leader in the Republican party in the territory, had this to say about it:

"We (the Republicans) are sure to have a two-thirds majority in the convention, and we think we are better able to make a good constitution than the Democrats. We know they would not hold a non-partisan election if they were in the majority. To make it non-partisan means that we would have to give away some of our strength, and I do not believe any political party can succeed by surrendering a part of its strength."<sup>6</sup>

The elected delegates assembled at two o'clock, October 3, 1910, in the House of Representatives at Santa Fe.<sup>7</sup>

---

<sup>5</sup>Donnelly, op. cit., p. 37.

<sup>6</sup>Donnelly, op. cit., p. 441.

<sup>7</sup>Ralph E. Twitchell, Leading Facts of New Mexico History (Cedar Rapids: The Torch Press, 1912) p. 584.





T. B. Catron called the convention to order, and the Reverend Jules Deraches delivered the invocation. The delegates then settled down to the business of writing a constitution.

All of the one hundred delegates elected were present with the exceptions of W. D. Murray of Grant County and A. B. McDonald of Torrance County. The Democrats were definitely in the minority. They had succeeded in sending only twenty-nine delegates to Santa Fe, whereas the Republicans were represented by seventy-one.

The delegates were representative of all phases of life in the territory.<sup>8</sup> Approximately one-third of them were Spanish-Americans and the other two-thirds Anglo-Americans. A few were wealthy, a larger number quite poor. The majority would probably be placed in the so-called middle-class. There were livestock growers, mining promoters, farmers, bankers, merchants, educators, newspaper men, etc. Lawyers represented the largest group, thirty-five of the delegates being members of the bar.

Many of the delegates had held political office and others had political ambitions. Thomas J. Mabry is representative of the latter group. He has served in the Supreme Court of New Mexico and has twice been the choice of the people to serve as their governor.

There were two major contenders for the office of pres-

---

<sup>8</sup>Donnelly, op. cit., p. 437.



Y. B. Carter said that he had been in the  
and John Carson had been in the  
then carried over to the house of William  
all of the money that was in the house  
with the exception of a few dollars which  
National of American Citizens. The house  
in the morning. The house was a small  
nine delegates to the house of representatives  
represented by several people.  
The delegates who were present at the  
life in the house. The house was a small  
Spanish-American war. The house was a small  
a few years ago. The house was a small  
would probably be a small house. The house  
There were a few people who were present  
here, and the house was a small house.  
represented the house. The house was a small  
the house of the house. The house was a small  
part of the house. The house was a small  
others in the house. The house was a small  
representative of the house. The house was a small  
Court of the house. The house was a small  
the house. The house was a small  
There were a few people who were present  
the house. The house was a small

U.S. GOVERNMENT



ident of the convention.<sup>9</sup> A Republican, Charles A. Spiess,<sup>10</sup> was elected over the Democratic nominee, Harvey B. Fergusson. The latter became the principal spokesman of the minority and the floor leader of the Democratic party. He was a lawyer of ability and believed in progressive government.

Other officers elected were George W. Armijo, chief clerk, and Harry R. Whiting, sergeant-at-arms.

In order to facilitate the handling of business, the delegates adopted the committee system.<sup>11</sup> A committee on committees was possibly the most powerful organ of the convention. The twenty-seven members of this committee were chosen by Republican caucus. They appointed the twenty-seven standing committees and acted as a steering committee. Each standing committee was given a section of the constitution to draft.

The Republicans had control of the proceedings of the convention from the start. They had a numerical majority, controlled the committee on committees and thus the steering committee, and the chairman and the majority on each standing committee was, without exception, Republican.<sup>12</sup>

---

<sup>9</sup>Twitchell, op. cit., p. 584.

<sup>10</sup>Spiess was of German-Swiss ancestry. He came to New Mexico in 1888 and soon settled in Santa Fe. Prominent politically, he served in the Legislative assembly of the territory and held a high place among the leaders of the New Mexico bar.

<sup>11</sup>Twitchell, op. cit., 5835.

<sup>12</sup>Loc. cit.

ident of the committee, ... was elected over the ... The latter became the ... The first leader of the ... of ability and ... Other officials of ...

Clark, and Harry A. ... In order to ... delegates elected the ... committee was ... version. The ... chosen by ... standing committee ... standing committee ... in brief.

The ... content on ... controlled the ... committee/ and ... committee and ...

...

10 ... Mexico in ... finally, he ...



There were no records kept of debate in any of the committee hearings.<sup>13</sup> As a result we will probably never know everything that took place during the convention. There is the chance that some member of the body might yet divulge information not as yet brought to light regarding the proceedings, but that is extremely unlikely. Without printed records, information is soon lost forever.

The majority of the delegates assembled were quite conservative.<sup>14</sup> Only a small minority were progressive. In order to understand this conservatism, it might be well to look behind the scenes to find what interests many of the delegates represented.<sup>15</sup> This, of course, might be quite difficult to determine.

Among the influential leaders of the convention were A. B. Fall, H. O. Bursam, and Solomon Luna. Mr. Fall was a lawyer and spokesman for the livestock industry. He was called "the defender of the special privileged interests" by the Albuquerque Tribune-Citizen.<sup>16</sup>

Mr. Bursam was a well-to-do rancher and territorial

---

<sup>13</sup>Donnelly, op. cit., p. 21.

<sup>14</sup>Donnelly, op. cit., p. 39.

<sup>15</sup>For the political affiliations of the delegates to the constitutional convention see Appendix B.

<sup>16</sup>Editorial in the Albuquerque Tribune-Citizen, October 12, 1910.



There is a... of...

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The... of...

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look behind... of...

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A. H. ... of...

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chairman of the Republican party. He was very interested in attracting new corporations into the state.

The most influential representative of the native element was probably Mr. Luna. A large sheep owner and probably a wealthy man, Mr. Luna was a powerful force in the convention. These three men were probably among the most powerful of the delegates in the convention.

There seems to have been little disagreement as to the relative abilities of the delegates assembled. The general consensus of opinion was that the level of ability was high, and a more able group could not have been selected from the citizenry of the territory.<sup>17</sup>

The delegates completed their work and adjourned November 21, 1910. The result of their work was a model of conservatism.

## II. OPPOSITION TO THE PROPOSED CONSTITUTION

The advocates of progressive government and a progressive constitution had little chance to assert themselves during the writing of the document, but they could now carry their fight to the people. Leading opponents of ratification put forth every effort to have the constitution rejected so that the convention would be forced to reassemble and frame

---

<sup>17</sup>Donnelly, op. cit., p. 437.



chairman of the committee, Mr. J. H. ...

... of the committee, Mr. J. H. ...

The committee has the honor to ...

... of the committee, Mr. J. H. ...

... of the committee, Mr. J. H. ...

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a new one.<sup>18</sup> During the campaign that followed they carried the fight for the initiative, referendum, recall, direct primary, and other progressive ideas of that era. Those opposed to ratification claimed that there was a total absence of progressive principles in the constitution.<sup>19</sup> Every effort to include any progressive measure in the document had been beaten down by the majority. The same was true of enforced, sworn publicity of campaign contributions. Without this provision the railroad corporations, coal companies, and wealthy men with predatory designs might contribute any means whatever to corrupt elections, to get the sort of legislature desired, or to control the corporation commission. The people would be left helpless against these predatory groups.<sup>20</sup>

Harvey Fergusson was the standard bearer in the fight for direct legislative provisions in the constitution. He told an audience at the University of New Mexico:

"It is to be hoped that if these progressive provisions are not inserted in the constitution, the people will reject it. If they do so, perhaps the convention when it re-assembles under the call of the

---

<sup>18</sup>The enabling act provided for a second assembling of the delegates elected if the people rejected at the polls the work of the convention at the first setting. The Governor was to call within twenty days after the rejection another session for the purpose of preparing another constitution.

<sup>19</sup>Constitution for the Proposed State of New Mexico (Washington, D. C.: United States Printing Office, 1911) p. 64.

<sup>20</sup>Ibid., p. 16.

a new one, and the first of the new series  
the first of the new series, and the first of the new series  
early, and other parts of the new series, and the first of the new series  
posed to the first of the new series, and the first of the new series  
of the first of the new series, and the first of the new series  
left to the first of the new series, and the first of the new series  
been passed, and the first of the new series, and the first of the new series  
forced, and the first of the new series, and the first of the new series  
this provision, and the first of the new series, and the first of the new series  
nearly, and the first of the new series, and the first of the new series  
whatever, and the first of the new series, and the first of the new series  
desired, or the first of the new series, and the first of the new series  
ple would be left, and the first of the new series, and the first of the new series  
However, and the first of the new series, and the first of the new series

for effect, and the first of the new series, and the first of the new series  
told an audience, and the first of the new series, and the first of the new series  
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the work of the first of the new series, and the first of the new series  
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needing, and the first of the new series, and the first of the new series

100  
(100)  
P. 100



Governor will yield to the wishes of the people. If not, let us reject statehood on such debasing conditions."<sup>21</sup>

Many other blasts were leveled at the proposed constitution. One of the most controversial sections was that on the corporation commission.<sup>22</sup> The arguments against it were basically the same then as they are today--the commission had insufficient power to enforce its own orders; and there were no adequate provisions for the appointment of an intra-state commission to deal with state transportation. The burden of proof lay with the commission rather than the offending corporations, and the proceedings could only be expensive and subject to long drawn-out delays. Further, the powers of the commission could not be changed or altered except by amending the constitution itself.

Opponents to ratification also pointed out the weaknesses of the proposed system of elective officers. Their arguments ran as follows:<sup>23</sup>

(1) There were too many elective offices and their terms were too long for the most part. (2) They objected to an eight year term for supreme court judges, a six year

---

<sup>21</sup>H. B. Fergusson and Frank W. Clancy, The Making of the Constitution. (Albuquerque: The University of New Mexico Press, 1910) p. 14.

<sup>22</sup>Article XI, Constitution of the State of New Mexico.

<sup>23</sup>Constitution for the Proposed State of New Mexico, op. cit., p. 69.



Government, which is not a part of the State, but a part of the Nation.

Many of the people of the State are not citizens of the Nation.

Education, on the other hand, is a part of the State, and is a part of the Nation.

On the other hand, the State is a part of the Nation, and is a part of the State.

There are many things which are not a part of the State, but are a part of the Nation.

There are many things which are not a part of the State, but are a part of the Nation.

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There are many things which are not a part of the State, but are a part of the Nation.

term for district judges, six year terms for corporation commissioners, and a four year term for state senators.

Article XIII of the constitution was bitterly attacked. The Democrats called it the "school-land-joker". It provided for the "sale at once of public school sections 2, 16, 32, and 36, as may be contiguous to other state lands; those not contiguous shall not be sold for ten years unless sooner sold for ten dollars per acre." Opponents of ratification claimed that all such sections where land is valuable would soon be contiguous to other state lands and thus be salable, whereas those sections in the mountains, desert or barren localities would not be salable for any price per acre whatever.<sup>24</sup>

It was further argued that the amending process was so difficult that once adopted, it would be almost impossible to amend or to correct its evils.

W. H. Blair had this to say of the proposed document:

"The proposed constitution itself, when carefully considered in connection with existing local conditions will be found to be craftily written, so as to perpetuate far into the future life of New Mexico all and still greater abuses than those under which that harassed people now suffer. If New Mexico is admitted to the Union, under this constitution, although it is republican in form, they will for long years live under an oligarchy or despotism. . . ."<sup>25</sup>

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<sup>24</sup>Fergusson, op. cit., p. 16.

<sup>25</sup>Constitution for the Proposed State of New Mexico, op. cit., p. 16.







Those favoring adoption of the constitution claimed that direct legislative provisions would give too much power to the people and result in mob rule. Further, there would probably be too frequent elections.. The answer of the Democrats was that there would be no need for frequent elections once the legislature had become responsive to the needs of the people. They reasoned that the legislature would not do what they knew the people could undo.<sup>26</sup>

Right or wrong the opponents of ratification had little chance for success. The constitution was a Republican document, and party loyalty was an important factor to be reckoned with. Others, opposed to the document, deemed it wise to accept it as it was with the hope of ironing out its weaknesses later, rather than face the possibility of delaying statehood.

On January 12, 1911, the election which was to determine whether or not the proposed constitution was to be adopted was held. The voters turned out en masse. There were over forty-five thousand votes cast that day, only about ten thousand less than the largest vote ever cast in New Mexico up to that time. The vote for ratification was 31,742 as compared with 13,399 against.<sup>27</sup>

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<sup>26</sup>Fergusson, op. cit., p. 16.

<sup>27</sup>Constitution for the Proposed State of New Mexico, op. cit., p. 5.





Only four counties in the entire state had voted against ratification--San Juan, Sierra, Lincoln, and Roosevelt counties. The vote for ratification had for the most part been decisive throughout the state. See Table I.

Contrary to what had gone before, neither party, as such, apparently opposed the new constitution. The fight for statehood had been long and often bitter, and the people were not to be denied.

The newspapers of the state were very heavily in favor of adoption of the constitution. The Sante Fe New Mexican was rather bitter against those who voted against ratification. Immediately following the election it said:

"On Saturday, feeling ran rather high against the seventy-four citizens of Sante Fe who voted against better schools, against a debtless Sante Fe, against their own fireside and their own children, against liberty and independence for New Mexico. The expressions uttered were bitter and ominous and it did seem strange that there should be found in Sante Fe anyone with judgment so warped or prejudice so perverted to keep the vote from being unanimous for New Mexico's and particularly Sante Fe's declaration of independence, but it must be remembered that those seventy-four, or one out of every eighteen voters, exercised their American privilege of voting as they pleased, and no one has a right to question their motive or hold it against them that they set their face against the welfare of the state. Threats of retaliation, spoken in haste, should not be carried into effect, and all resentments should be forgotten. . . They have had their lesson and they should be invited to join the citizens who voted for the constitution to share the fruits of victory and help build a greater and better Sante Fe."<sup>28</sup>

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<sup>28</sup>Editorial in the Sante Fe New Mexican, Monday, January 23, 1911.





TABLE I  
VOTE BY COUNTIES  
FOR THE PROPOSED CONSTITUTION<sup>29</sup>

COUNTY	FOR	AGAINST
Bernalillo	2426	1009
Chaves	1925	348
Colfax	2055	485
Curry	769	250
Dona Ana	1450	405
Eddy	1262	303
Grant	916	376
Guadalupe	942	611
Lincoln	549	580
Luna	302	231
McKinley	681	73
Mora	1377	692
Otero	548	449
Quay	1112	506
Rio Arriba	1542	706
Roosevelt	702	720
Sandoval	377	645
San Juan	1139	67
San Miguel	2780	1204
Sante Fe	2643	297
Sierra	220	386
Socorro	1735	991
Taos	1018	793
Torrance	740	532
Union	1067	511
Valencia	1465	229

<sup>29</sup>Ibid., pp. 6-12.

# COUNTY

Bernadillo  
 Chaves  
 Colfax  
 Curry  
 Dona Ana  
 El Paso  
 Grant  
 Guadalupe  
 Lincoln  
 Luna  
 McKinley  
 Mora  
 Otero  
 Quay  
 Rio Arriba  
 Roosevelt  
 Sandoval  
 San Juan  
 San Miguel  
 Santa Fe  
 Sierra  
 Socorro  
 Teller  
 Torrance  
 Union  
 Valencia

EZEKIEL  
 DEFICIT



Although the people had expressed their desire to adopt the new constitution, the opposition was determined to fight on. On February 17, 1911, W. H. Blair appeared before the Committee on Territories of the House of Representatives in Washington. He was counsel for the protesting citizens of the territory. Appearing with him was the National Supervisor of the Women's Christian Union and the National Representative of the Anti-Saloon League of the United States.

Mr. Blair and associates protested against the organization and personnel of the convention, the election by which the delegates had been chosen, and the constitution.<sup>30</sup> They charged that the list of eligible voters throughout the state had been grossly encumbered with many persons who were not eligible to vote. According to their charges many persons deceased or removed were carried on the registers while others were found on more than one precinct list. The election for ratification had been so padded that the result was not a true picture of the will of the people.

The manner in which the election was carried on was subject to severe criticism. Many sworn affidavits were collected regarding the events of that day which Mr. Blair took with him to present to the Committee on Territories of the House of Representatives. (See Appendix A)

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<sup>30</sup>The Constitution for the Proposed State of New Mexico, op. cit., p. 14.

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In one affidavit, a Mr. J. C. Sweet swore that he had seen men drinking whiskey in a room just back of a polling place.<sup>31</sup> One man had come into the polling place and after refusing to vote for ratification was thrown out without being allowed to vote. According to Mr. Sweet, the votes were opened and inspected by the judges before being deposited in the ballot boxes. In Madrid, Mr. Sweet observed that everyone seemed to be drinking. The law at that time required that all saloons should be closed on election day, and that no one should loiter within forty feet of a polling place.

A very unusual ballot was used for the election on ratification. There was a separate ballot being used for and another against ratification. It seems that very early in the day many of the polling places in the state ran out of negative ballots and no more were to be found.<sup>32</sup>

Mr. E. M. Fenton, a Presbyterian minister from Sandoval County, went to the polls on election day to vote against ratification, but he could not secure a ballot. The judges said that they had no ballots for the opposition. He tried to change the "for" to "against" on the ballot, but the judges threw it out on the grounds that the ballot was scratched. Failing in this, he made a ticket the same size and shape of the ballot, but again it was rejected. The election judge

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<sup>31</sup>Ibid., p. 17-18.

<sup>32</sup>Ibid., p. 23.



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claimed that since it was not endorsed on the back by the probate clerk it was not valid and thus not acceptable. He was prohibited from voting entirely by the decisions of the election judges.<sup>33</sup>

"The very interests that prey upon the people had written the constitution," so said Mr. Blair in summation before the Committee on Territories.<sup>34</sup> Of the one hundred members of the constitutional convention, fifteen had been liquor dealers while twenty more had been distributors of liquor. Further, nearly one-half of the members were either in the liquor business or were retained corporation lawyers. This was undoubtedly true, and easily proven, but it should be kept in mind that Mr. Blair had been retained by the anti-liquor groups and was probably more concerned with liquor control in the constitution than with the various other charges which were made. It is evident from the facts that many wrongs were committed on election day, but it is doubtful whether they were so extensive as to nullify the outcome of the election. Over thirty-one thousand votes had been cast for ratification, while the negative tally was just above thirteen thousand. Further, there had been a near record turnout on election day.

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<sup>33</sup>Ibid., p. 23.

<sup>34</sup>Ibid., p. 14.



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The people had expressed their desire to become a state, and the Congress and the President were not to deny their will. On February 24, 1911, President Taft approved the proposed document and sent it to the Congress, recommending its approval. After some delay and controversy<sup>35</sup> it was passed by Congress and was subsequently signed by the President, January 6, 1912.

The constitution in its final form was certainly not a model of perfection, but it was probably as good a document as could have been conceived under existing circumstances. One newspaper said that the document is a credit to the delegates, to their disinterestedness and patriotism, and a credit to the people of New Mexico.<sup>36</sup>

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<sup>35</sup>Congress stipulated in the Smith-Flood Resolution that New Mexico should vote a substitute for Article XIX of the constitution (the amending clause). The vote on the amendment was to be a separate ballot from that used in the first general election and tinted blue. The vote was held November 7, 1911, and the amendment was accepted. The substitution was the present Article XIX of the constitution.

<sup>36</sup>Editorial in the Albuquerque Journal, November 22, 1910.





## CHAPTER III

### THE AMENDING PROCESS

The purpose of a constitution is twofold--(1) the creation of a governmental machinery, and (2) the establishment of safeguards to prevent unfair or improper exercise of power.<sup>1</sup>

A good constitution should be flexible to a degree that, without frequent amendment, the stable progress of the people will not suffer unnecessary restraint.<sup>2</sup> Whether or not the constitution of the state of New Mexico meets this requirement may be decided by an analysis of the amending process of that document.

Our constitution may be changed by one of two methods, the amending process or by complete revision via a constitutional convention. Whether the state constitution can be sufficiently modernized by a series of piecemeal amendments instead of a general revision is a question which might be answered by an analysis of the amending process and the amendments proposed and adopted in the past thirty-eight years.

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<sup>1</sup>H. V. Thornton, What A Constitution Should Contain (State Legislative Council, Oklahoma City, 1947) p. 1.

<sup>2</sup>The Book of the States (Council of State Government: Chicago, 1948) p. 75.



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## THE AMENDING PROCESS

Amending procedures vary considerably from state to state. In general they may be grouped into three categories. The first involves the use of a constitutional convention<sup>3</sup> (which will be examined in Chapter IV) whose work may or may not be subject to voter approval; the second involves the proposal of amendments by the state legislature and the subsequent approval of the voters and the legislature; and the third involves direct action by the people in proposing and approving amendments. Most states provide for the use of at least two of the methods, while a few provide for all three.<sup>4</sup>

In New Mexico, amendments may be proposed at any regular session of the legislature by a majority of the whole number of members elected to each house. They must then be voted on at a special election held not less than six months after adjournment of the legislature. If a proposed amendment is ratified by a majority of the votes cast on it, it becomes part of the constitution.<sup>5</sup>

New Mexico then is one of the majority using only two

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<sup>3</sup>Twelve states make no provision for revision or amendment by constitutional convention. Such conventions have been held permissible as an inherent right of the people. See In re Constitutional Convention 55RI 56 (1935).

<sup>4</sup>Christian L. Larson and Conrad Cowan, South Carolina Constitution Amendment Procedure (Bureau of Public Administration, University of South Carolina, 1948) p. 14.

<sup>5</sup>Article XIX, The Constitution of the State of New Mexico.





of the three methods of amendment. Legislative proposal of constitutional amendments is provided for in forty-seven of the state constitutions. In forty-one of these, the proposal may originate in either House. In twenty states a majority of each house is sufficient for the proposal. Seven require a three-fifths vote and twenty a two-thirds vote.<sup>6</sup>

The popular initiative may be used to initiate amendments in thirteen states, ten of them being west of the Mississippi.<sup>7</sup> The usual requirement is a simple majority of the votes cast on the particular issue.

Advocates of the initiative in New Mexico have demanded its adoption since its failure to be incorporated in the constitution, thus far to no avail. Certainly more control in the hands of the people is to be desired. Other western states have readily adopted progressive governmental practice, but New Mexico continues to resist change.

Regarding publication of proposed amendments, Article XIX, Section I, of the constitution has this to say in substance:

The Secretary of State shall be responsible for the

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<sup>6</sup>John J. George, Amendment and Revision of State Constitutions (The Governor's Committee on Preparatory Research for the New Jersey Constitutional Convention, State of New Jersey, 1947) p. 1.

<sup>7</sup>Arizona, Arkansas, Ohio, Michigan, California, Missouri, Nebraska, North Dakota, Oregon, Oklahoma, Nevada, Massachusetts, and Colorado.



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publication in at least one newspaper in every county of the state, once every week for four consecutive weeks (in English and Spanish when possible), the last publication to be not more than two weeks prior to the election.

Forty-two states require publication of legislative proposed amendments. The period of publication ranges from four weeks to six months. In four states, publication includes distribution of arguments for and against the amendment, along with the amendment itself. In California and Oklahoma, these arguments are official and are printed at state expense.<sup>8</sup>

In most of the states the time of election at which amendments are submitted to the people is the next general election. Nine states leave the time for legislative determination, while three do not specify any time. Of the amendments proposed by constitutional convention seventeen states do not require popular ratification at all.<sup>9</sup>

The required vote for ratification of proposed amendments also varies throughout the states.<sup>10</sup> Popular vote of varying degrees is necessary for ratification of legislative proposed amendments in forty-six states. Of these, thirty-four require a majority of those voting in the election in

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<sup>8</sup>George, op. cit., p. 2.

<sup>9</sup>Ibid., p. 3.

<sup>10</sup>The Book of the States, op. cit., pp. 84-90.





which the amendment was submitted. New Mexico falls in the latter group requiring a majority of the electors voting.<sup>11</sup>

Most states provide (for legislative amendments) that if more than one amendment is submitted, they must be voted upon separately. New York, North Carolina, Virginia, and Wisconsin leave to legislative discretion the manner of submitting amendments. Arkansas, Illinois, Kansas, Kentucky, and Montana prescribe a maximum number to be submitted at one time.<sup>12</sup> A maximum is certainly to be desired. It is asking too much even of the politically literate to expect an intelligent vote upon a ballot consisting of a long list of candidates further complicated by a long series of proposed amendments. Those voting in 1949 upon the ten proposed constitutional amendments here in New Mexico were certainly well aware of the impossibility of their task.<sup>13</sup> It is difficult under such circumstances to conceive of such a thing as an intelligent vote.

Our state constitution provides (Article XIX, Section I) that if two or more amendments are proposed, they shall be so submitted so as to enable the electors to vote on each

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<sup>11</sup>Article XIX, Section I, The Constitution of the State of New Mexico.

<sup>12</sup>George, op. cit., p. 4.

<sup>13</sup>For a brief presentation of the problem see Jack E. Holmes (editor) Constitutional Amendments in New Mexico (Albuquerque: The University of New Mexico Press, 1949).



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of them separately. There is no maximum number stipulation.

There are two notable exceptions to the regular provisions for amending the constitution. These exceptions are: (1) provisions of the constitution guaranteeing equality of political rights to persons of Spanish speech<sup>14</sup> and equality of educational opportunity to Spanish speaking children<sup>15</sup> may be amended only if the amendment is proposed by a three-fourths vote of the total membership of each house of the legislature and ratified by three-fourths of the total vote of the state and by two-thirds of the total vote in every county; (2) the amending clause itself<sup>16</sup> may be changed only by a constitutional convention called for the specific purpose of revising the constitution.

It is easily understood why the Spanish speaking peoples were suspicious of the Anglo-Americans and demanded the above-mentioned constitutional provisions. However, the Spanish speaking peoples are certainly not now going to be deprived of any of their civil rights, and the continuation of such unamendable provisions in our present constitution is deplorable. To attain a two-thirds majority in every county of the state is utterly impossible.

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<sup>14</sup>Article VII, Sections 1, 3, The Constitution of the State of New Mexico.

<sup>15</sup>Article XII, Sections 8, 10, The Constitution of the State of New Mexico.

<sup>16</sup>Ibid., Article XIX.



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The amending clause was attacked by the opponents of ratification before 1912, and there have been no changes made since the blue-ballot vote of 1912. The unamendable amending process is a substantiation of the need for constitutional revision.

#### CONSTITUTIONAL AMENDMENTS--1910-1949

Some idea of the adequacy of piecemeal amendment of our constitution might be gained by tracing the proposed and adopted amendments during the thirty-eight years that New Mexico has been a state.

TABLE II

#### DISPOSITION OF PROPOSED CONSTITUTIONAL AMENDMENTS<sup>17</sup>

Years	Amendments Approved By Legislature	Amendments Adopted By Electorate
1910-1919	7	4
1920-1929	21	5
1930-1939	20	6
1940-1949	<u>24</u>	<u>12</u>
Total	72	27

During the early years of New Mexico's statehood there was apparently little need for constitutional revision

<sup>17</sup>Based in information obtained from The Laws of New Mexico, 1910 through 1949.



The Commission has been authorized to make such investigation as may be necessary to determine the feasibility of establishing a national system of public health service, and to report thereon to the President.

From 1910 to 1919, the Commission has been authorized to make such investigation as may be necessary to determine the feasibility of establishing a national system of public health service, and to report thereon to the President.

RECAPITULATION OF THE COMMISSION'S WORK

Years	Amount
1910-1919	\$1,000,000
1920-1929	\$1,000,000
1930-1939	\$1,000,000
1940-1949	\$1,000,000
Total	\$4,000,000

There was expended during the years 1910-1919, \$1,000,000 for the purpose of carrying out the Commission's work.

Of the seven amendments submitted to the voters during the eight years following statehood, four were adopted by the people and three were rejected. However, it may be noted that the need for amendment has evidently increased with the passing of years.

Twenty-one proposed amendments were approved by the legislature during the period 1920-1929. The electorate rejected seventeen of that number and approved only five. It is interesting to note that during this ten-year period the number of legislative approved proposed amendments increased three-fold, whereas the number adopted by the electorate increased by only one. There was little agreement between the legislature and the electorate as to the needs of the people.

The following decade (1930-1939) brought a reduction in the total number of amendments proposed. Only twenty received legislative approval. Fourteen of these were rejected by the electorate and six adopted.

During the last ten-year period the legislature approved a record of twenty-four proposed amendments. Fifty per-cent of these proposals (twelve) received the approval of the citizenry.

During thirty years of statehood, the legislature has deemed it necessary to approve seventy-two proposals for amending the constitution. The people of the state in turn have thought it wise to adopt twenty-seven of the proposals



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which are now a part of our fundamental law.

The United States constitution during its one hundred and sixty-one years of existence has been amended only twenty-one times. In comparison, the constitution of New Mexico has been amended twenty-seven times in only thirty-eight years of existence.

The number of amendments adopted in other states varies considerably.<sup>18</sup> Delaware has amended its constitution only fifteen times during the forty-eight years since its present constitution was adopted. California, during the sixty-six year span of its constitution, has amended the document three hundred and six times. Illinois, during the past seventy-five years, has evidently had little need for constitutional revision. It has amended its fundamental law only seven times during that period. These figures are certainly positive evidence of the inadequacy of piecemeal amendment and the need for general constitutional revision.

Further insight into the inadequacies of the constitution might be derived from an analysis of the number of amendments proposed and adopted affecting each article of the constitution. A good case for revision of the entire constitution might be built upon these facts. (See Table III)

Many of the articles of the constitution have been

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<sup>18</sup>The Book of the States, op. cit., pp. 84-90.



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THE CONSTITUTION  
EXERCISES  
BY THE COMMISSIONER

TABLE III

PROPOSALS SUBMITTED TO THE ELECTORATE  
TO AMEND THE CONSTITUTION, STATE OF NEW MEXICO<sup>19</sup>  
(1910-1949)

Articles	Amendments Proposed	Amendments Adopted	Amendments Defeated
I. Names and Boundaries	-	-	-
II. Bill of Rights	5	2	3
III. Distribution of Powers	-	-	-
IV. Legislative Department	14	6	8
V. Executive Department	7	3	4
VI. Judicial Department	4	2	2
VII. Elective Franchise	4	-	4
VIII. Taxation and Revenue	7	4	3
IX. State, County, Municipal indebtedness	6	1	5
X. County and Municipal in- debtedness	6	2	4
XI. Other Corporations	1	-	1
XII. Education	4	1	3
XIII. Public Lands	1	-	1
XIV. Public Institutions	1	-	1
XV. Agriculture and Conser- vation	-	-	-
XVI. Irrigation and Water Rights	-	-	-
XVII. Mines and Mining	-	-	-
XVIII. Militia	-	-	-
XIX. Amendments	-	-	-
XX. Miscellaneous	1	-	1
XXI. Compact with U. S.	3	2	1
XXII. Schedule	1	1	-
XXIII. Prohibition	1	1	-
XXIV. Reserving Mineral Roy- alties	-	-	-
XXV. Repeal of XXIII	1	1	-

<sup>19</sup>Derived from The Laws of New Mexico, 1910 through 1949.



# Articles

- I. Names and Numbers
- II. Bill of Rights
- III. Districts
- IV. Legislative Branch
- V. Executive Branch
- VI. Judicial Branch
- VII. Electors
- VIII. Taxes
- IX. States, Counties, Townships
- X. County and Township
- XI. Other Corporations
- XII. Education
- XIII. Public Lands
- XIV. Public Debt
- XV. Agriculture and Commerce
- XVI. Immigration and Naturalization
- XVII. Mines and Minerals
- XVIII. Railroads
- XIX. Amusement
- XX. Miscellaneous
- XXI. County
- XXII. Corporations
- XXIII. Prohibition
- XXIV. Revenue
- XXV. Appeal of Cases

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amended frequently, others occasionally, while a few have never been altered. Article I (Names and Boundaries) has never been amended nor have any proposals been made affecting that article by the state legislators. The same is true of Article III (Distribution of Powers), Article XV (Agriculture and Conservation), Article XVI (Irrigation and Water Rights), Article XVII (Mines and Mining), Article XVIII (Militia), and Article XIX (The Amending Process).

This lack of change might indicate one of two things-- (1) the above-mentioned articles were so well-written that the need to alter them has never arisen, or (2) the amending process is so difficult (particularly regarding the amending article itself) that it has been impossible to change the original article. It would seem that the amending process itself has been the biggest stumbling block to change.

Article IV of the constitution of the state, dealing with the legislative department has been the most frequently amended article of the constitution. There have been fourteen amendments to Article IV approved by the legislature. Of these six were adopted and eight rejected by the electorate.

The second most frequently amended article of the constitution is Article VIII dealing with taxation and revenues. The electorate has approved four of the seven amendments submitted to them for their approval on this Article.





An historical analysis of the amending process is pertinent for various reasons. The weaknesses of the constitution are highlighted and magnified to a degree otherwise unattainable. Frequency of amendment of each individual article reveals individual weaknesses which might otherwise go unnoticed or less noticed. The people are being asked with the passing of years to consider more and more constitutional amendments. If our constitution is so poor that it needs to be amended twenty-four times within a period of ten years then the time for a general over-all constitutional revision has certainly arrived.<sup>20</sup>

An omission of the amending process in New Mexico is the failure to provide for proposal by initiative. The initiative for proposing amendments is recommended by the Model State Constitution<sup>21</sup> but by 1949 only fourteen of the forty-eight states had any provisions for its use in their fundamental law.<sup>22</sup>

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<sup>20</sup>See Table III.

<sup>21</sup>Model State Constitution (National Municipal League: New York, 1948) Article XIII, Section 1300.



EFFICIENCY  
EZEKIAH BOND  
JUDG CONTEMP

James Smith

James Smith

New York

## CHAPTER IV

### REVISION BY CONSTITUTIONAL CONVENTION

"A constitution, to contain an accurate detail of all subdivisions of which its great powers will admit, and all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It probably would never be understood by the public. Its nature, therefore, requires that only its great outline should be marked, its important objects designated, and the minor ingredients which composed those objects are deduced from the nature of the objects themselves."<sup>1</sup>

If this warning against wordiness and detail had been heeded by the framers of recent state constitutions many states would not now be faced with the problem of modernizing their fundamental law. Excess detail and wordiness has resulted in frequent amendment and constitutions have in turn become longer and more complex. This could result in an impasse that could bring confusion and disrepute for the constitution.

Since the end of World War II, the subject of constitutional revision has received serious attention in approximately one-fourth of the states.<sup>2</sup> Only in Missouri and Georgia have these attempts been successful. Of the other states, the campaigns for constitutional revision are

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<sup>1</sup>John Marshall in McCullough v. Maryland (4 Wheatland 316) 1819.

<sup>2</sup>The Book of the States (Council of State Government: Chicago, 1948) p. 79.





farthest advanced in Kentucky and New Jersey.<sup>3</sup>

During the 1947 sessions of the various state legislatures there were many bills introduced to revise state constitutions. These included California, Illinois, Indiana, Kansas, Michigan, Minnesota, New Hampshire, New Jersey, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Washington.<sup>4</sup> More states appear ready to do something about their antiquated state constitutions than ever before.

The process of revising a state constitution is often subject to various obstacles.<sup>5</sup> There is a general lack of interest on the part of most elected officials, both executive and legislative, regarding constitutional change. Further, the public is generally apathetic and often regards the constitution as being divinely inspired. The opposition of any groups fearing the possibility of loss of any privilege or preferred position may also be taken for granted.

#### METHODS OF REVISION

There are two general methods by which a constitution may be completely revised. Revision may be undertaken by a

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<sup>3</sup>New Jersey, in 1944, voted on a new constitution, but it was rejected by the electorate. However, there is still an active movement for revision in the state.

<sup>4</sup>The Book of the States, op. cit., p. 91.

<sup>5</sup>Ibid., p. 79.



terrestrials appeared in the sky in the year 1911.

During the last session of the Wisconsin

Legislature there were many bills introduced to amend

state constitution. These included amendments to

Article I, Section 1, Article II, Section 1, and

Article III, Section 1, and also to amend the

constitution of the State of Wisconsin.

Nothing about these bills was mentioned

ever before.

The process of amending a state constitution is

subject to various conditions. There is a

limit on the number of amendments which may be

introduced in any one session of the

Legislature, and the public is entitled to

the opportunity to be heard on any

of any groups feeling that the

idea or proposed position has been

discussed.

There are two general methods of

may be completely revised. Legislation may be

amended by the Legislature.

There is no doubt that the

but it was rejected by the Legislature.

still as active members of the

The State of Wisconsin

Field, p. 11.

revision commission<sup>6</sup> or by a constitutional convention. The Model State Constitution recommends use of the constitutional convention.<sup>7</sup>

A revision commission may be created by the Governor and the legislature alone.<sup>8</sup> The legislature might transform itself into a revision commission as was done in New Jersey in 1944. The advantages as well as the disadvantages of a revision commission are very well set forth by W. Brooke Graves.<sup>9</sup>

Briefly, these include: (1) The commission is a smaller more compact body than is the convention. (2) The caliber of its personnel is very high. (3) It is very inexpensive. (4) A superior type of work is usually produced. (5) It has been used successfully in many states. (6) It's not so susceptible to log-rolling or to pressure groups as is the convention. (7) It can study more effectively the experiences of other states. He also says that its disadvantages are that it is undemocratic and that it has failed in

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<sup>6</sup>This method of constitutional revision was attempted in New Jersey in 1942 and successfully used in Georgia in 1944.

<sup>7</sup>Model State Constitution (National Municipal League: New York, 1948) Article XIII, Section 1301.

<sup>8</sup>John J. George, Amendment and Revision of State Constitutions (The Governor's Committee On Preparatory Research for the New Jersey Constitutional Convention, State of New Jersey, 1947) p. 6.

<sup>9</sup>W. Brooke Graves, American State Government (D. C. Heath and Company: Boston, 1941) p. 73.



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advantages are that it is cumbersome and that it has failed in

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<sup>7</sup>This method of constitutional revision was attempted  
in New Jersey in 1944 and successfully used in Georgia in 1945.  
Model State Constitutional Commission (National Municipal League,  
New York, 1946) Article XIII, Section 1301.

<sup>8</sup>John J. George, Amendment and Revision of State Con-  
stitutions (The Governor's Committee on Temporary Revision  
for the New Jersey Constitutional Convention, State of New  
Jersey, 1944) p. 6.

<sup>9</sup>W. Weaver Graves, American State Governments (C. C.  
Nash and Company, Boston, 1933) p. 17.

many states.<sup>10</sup>

The constitutional convention adheres to democratic tradition and conforms to previous practice in most states. New Hampshire has had sixteen constitutional conventions, North Carolina six, Vermont eleven, Virginia nine, Louisiana ten, and Georgia thirteen.<sup>11</sup> Although it is frequently used, many weaknesses have been attributed to it. The convention is large in size, unwieldy, expensive, consists of inferior personnel, is time consuming, makes for log-rolling, and compromise, is more susceptible to the influence of pressure groups, and is unnecessary except for a sweeping constitutional revision. The convention method of revision is, as noted, the most common method used.<sup>12</sup>

A convention to revise the constitution may be called occasionally or periodically.<sup>13</sup> Many state constitutions leave this to legislative discretion. (Arkansas, Connecticut, Indiana, Louisiana, Massachusetts, Mississippi, New Jersey, North Dakota, Rhode Island, Pennsylvania, Texas, and Vermont)<sup>14</sup> Other state constitutions stipulate that the question of calling a constitutional convention shall be

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<sup>10</sup>Graves, loc. cit.

<sup>11</sup>The Book of the States, op. cit., pp. 84-90.

<sup>12</sup>Graves, op. cit., p. 73.

<sup>13</sup>George, op. cit., p. 7.

<sup>14</sup>The Book of the States, op. cit., pp. 84-90.





raised periodically. Seven state constitutions stipulate that the question of calling a constitutional convention shall go on the ballot every few years.<sup>15</sup> These provisions vary from seven to twenty years. New Hampshire requires that the question go on the ballot every seven years, while Oklahoma, Ohio, Missouri, and Maryland make the question mandatory every twenty years. Michigan stipulates every sixteen years, and Iowa every ten years. In New York it will be mandatory to place the question on the ballot every twenty years after 1957.

Article XIII, Section 1301, of the Model State Constitution provides that a constitutional convention shall be called every fifteen years. A proposal to call a convention may be raised at any time upon approval by the majority of all members of the legislature.

In New Mexico revision of the whole constitution or substitution of a new one can be accomplished only by a constitutional convention.<sup>16</sup> Prior to 1946 this could have been proposed by a three-fourths majority of the total membership of each house of the legislature. Ratification of the proposal would have required the approval of a majority of the

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<sup>15</sup>The Book of the States, loc. cit.

<sup>16</sup>Article XIX, Section 5, The Constitution of the State of New Mexico.





votes cast on the question.<sup>17</sup>

Since 1946, a proposal to call a constitutional convention would require concurrence of a two-thirds majority in each house of the State Legislature.<sup>18</sup> The question would then be submitted to the electorate at the next general election. A favorable vote by a majority of the electors voting upon the question is sufficient to require the state legislature to issue the call for a constitutional convention.

Approximately three-fourths of the states provide in their constitutions for a constitutional convention. Of these, twenty-six permit the legislature to initiate the call for a convention, but require popular vote approval of the legislative proposal to call the convention. Twenty states require a two-thirds vote in each house to pass the call for a convention. Ten accept a majority. In Nebraska a three-fifths vote suffices.<sup>19</sup>

The selection of delegates for a constitutional convention is usually by popular vote. Delegates-at-large are sometimes provided for, Missouri being a recent example.<sup>20</sup>

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<sup>17</sup>Ibid., Article XIX, Section 2.

<sup>18</sup>Loc. cit.

<sup>19</sup>George, op. cit., p. 7.

<sup>20</sup>Ibid., p. 8.





The Model State Constitution (Article XIII, Section 1031) stipulates that any qualified voter of the state shall be eligible to membership in the convention. There shall be as many delegates elected from each legislative district (existing) as there are representatives in the legislature from that district.

The New Mexico constitution requires a minimum number of delegates equal to the number of members of the House of Representatives (49).<sup>21</sup>

Most state constitutions require that conventions submit the new document to the vote of the people. Nineteen constitutions require such approval. Most of these exact a majority vote on the proposal.<sup>22</sup>

Seventeen states have no provision in their fundamental law regarding popular ratification of the convention proposed document--Nevada, North Carolina, Oregon, South Carolina, Tennessee, South Dakota, Virginia, Wisconsin, Georgia, Florida, Delaware, Alabama, Iowa, Kansas, Kentucky, Maryland, and Minnesota.<sup>23</sup>

Approval by a majority of the qualified voters voting upon the proposed document is recommended by the Model State

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<sup>21</sup>Article XIX, Section 2, The Constitution of the State of New Mexico.

<sup>22</sup>George, op. cit., p. 9.

<sup>23</sup>The Book of the States, op. cit., pp. 84-90.



The Board of Directors of the  
Company, after a careful  
consideration of the  
proposal, has decided to  
accept the same, and  
has authorized the  
President to execute  
all necessary papers  
in connection therewith.

IN WITNESS WHEREOF, the Board of Directors  
has caused this resolution to be signed by its  
President, and the same to be attested by its  
Secretary, this 1st day of January, 1911.

Attest:  
Secretary

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

Witness my hand and the seal of the  
Company, this 1st day of January, 1911.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

Constitution (Article XIII, Section 1302). The New Mexico constitution leaves much of the details of the convention to legislative prescription. It does state that a new constitution must be ratified by a majority of the electors voting thereon before it goes into effect.



12  
Constitution (Article XIII, Section 1). The "Constitution  
Constitution leaves much of the details of the organization of  
legislative prescription. It does state that a new consti-  
tution may be ratified by a majority of the electors voting  
thereon before it goes into effect.

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FILE

## CHAPTER V

### THE JUDICIARY

The Model State Constitution has for a period of more than a quarter of a century exerted a very considerable influence on the development of state constitutions. Thus, since it has achieved considerable renown and praise from authorities on state government, a comparison between the Model State Constitution and that of New Mexico should be of value in the judicial branch as well as in other branches and provisions of the constitution.

#### I. MODEL STATE JUDICIARY

The Model State Constitution provides for the establishment of the judiciary in broad terms and leaves the excess of detail to legislative discretion.<sup>1</sup>

Under its provisions the judicial power is vested in a general court of justice which includes a supreme court plus any other departments or divisions and as many judges as may be provided by the law.

Much of the jurisdiction of the court is left to legislative prescription. The general court of justice is given original jurisdiction throughout the state in all causes, including claims against the state. The jurisdiction of the

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<sup>1</sup>Model State Constitution (National Municipal League: New York, 1948) Article VI, Section 600.





Supreme Court is determined by the state legislature, and that of the inferior courts by statute or by the rules of the judicial council.<sup>2</sup>

With the exception of the chief justice, all of the justices and judges are appointed not elected to the judiciary.<sup>3</sup> His term of office is eight years, and he shall be elected during an off-year election (year when the governor is not elected<sup>4</sup>). (Vacancies in the general court of justice are appointed by the chief justice from a list of three names which is supplied by the judicial council.) Each such appointed judge serves for a period of twelve years. After serving four years he may be recalled or retained, depending upon a vote of the people. If a majority of the voters voting are against retaining the judge, then he is recalled, and the chief justice appoints another judge.

In the event that a vacancy occurs in the office of chief justice, the judicial council designates a judge to perform the office until the next off-year election at which time a new chief justice would be elected, or at a special election at an earlier time as prescribed by the legislature.<sup>5</sup>

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<sup>2</sup>Ibid., Article VI, Section 601.

<sup>3</sup>Ibid., Article VI, Section 602.

<sup>4</sup>It is felt that an election in the same year as a gubernatorial election focus as much attention on the election as the position of chief justice warrants.

<sup>5</sup>Model State Constitution, loc. cit.



Supreme Court is determined by the state legislatures, and that of the inferior courts by statute or by the rules of the judicial council.

With the exception of the chief justice, all of the justices and judges are appointed for a term of office of not less than eight years, and are elected during an off-year election year when the governor is not elected. Vacancies in the general court of justice are appointed by the chief justice from a list of names which is supplied by the judicial council. Each judge serves for a period of twelve years, and after serving four years he may be reelected or retained, depending upon a vote of the people. It is a majority of the voters who are required retaining the judge, otherwise he is removed, and the chief justice appoints another judge.

In the event that a vacancy occurs in the office of chief justice, the judicial council selects a judge to perform the office until the next off-year election at which time a new chief justice would be elected, or at a special election at an earlier time as prescribed by the legislature.

Article VI, Section 101.

Article VI, Section 102.

It is felt that an election in the year 1960 for a constitutional election would be an ideal time for the election of chief justice.

Model State Constitution, 1960.

The Judicial Council as established by the Model State Constitution would consist of eleven members. Membership consists of the chief justice (who presides over the group), one other member of the supreme court and two members of inferior courts to be appointed by the Chief Justice to serve a four year term; three practicing lawyers, to be appointed by the Governor for a three year term from an eligibility list supplied by the state bar association; three laymen citizens of the state to be appointed by the governor for three year terms; and the chairman of the judiciary committee of the legislature.<sup>6</sup> The council is required to meet four times yearly, at least once in each quarter.<sup>7</sup>

The powers of the judicial council are rather extensive.<sup>8</sup> It has the power to make and to alter the rules relating to pleading, practice, or procedure in the general court of justice. Further it prescribes all rules regarding the administration of the general court of justice, including the duties of the administrative director and all other ministerial agents of the court.

The chief justice, Under the Model State Constitution

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<sup>6</sup>The Model State Constitution provides for a unicameral legislature (Article III, Section 301).

<sup>7</sup>Model State Constitution, op. cit., Article VI, Section 603.

<sup>8</sup>Ibid., Article VI, Section 604.



The Judicial Council as established by the Model State Constitution would consist of eleven members. It would consist of the chief justice (who would serve for one other member of the supreme court and two members of the lower courts to be appointed by the chief justice to serve a four year term; three practicing lawyers to be appointed by the Governor for a three year term from an advisory list supplied by the state bar association; three laymen of the state to be appointed by the Governor for three year terms; and the chairman of the Judicial Council for one year term; and the chairman of the Judicial Council for one year term. The council is required to meet at least once a year, at least once in each quarter.

The powers of the Judicial Council are set forth in Article VI. It has the power to make and to alter the rules relating to pleading, practice, or procedure in the courts of the state. Further it prescribes all rules of procedure, the administration of the general court of appeals, and the duties of the administrative agencies of the state and the administrative agencies of the court.

The chief justice under the Model State Constitution

The Model State Constitution provides for a judicial  
and legislative (Article VI, Section 20).

Model State Constitution, op. cit., Article VI, Sec-  
tion 20.

Article VI, Section 20.

is the chief judicial officer. He presides over the supreme court and is the executive head of the general court of justice. Other functions of the chief justice are the appointment of an administrative director of the general court, the assignment of judges to departments, subdivisions and judicial districts, and the supervision of the work of the general court of justice and its agents.<sup>9</sup>

Section 604, Article VI, of the Model State Constitution provides for the retirement and removal of judges. The retirement of judges is left to legislative provision. The legislature may remove any judge from office upon the concurrence of two-thirds of all the members. The judicial council has the power of removal over judges and ministerial agents of the general court of justice. In all cases the accused may not be removed without cause, must be given due notice, and provided with an opportunity for defense.

The compensation of judges and all court officials is determined by the state legislature and not by constitutional provision. This remuneration may not be altered during a judge's term of office.<sup>10</sup>

Judges are ineligible to hold any other office during their elected term (Section 609, Article VI). Under certain

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<sup>11</sup>Article VI, Section 1, The Constitution of the State of New Mexico.

<sup>12</sup>Ibid., Article VI, Section 2.



is the chief judicial officer of the State and is the representative of the State in the Federal courts. Other functions of the chief justice are the appointment of an administrative committee of the judicial branch, the assignment of judges to the various courts, and the distribution of the cases of the courts.

Section 22, Article IV of the Constitution provides for the removal of judges by impeachment. The impeachment of judges is provided for by the House of Representatives, and the removal of judges is provided for by the Senate. The impeachment of judges is provided for by the House of Representatives, and the removal of judges is provided for by the Senate.

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conditions they may be disqualified from sitting on a case (Section 610, Article VI). Each judge of the general court of justice has the power to issue writs of habeas corpus (Section 611, Article VI).

## II. THE NEW MEXICO JUDICIAL SYSTEM

In New Mexico the judicial power is vested in the Senate when sitting as a court of impeachment, a supreme court, district courts, a probate court, justices of the peace, and courts inferior to the district court as may be established by law.<sup>11</sup>

The supreme court of the state has both original and appellate jurisdiction. The appellate jurisdiction of the court is co-extensive with the state and extends to all decisions and final judgments of the district courts.<sup>12</sup>

Original jurisdiction of the supreme court extends in quo warranto and mandamus against all state officers, boards, and commissions. The court has a superintending control over all inferior courts. Writs of mandamus, habeas corpus, error, prohibition, certiorari, injunction, or any other necessary writs may be issued by the court.<sup>13</sup>

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<sup>11</sup>Article VI, Section 1, The Constitution of the State of New Mexico.

<sup>12</sup>Ibid., Article VI, Section 2.

<sup>13</sup>Ibid., Article VI, Section 3.



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appellate jurisdiction. The appellate jurisdiction of the  
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districts and local judgments of the district courts.<sup>12</sup>

Original jurisdiction of the supreme court extends to  
all writs and judgments against all state officers, judges,  
and sheriffs. The court has a supervisory control over  
all inferior courts. Writs of mandamus, habeas corpus, ex-  
cess, prohibition, certiorari, injunction, or any other  
writ may be issued by the court.<sup>13</sup>

<sup>11</sup>Article VI, Section 1, The Constitution of the State  
of New Mexico.

<sup>12</sup>Id., Article VI, Section 2.

<sup>13</sup>Id., Article VI, Section 3.

Justices of the supreme court (of whom there are three) are elected at the general election for representatives in Congress for an eight year staggered term. Unless otherwise stipulated by law, the chief justice is the justice who has the shortest term to serve. No justice appointed or elected to fill a vacancy may be chief justice.<sup>14</sup>

(The supreme court is required to hold court one term each year, commencing on the second Wednesday in January. The constitution requires that it meet at the seat of government) (Sante Fe).<sup>15</sup>

To be eligible to hold a seat on the supreme court, a person must be at least thirty years of age, learned in the law, and a resident of the state for a minimum of three years.<sup>16</sup> The justices of the court receive an annual salary of six thousand dollars.<sup>17</sup>

The court has the power of removal over its reporter, bailiff, clerk, and any other inferior officers which might be created by law.<sup>18</sup>

The state of New Mexico is divided into eight judicial districts as follows:

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<sup>14</sup>Ibid., Article VI, Section 4.

<sup>15</sup>Ibid., Article VI, Section 7.

<sup>16</sup>Ibid., Article VI, Section 8.

<sup>17</sup>Ibid., Article VI, Section 11.

<sup>18</sup>Ibid., Article VI, Section 9.



Justices of the Supreme Court (of which there are  
 nine) are elected at the general election for six years.  
 Three are Congressmen for an eight year staggered term. Others  
 otherwise designated by law, one chief Justice is the  
 one who has the shortest term to serve. No Justice ap-  
 pointed or elected to fill a vacancy may be re-elected.  
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 the law, and a resident of the state for a number of years.  
 The Justice of the Court receives an annual sal-  
 ary of six thousand dollars.

The court has the power of removal from the position,  
 disability, death, and any other inferior officers which may  
 be created by law.  
 The state of New Mexico is divided into several  
 judicial districts as follows:

- 1st Judicial District, Article VI, Section 1.
- 2nd Judicial District, Article VI, Section 2.
- 3rd Judicial District, Article VI, Section 3.
- 4th Judicial District, Article VI, Section 4.
- 5th Judicial District, Article VI, Section 5.

First District--Sante Fe, Rio Arriba and San Juan counties.

Second District--Bernalillo, McKinley, and Sandoval counties.

Third District--Dona Ana, Otero, Lincoln, and Tarrant counties.

Fourth District--San Miguel, Mora and Guadalupe counties.

Fifth District--Eddy, Chaves, Roosevelt, and Curry counties.

Sixth District--Grant and Luna counties.

Seventh District--Socorro, Valencia, and Sierra counties.

Eighth District--Taos, Colfax, Union, and Quay counties.<sup>19</sup>

The state legislature is authorized to increase the number of district judges in any judicial district.<sup>20</sup> Each district judge is elected during a congressional election. They serve for a six year period (Article VI, Section 12). The qualifications for district judges are the same as for membership in the supreme court. Their powers are also similar within their respective jurisdictions, the district

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<sup>19</sup>Ibid., Article VI, Section 25.

<sup>20</sup>Ibid., Article VI, Section 16.





judge having the same power to issue writs as do the justices of the supreme court.<sup>21</sup> Compensation of judges (constitutionally provided) is four thousand, five hundred dollars annually.

Both original and appellate jurisdiction are possessed by the district courts. The courts have original jurisdiction over all matters not prohibited by the constitution, and appellate jurisdiction in all matters originating in any inferior courts. Court sessions must be held at least two terms annually in each county of the state at the county seat.<sup>22</sup>

A constitutional amendment adopted by the people September 20, 1949, provides for the establishment of a probate court.<sup>23</sup> It is a court of record created to replace the previous probate courts of New Mexico. Further jurisdiction over that acquired from the probate courts extends to litigation to determine heirship with respect to real property in all proceedings for the administration of decedents' estates.<sup>24</sup>

The office of justice of the peace, police magistrate, and constable is created by the constitution. The manner in

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<sup>21</sup>Ibid., Article VI, Section 13.

<sup>22</sup>Loc. cit.

<sup>23</sup>Ibid., Article VI, Section 23.

<sup>24</sup>Loc. cit.





which they are to be elected and the precincts or districts within which they are to serve are to be provided by law. These officers are forbidden jurisdiction over any matter involving the title to real estate or the boundaries of land.

### III. COMPARISON OF THE MODEL STATE AND NEW MEXICAN CONSTITUTIONS

Composition of the judicial department. Under the provisions of the Model State Constitution, The entire state judiciary is combined into one court of which the various tribunals would be integral parts, and it leaves the majority of its detail to legislative discretion.<sup>25</sup>

New Mexico (like most of the new Western states) has a less complicated system of judicial structure than that of the majority of the Eastern states, but still provides for judicial power being vested in a supreme court, district courts, a probate court, justices of the peace, and courts inferior to the district court as may be established by law. The supreme court has a superintending control over all inferior courts.

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<sup>25</sup>Chicago and Detroit have instituted unification of the courts with visible proof of savings in both costs and litigants time. Many Chicago litigants have even reduced the amount sued for in order to bring the case within the jurisdiction of the unified court system--one evidence of the high regard held for it. (Model State Constitution pamphlet, p. 37.)





The United States met this problem of flexibility of the constitution by providing for the judicial department in broad outline and leaving to Congress or the courts, the determination of the great amount of subordinate policies involved in the administration of justice. Unification of the courts has also for years been one of the principal advantages which the English judicial system has had over the organization prevailing in the United States.<sup>26</sup>

Choosing the Chief Justice and other justices. The chief justice is the only elected member of the judicial structure under the Model State Constitution, with all other justices being appointed by him from a list of names supplied by the judicial council.<sup>27</sup> He is elected for a term of eight years.

The chief justice, as provided for in the New Mexico constitution, is the justice who has the shortest term to serve of the three justices of the supreme court. Seven other states use this method of selecting their chief justice--Colorado, Idaho, North Dakota, Oregon, Utah, Washington, and Wyoming.<sup>28</sup> The chief justice thus serves for two

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<sup>26</sup>Model State Constitution, op. cit., p. 36.

<sup>27</sup>This method of selecting judges was advised by the American Judicature Society.

<sup>28</sup>Book of the States (Council of State Government, Chicago, 1948) p. 499.



The United States and this problem of responsibility of the constitution by providing for the judicial department. In fixed outline and leaving to Congress or the courts, the determination of the great amount of subordinate legislation involved in the administration of justice. Legislation in the courts has also for years been one of the principal advantages which the English judicial system has over the organization prevailing in the United States.<sup>26</sup>

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Model State Constitution, art. VI, § 10.

<sup>26</sup>This method of selecting judges has been used by the American Judicature Society.

<sup>28</sup>Book of the States (Council of State Governments, Chicago, 1931) p. 137.

years in New Mexico.

In an article prepared by Glenn Winters, Secretary-treasurer of the American Judicature Society, titled "State Judicial Systems", which was published in the Book of the States, Mr. Winters says that if the chief justice is to be a leader, it should be recognized that not all judges have equal leadership talent, and that those plans of the states which give the electors the appointing authority, or the judges themselves the chance to pick someone among them who has that talent, and then give him a long enough term to establish leadership and make it effective.<sup>29</sup>

Since all other justices are appointed by the chief justice, under the Model State Constitution, the electorate is given the opportunity to recall them at an automatic recall election to be held after they have served four of their twelve years in office.

Each district judge in New Mexico is elected for six years, according to the constitution. The election of the other minor judges is left to the legislature, but they are all elective offices and judges serve for a two-year term.

All or part of the judges are elected in forty-five of the forty-eight states, but appointive methods of one kind or another are in use for all or part of the judges in twenty-one states. Election may be said to be the principal

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<sup>29</sup>Ibid., p. 496.





method in use in thirty-five of the states, appointment by the governor in ten, and by the legislature in three.<sup>30</sup>

California, Missouri, and New Jersey's main justices are appointed by the supreme court. However, trial judges in California and Missouri are still elected,<sup>31</sup> while those of New Jersey are appointed.<sup>32</sup> Recent drafting of proposed constitutional amendments have been the results of the demand for reform in the methods of selection of judges in seventeen states--Alabama, Arizona, Arkansas, Colorado, Idaho, Illinois, Kansas, Minnesota, Nebraska, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Washington, and West Virginia.<sup>33</sup>

John E. Bebout, Assistant Secretary of the National Municipal League, says:

"Having the Chief Justice, elected by the people, appoint the other justices after nomination by a judicial council, and having them subject to popular recall, makes the judicial department as independent as can be of the other branches at the same time that it rejects the extremely questionable system of direct elections of all judges."<sup>34</sup>

Most authorities agree that judges should also be

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<sup>30</sup>Ibid., p. 497.

<sup>31</sup>Loc. cit.

<sup>32</sup>Model State Constitution, op. cit., p. 37.

<sup>33</sup>Book of the States, op. cit., p. 497.

<sup>34</sup>Model State Constitution, op. cit., p. 24.



method in use in France--the "marché noir" method.  
The Governor in California is not a member of the  
California, Governor, and the Governor is not a member of the  
are appointed by the Governor, and the Governor is not a member of the  
in California and Governor, and the Governor is not a member of the  
of New Jersey are appointed by the Governor, and the Governor is not a member of the  
constitutional amendment, and the Governor is not a member of the  
and the Governor is not a member of the  
seventeen states--Alabama, Georgia, Florida, Louisiana, Mississippi, North Carolina,  
No. Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri,  
Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia,  
West Virginia, Wisconsin, and Wyoming.

John H. Johnson, President, National Negro College Fund, Inc.,  
National Negro College Fund, Inc.,  
"Having the honor to acknowledge the receipt of your letter of the 10th inst.,  
appointing the National Negro College Fund, Inc., as the national  
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freed from the capricious aspects of politics. Under our present system of electing all judges, the election of the large number of judges necessary to man the courts of our cities has not tended to increase popular control, but rather has diminished it. Since they are merely included on a ballot along with untold numbers of elected officials, sometimes they are chosen merely to round out a ballot. The addition of them to a ballot already crowded with other local and state officials often results in a hasty choice by the voter, or straight ticket voting. Sometimes they are also held responsible to the local "political boss" who elected them. Obviously this situation is undesirable.

Qualifications for judges. With the system of appointing of justices by the judicial council the Model State Constitution makes no provisions for qualifications of these justices, thereby leaving that matter to the discretion of the council.

New Mexico is among the less than half of the states which do not make United States citizenship a qualification for its judges. It is also among the just about half of the states which require legal knowledge (member of the bar) and legal experience at the bar or on the bench for their justices.

Connecticut, Massachusetts, New Hampshire, New Jersey, and Vermont have no requirements of any kind, and the





distinguished courts and judges throughout the long history of those states suggest that where provision is made for appointment of judges by a competent and responsible authority (as is advised in the Model State Constitution) minimum standards are not so important as in other states where any ambitious lawyer may be a candidate for election to judicial office.<sup>35</sup>

Salaries. Compensation of judges and all court officials is determined by the state legislature under the Model State Constitution, while in New Mexico the constitution sets the yearly salary of the supreme court justices at \$6,000, and that of the district court judges at \$4,500. The state legislature has seen fit to increment these salaries in other ways, however, and the salaries are listed at \$8,000 and \$5,250, respectively, in the Book of the States. New Mexico is not among the twenty-seven states which provide retirement pensions in some amount for some of their judges.

Judicial Councils. New Mexico is among the thirty-five states which have a judicial council. Its principal duties are general judicial research. This council was set up by statute and is not an integral part of the constitution. The Model State Constitution authorizes much more power to its judicial council than the legislature of New

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<sup>35</sup>The Book of the States, op. cit., p. 497.





Mexico have seen fit to yet bestow on theirs.

New Jersey experience. New Jersey (which revised its judicial structure September 15, 1948) is the only state which provides an administrative head with powers to control dockets, assign judges where they will be most needed, or to coordinate the activities of different branches of the court.<sup>36</sup> In other words, it is the only states which incorporates most of the recommendations of the Model State Constitution in the judicial section.

Of New Jersey's experiences with this new court arrangement, Joseph Harrison, member of the New Jersey Bar and Deputy Attorney General, says:

"On September 15, 1949, New Jersey observed a most significant anniversary--the first full year of experience under its new streamlined court system. . . . Cold facts and figures attest most eloquently to the success of the state's new judicial system. Equally important is the fresh atmosphere that pervades the administration of justice. Efficiency, punctuality, greater application to work, and minimum delays now characterize the state's judicial process as never before."<sup>37</sup>

These "cold facts and figures" include the combined results of two appellate courts (the appellate division of the Supreme Court and the Supreme Court) under the new system and that of the former Supreme Court and Court of Errors

<sup>36</sup>Joseph Harrison, "New Jersey's Judicial Reform" (State Government: October, 1949) p. 232.

<sup>37</sup>Ibid., p. 235.



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and appeals. The former heard 442 appeals and rendered decisions in all with the average disposition time being 29 days, and using a total of 13 judges. During a comparative time, the latter, using 16 judges, disposed of 276 cases in an average time of 108 days.

Thus in its first year of operation the present appellate system disposed of 60% more appeals in 73% less time. The former Supreme Court, the Circuit Court, the Court of Common Pleas, for the corresponding period of 1947 to 1948, disposed of 6,210 cases, while the two new trial courts replacing them disposed of 11,808 cases--an increase of 90%.<sup>38</sup>

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<sup>38</sup>ibid., p. 236.



and expense. The former board 442 appeals and reviewed 10-

claims in all with the average disposition time being 22

days, and making a total of 13 judges. During a comparative

time, the latter, using 10 judges, disposed of 275 cases in

an average time of 108 days.

Thus in its first year of operation the system spent-

into system disposed of 504 more appeals in 736 less time.

The former Supreme Court, the Circuit Court, the Court of

Common Pleas, for the corresponding period of 1911 to 1914,

disposed of 8,210 cases, while the two new trial courts re-

ceived from disposed of 17,808 cases--an increase of 9,598

## CHAPTER VI

### THE EXECUTIVE DEPARTMENT

#### I. PROVISIONS OF THE MODEL STATE CONSTITUTION

The Model State Constitution is very short and concise in its provisions regarding the executive department. The executive power is vested in a governor chosen by direct vote of the people for a four year term.<sup>1</sup> Any citizen who is a qualified voter is eligible to the office of governor.<sup>2</sup>

The relationship between the executive and legislative departments are close and keyed to harmony between the two bodies. The Governor's legislative powers enable him to present to the legislature a state of affairs message during the beginning of each legislative session and to recommend legislation which he deems necessary or expedient.<sup>3</sup> The governor and the heads of the administrative departments are entitled to seats in the legislature. They may introduce bills, and take part in discussions on the floor, but they do not have a vote.<sup>4</sup>

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<sup>1</sup>Model State Constitution (National Municipal League: New York, 1948) Article V, Section 500.

<sup>2</sup>Ibid., Article V, Section 501.

<sup>3</sup>Ibid., Article V, Section 502.

<sup>4</sup>Loc. cit.



## CHAPTER VI

### THE EXECUTIVE DEPARTMENT

#### 1. PROVISIONS OF THE NEW YORK CONSTITUTION

The New York Constitution is very brief and concise in its provisions regarding the executive department. The executive power is vested in a Governor chosen by the vote of the people for a term of years. The Governor is a qualified voter in all respects as the holder of office. The relationship between the executive and legislative departments has also been defined to a certain extent. The Governor's legislative powers are limited to two bodies. The Governor's legislative powers are limited to the legislature and the courts of this state. At the beginning of each legislative session and at the beginning of each session of the courts, the Governor shall deliver a message to the legislature and the courts. The Governor shall also deliver a message to the courts at the beginning of each session. The Governor and the heads of the administrative departments are entitled to seats in the legislature. They may introduce bills, and take part in discussions on the floor, but they do not have a vote.

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<sup>1</sup> New York Constitution (Revised Edition) (1938)  
New York, 1938, Article V, Section 20.  
<sup>2</sup> Id., Article V, Section 20.  
<sup>3</sup> Id., Article V, Section 20.  
<sup>4</sup> Id., Article V, Section 20.

The executive is further vested with the veto power over legislative approved bills.<sup>5</sup> A two-thirds majority vote in each house of the legislature is necessary to over-ride the executive veto.<sup>6</sup>

The executive and administrative powers of the governor under the Model State Constitution are similar in many respects to those of the President of the United States. It is the duty of the governor to see that the laws of the state are faithfully executed. All officers of the state are commissioned by the chief executive. The state militia is under the command of the governor, and he may mobilize them to repel invasion or to suppress insurrection.<sup>7</sup>

The power to grant reprieves, commutations, and pardons for all offenses are accorded the governor, subject to the laws of the state.<sup>8</sup>

An administration manager is provided the governor to aid him in the management of the affairs of the state. The manager is appointed by the governor for an indefinite term, subject to the pleasure of the governor. The duties of the manager may include as much of the administrative

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<sup>5</sup>The executive is given a blanket veto, and no provision is made for the item veto.

<sup>6</sup>Model State Constitution, op. cit., Article III, Section 315.

<sup>7</sup>Ibid., Article V, Section 503.

<sup>8</sup>Ibid., Article V, Section 504.



The executive is further vested with the veto power.

over legislative approved bills. A two-thirds majority vote in each house of the legislature is necessary to override the executive veto.<sup>6</sup>

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The executive is given a blanket veto, and no provision is made for the item veto.

Model State Constitution, art. 2, sec. 1, 101, Section 21.

<sup>6</sup>Id., Article V, Section 20.  
<sup>7</sup>Id., Article V, Section 20.  
<sup>8</sup>Id., Article V, Section 20.

powers as the governor cares to delegate to him. The administrative manager may in turn be assisted by as many aides as the law prescribes.<sup>9</sup>

Provision is made for as many administrative departments as may be provided by law up to a maximum of twenty. All powers and functions of the various departments are legislatively determined. The governor has sole jurisdiction over the appointment and removal of department heads. All other officers in the administrative service are appointed by the governor or by the department heads, as provided for by law.<sup>10</sup>

Provision for the impeachment of administrative officers for the state are found in Article VI, Section 507, of the Model State constitution. The legislature has the power of impeachment by a two-thirds vote of all of its members. Impeachment procedure is left to legislative prescription.<sup>11</sup>

If the governor is unable to carry on his office by reason of absence from the state, death, impeachment, resignation, or other causes, the constitution provides that the office shall be filled by the presiding officer of the

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<sup>9</sup>Ibid., Article V, Section 505.

<sup>10</sup>Ibid., Article V, Section 506.

<sup>11</sup>Ibid., Article V, Section 507.



power as the governor cannot be delegate to him. The  
executive power may in turn be vested by a single officer  
as the law prescribes.

Provision is made for an advisory committee  
which may be provided by law to a number of persons.  
All powers and functions of the various departments and  
institutes determined. The governor has sole jurisdiction  
over the appointment and removal of executive officers. All  
other officers in the administrative service are appointed  
by the governor or by the department heads, as provided for  
by law.

Provision for the impeachment of administrative officers  
made for the state are found in Article IV, Section 10, of  
the Model State Constitution. The impeachment may be brought  
at of impeachment by a two-thirds vote of all of the members  
of the House. Impeachment procedure is left to legislative  
action.

If the governor is unable to carry on his office by  
reason of absence from the state, death, impeachment, resignation,  
or other causes, the constitution provides that the  
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- Article V, Section 10.
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legislature (unicameral). He shall remain in office for the remainder of the term or until the disability of the governor is removed.<sup>12</sup>

## II. THE NEW MEXICO EXECUTIVE DEPARTMENT

The executive department in New Mexico is composed of a governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of schools, and a commissioner of public lands. Each serve for a two-year term starting the first day of January following their election. Officers of the executive department may not serve more than two consecutive (two year) terms, after which they are ineligible to hold any office in the state for two years thereafter.<sup>13</sup>

To be eligible to office in the executive department in New Mexico, a person must be a citizen of the United States, not less than thirty years old, and must have resided continuously in New Mexico for a five-year period immediately preceding his election. Further qualifications are required for specific offices. The attorney-general must be a licensed attorney of the state supreme court in good standing at the time of his election. The superintendent

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<sup>12</sup>Ibid., Article V, Section 508.

<sup>13</sup>Article V, Section I, The Constitution of the State of New Mexico.





of public instruction is required to be a trained and experienced educator. However, the quality and quantity of training and experience is not mentioned.<sup>14</sup>

The supreme executive power of the state is vested in the governor. Among his duties are the faithful execution of the laws of New Mexico. The chief executive is the commander-in-chief of the state militia (except when they are called into federal service). The militia may be called out by the governor to preserve the peace, execute the laws, repel invasion or to suppress insurrection.<sup>15</sup>

The governor nominates and appoints (with the consent of the senate) all officers whose selection is not otherwise provided for in the constitution. Any officer appointed by the governor may be removed by him for incompetence, neglect of duty, or malfeasance in office. Vacancies in any state office (except lieutenant-governor or a member of the legislature) are filled by gubernatorial appointment. Such appointment would serve until the next general election, at which time his successor would be chosen for the unexpired term.<sup>16</sup>

Reprieves and pardons may be granted by the governor

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<sup>14</sup>Ibid., Article V, Section 3.

<sup>15</sup>Ibid., Article V, Section 4.

<sup>16</sup>Ibid., Article V, Section 5.





after conviction for all offenses except treason and in cases of impeachment. Such executive clemency is subject to regulation prescribed by the law.<sup>17</sup>

If a vacancy occurs in the office of governor, whether temporary or permanent, the lieutenant-governor is first in the line of succession. The line of succession follows to the secretary of state, the president pro-tempore of the senate and the speaker of the House, respectively.<sup>18</sup>

The lieutenant-governor of the state is the president of the senate, but he may cast a vote only in the event that the senate is equally divided.<sup>19</sup>

The annual compensation of the executive officers here-to-fore mentioned was constitutionally determined. However, after ten years had expired from the date of the admission of New Mexico as a state, such compensation might be increased or decreased by law. Executive salaries as provided in 1910 were: governor, five thousand dollars; secretary of state, three thousand dollars; state auditor, three thousand dollars; state treasurer, three thousand dollars; attorney general, four thousand dollars; superintendent of public instruction, three thousand dollars; and

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<sup>17</sup>Ibid., Article V, Section 6.

<sup>18</sup>Ibid., Article V, Section 7, (adopted November 2, 1948).

<sup>19</sup>Ibid., Article V, Section 8.





commissioner of public lands, three thousand dollars.<sup>20</sup>

In 1948, the governor received an annual salary of ten thousand dollars; the attorney-general, eight thousand dollars; the state auditor, the state treasurer, the secretary-of-state, and the superintendent of public instruction, each received annual salaries of six thousand dollars.<sup>21</sup>

Constitutional provision is made in New Mexico for a state highway commission.<sup>22</sup> The commission has complete control over such matters as construction and maintenance of highways and bridges, expenditure of funds, and jurisdiction over employees. The state is divided into five highway commission districts. Commission members are appointed by the governor subject to confirmation of the senate. They serve for six-year overlapping terms. One member must be chosen from each of the five districts, and not more than three of the commissioners may be of the same political party. The chief administrative officer of the highway commission is the chief highway engineer, who is appointed by

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<sup>20</sup>Ibid., Article V, Section 12.

<sup>21</sup>The Book of the States (Council of State Governments: Chicago, 1948) pp. 202-203, 614-618.

<sup>22</sup>Approved by the people by constitutional amendment, (September 20, 1949).





the state highway commission.

### III. COMPARISONS

Officers in the executive department. Under the administrative department set up by the Model State Constitution, the governor is the only elected officer, and he has sole jurisdiction over the appointment and removal of department heads. All powers and functions of the various administrative departments are legislatively determined, and the maximum number of departments is set at twenty.<sup>24</sup>

The executive department in New Mexico is composed of a large number of elected officials--the governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of public instruction, and commissioner of public lands.

"Giving the governor more power to appoint and remove all elective department heads increases unity and coordination in the executive branch and improves administration," according to Paul K. Walp, assistant professor of political science, in an article in the University of Tennessee News Letter.<sup>25</sup>

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<sup>24</sup>An editorial in the National Municipal Review, June, 1948, titled, "Retooling State Government", contains an excellent discussion of this question.

<sup>25</sup>Paul K. Walp, "The Tennessee and the 'Model' Constitution" (University of Tennessee News Letter: May, 1948) p. 3.



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On the other hand, it has been pointed out that having the other officers elected serves as a check and balance upon the financial and administrative operation of the state.

The reasons on which the authors of the Model State Constitution base their executive system are as follows:

(1) The convictions supported by experience in all states, that popular attention can be riveted only on the election of the governor.

(2) The other important state officials rarely have programs which can be judged on an efficiency basis by the people. Thus nominations for these are often made just to "round out a ticket" or "represent all factions."

(3) State department heads feel little or no loyalty to the governor. As a matter of fact they are frequently out to succeed him, and thus they precipitate a series of inter-departmental quarrels to make names for themselves or to discredit the governor or some potential rival.<sup>26</sup>

President Taft put it this way in a speech before a committee of the New York constitutional convention of 1915:

"Well, if you are going to have a lot of independent officers who are running their own boats, paddling their own canoes, without respect to the head of the state, then of course you want a judicial officer to decide between them. But if you are running a government on the basis of a head man being responsible for what is done, and for the work

<sup>26</sup>George C. S. Benson, "The Executive", (Model State Constitution, op. cit.) p. 34.





being done in the most effective way, then what you want is a counsel. When you consult a lawyer, you don't consult a judge, you consult a man who is with you, seeking to help you carry out the lawful purposes that you have. Therefore he ought to be your appointee. You select him. Now the chief executive is given an attorney-general to advise and represent him in all legal matters. I don't see why he shouldn't be appointed. It would be most awkward if he was not in Washington, I can tell you that."

Duties of the governor. Most of the duties of the governor under the Model State and New Mexico constitutions are essentially the same with the exceptions that the governor under the Model State Constitution is given a seat in the legislature and may introduce bills and take part in discussions on the floor, and the governor of New Mexico is given the "item" veto which the Model State Constitution makes no provision for.

Having the governor sit in on legislative sessions would seem to provide for greater coordination between the legislative and the executive, however, the governor usually is powerful enough as leader of the majority party, and he can control the legislature through the party caucus. He also has the veto.

The "item" veto is generally conceded to be an aid in separating the "wheat from the chaff", but on the other hand, it gives the legislature a chance to embarrass the governor by inserting many items into bills so that the governor can become unpopular by cutting them from the final



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approved bill.

Creation of commissions. No provisions are made in the Model State Constitution for the creation of commissions, except in that they leave the creation of departments up to the legislature. New Mexico sets up two commissions in its constitution--the highway commission and the corporation commission. Most authorities agree that the creation of commissions is not a constitutional matter, but one for legislative determination.

General conclusions. All in all, the New Mexico constitution compares fairly well in the executive department with the recommendations of the Model State Constitution with the exception of the number of elected officials.

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IS NO ONE'S BUSINESS



approved.

The Board of Directors of the National Board of Fire Underwriters, Inc., has approved the proposed amendments to the By-Laws of the National Board of Fire Underwriters, Inc., which amendments were submitted to the Board of Directors at its meeting held on the 10th day of June, 1914, and which amendments were approved by the Board of Directors at its meeting held on the 10th day of June, 1914.

The Board of Directors of the National Board of Fire Underwriters, Inc., has approved the proposed amendments to the By-Laws of the National Board of Fire Underwriters, Inc., which amendments were submitted to the Board of Directors at its meeting held on the 10th day of June, 1914, and which amendments were approved by the Board of Directors at its meeting held on the 10th day of June, 1914.

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## CHAPTER VII

### THE LEGISLATIVE DEPARTMENT

#### I. MODEL STATE LEGISLATURE

A unicameral, rather than a bicameral legislature is recommended by the Model State Constitution. Membership in the body is prescribed by law, but it may not exceed a maximum membership set forth in the constitution. Any qualified voter is eligible to membership in the state legislature.<sup>1</sup>

State legislators are chosen by the electorate for a two-year term. It is recommended that they be chosen by proportional representation, by a method prescribed by law. Members are elected from districts (composed of contiguous and compact areas) from each of which are elected from three to seven members, total representation to be dependent upon the population of the district.<sup>2</sup> Membership in each district may be re-assigned after each decennial census.<sup>3</sup> It is recommended that they be elected during the odd-numbered years.<sup>4</sup>

If a vacancy occurs within the legislature, it is

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<sup>1</sup>Model State Constitution (National Municipal League: New York, 1948) Article III, Section 301.

<sup>2</sup>Ibid., Article III, Section 302.

<sup>3</sup>Ibid., Article III, Section 303.

<sup>4</sup>Ibid., Article III, Section 304.





filled by a majority vote of the members from the district in which the vacancy occurs, or in any other manner as prescribed by law. The governor may appoint an eligible person to the vacancy if it is not filled by the legislature within thirty days after the vacancy occurs.<sup>5</sup>

The annual compensation of legislators is legislative-ly, not constitutionally, determined. The amount received may not be increased or decreased during the term for which the legislator is elected.<sup>6</sup>

The legislature, under the Model State plan, is a continuous body during the two year period for which its members are elected. Special sessions may be called by a majority of the members of the legislative council or by the governor.<sup>7</sup>

Most matters of organization and procedure are legislatively determined. The unicameral body selects its own officers (presiding officer and a secretary), determines its own rules of procedure, the qualifications for its members, etc.<sup>8</sup>

A quorum consisting of a majority of all members of

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<sup>5</sup>Ibid., Article III, Section 305.

<sup>6</sup>Ibid., Article III, Section 306.

<sup>7</sup>Ibid., Article III, Section 307.

<sup>8</sup>Ibid., Article III, Section 308.



filled by a large number of people, and the

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the legislature is necessary for the transaction of business. A journal of the legislative proceedings is kept which is published from day to day. A record vote may be taken on any question upon demand of one-fifth of the members present.<sup>9</sup>

The legislature may create as many committees as it deems necessary for the transaction of business. Each committee is required to keep a journal of its proceedings. One-third of the membership of the legislature is sufficient to force any bill out of committee. A notice of all committee hearings and of the subjects to be considered must be published at least one week in advance in the journal.<sup>10</sup>

To become law, a proposed bill must have been read on three different days, have been printed and in the hands of the legislators at least three legislative days before final passage, and have received the assent of a majority of all the members.<sup>11</sup>

Provision is made for a legislative council to consist of from three to fifteen members. Members are chosen by and from the legislature. The legislature may, by a majority vote, dissolve the council and proceed to elect a successor.<sup>12</sup>

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<sup>9</sup>Ibid., Article III, Section 311.

<sup>10</sup>Ibid., Article III, Section 312.

<sup>11</sup>Ibid., Article III, Section 314.

<sup>12</sup>Ibid., Article III, Section 317.



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The chief function of the legislative council is to collect pertinent information concerning the government and to present it to the legislature. The council studies and makes recommendations regarding proposed legislation. Other powers and duties may be assigned to the legislative council by law.<sup>13</sup>

## II. THE NEW MEXICO LEGISLATURE

The constitution of New Mexico provides for a bicameral legislature.<sup>14</sup> A senate and a house of representatives is vested with full legislative power.

The senate consists of one senator from each county of the state. Senators must be at least twenty-five years of age when elected. They serve for a term of four years.<sup>15</sup>

The house of representatives consists of fifty-five members. They are distributed throughout the thirty-one representative districts in varying numbers. Many districts have only one representative, while district three (Bernalillo county) has six representatives. To be eligible for membership in the house, one must be at least twenty-one years

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<sup>13</sup>Ibid., Article III, Section 319.

<sup>14</sup>The Constitution of the State of New Mexico, Article IV, Section 1.

<sup>15</sup>Ibid., Article IV, Section 3.





of age at the time of election.<sup>16</sup> Representatives serve a two-year term. Vacancies in either house are filled by an election at a time designated by the governor.<sup>17</sup>

The legislature convenes at 12:00 noon on the second Tuesday of January following the general election. They may not remain in session more than sixty days. Special sessions of the legislature may not exceed thirty days.<sup>18</sup>

The governor may call special sessions of the legislature during which time no business may be considered unless it relates to that specified in his proclamation.<sup>19</sup> Exception to this is provided to meet emergencies.<sup>20</sup>

Many minor officers and employees are necessary to carry out the every day business of the legislature. The state constitution provides that the legislature itself shall select these employees and determine their compensation. Each house has a chaplain, one chief clerk, a sergeant-at-arms, an assistant chief clerk, and an assistant sergeant-at-arms. Each house may employ further assistants

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<sup>16</sup>The Constitution of the State of New Mexico, Loc. cit.

<sup>17</sup>Ibid., Article IV, Section 4.

<sup>18</sup>Ibid., Article IV, Section 5.

<sup>19</sup>Ibid., Article IV, Section 6.

<sup>20</sup>If three-fifths of both houses of the legislature decide that an emergency exists in the state, it is mandatory for the governor to call a special session (for all purposes) within five days.



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such as reading and enrolling clerks, stenographers, janitors, or any other subordinate employees as may be required.<sup>21</sup>

Annual compensation of state legislators is constitutionally determined. Each member of the legislature receives ten dollars a day during each session plus ten cents per mile travel expense.<sup>22</sup>

All sessions of the state legislature are open to the public. A journal of day by day proceedings is kept by each house and deposited with the secretary of state at the close of each session.<sup>23</sup>

Any legislative bill may originate in either house. It is required that each bill be read at least three times before it may become a law, the third reading to be in full.<sup>24</sup> All bills must be approved by a majority of the members present in each house before it shall become law (Article IV, Section 17).

An attempt is made in New Mexico to avoid a legislative rush during the latter days of the legislative session. No bill (except a general appropriation bill, bills to

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<sup>21</sup>The Constitution of the State of New Mexico, Article IV, Section 9.

<sup>22</sup>Ibid., Article IV, Section 10.

<sup>23</sup>Ibid., Article IV, Section 12.

<sup>24</sup>Ibid., Article IV, Section 15.



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provide for current expenses of government, or special bills requested by the governor) may be introduced after the forty-fifth legislative day (Article IV, Section 19).

No proposed bill may become a law without first being presented to the governor. He may sign it, reject it and return it to the house in which it originated, or he may hold it. If the governor elects to veto a bill (either in its entirety or by selected items), he must present his objections to the bill when returning it to the legislature. The legislature may override his veto by a two-thirds majority vote in each house. Any bill not returned by the governor within three days after it was presented to him becomes a law. There is one notable exception to this rule. Any bill received during the last three days of the session need not be acted upon until six days after adjournment. In this instance, if the bill is not approved, it does not become a law.<sup>25</sup>

Further provisions of the New Mexico constitution concerning the legislative department are long and detailed. Other provisions include the enrolling and engrossing of bills (Section 20); limitations are placed upon the passing of local or special laws (Section 24); no exclusive right, privilege, or immunity shall be granted by the legislature (Section 20); no indebtedness shall be authorized unless a tax

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<sup>25</sup>Ibid., Article IV, Section 22.





is levied sufficient to pay the interest and later the principal of the loan.

### III. COMPARISONS

Unicameral versus bicameral legislature. The Model State constitution recommends the unicameral legislature, while that of New Mexico is bicameral. Opponents of the one-house plan say that the two-house system consists of a better check and balance against hasty, ill-considered legislation, and it enables a better representation of rural and urban areas. However, the one-house legislature seems to be gaining more and more supporters.

Arguments for the bicameral system include: (1) permits representation of areas as well as population; (2) one house serves as a check on the other, tends to more careful deliberation, and to prevent hasty, and ill-considered action; (3) each house would remedy defects in legislation passed by the other; (4) it is more difficult to corrupt two houses than a one-house body; (5) less inclination to accumulate government's power into its own hands; and (6) it affords a means of granting representation to different classes and interests.<sup>26</sup>

Unicameral advocates include among their reasons:

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<sup>26</sup>John P. Senning, The One House Legislature (McGraw-Hill Book Company; New York and London) 1937, p. 114.



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(1) no shifting of responsibility; (2) pitiless publicity would reign supreme and center responsibility; (3) save taxpayers money, even if legislators were given an increase in salary; (4) members should have no party affiliations since state legislature has nothing to do with national issues; (5) legislature is not so bulky as to be unwieldy.<sup>27</sup>

The working examples of unicameralism include, in addition to Nebraska (the only unicameral state in the Union<sup>28</sup>), Canada (of nine provinces, all but one have unicameral legislatures), the Republic of Finland (so well-governed that it is the only European power who had the financial ability to meet her war loan installments) for thirty years, the new Phillipine Islands republic, and even England for all practical purposes since the House of Lords is no longer a power.<sup>29</sup>

J. P. Senning lists the following results of the 1937 adoption of the unicameral legislature in Nebraska:

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<sup>27</sup>George W. Norris, writing a chapter of the book, Bicameralism vs Unicameralism (see Bibliography, p. 97) pp. 112-114.

<sup>28</sup>The Ohio Association of Cities in May, 1948, unanimously approved a proposed amendment to the constitution providing for a one-house legislature. No action has been taken as yet in the form of putting the resolution up for direct vote of the people of the state. ("Ohio Cities Demand One-House Legislature", National Municipal Review, July, 1948, pp. 377-385).

<sup>29</sup>Thomas A. Rousse, op. cit., p. 113.



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The legislature now has forty-three non-partisan members in comparison to the former one hundred representatives and thirty-three senators; the cross section of interest represented in the small assembly and bicameral body is about the same; improved personnel--a higher type of legislator judging by the fact that in the 1944 legislature over 50 per-cent had attended college; simple rules of procedure to safeguard the process of legislation have been established; now have a system of mandatory public hearings on all bills; eleven standing committees, no member may serve on more than two (conflict of committee hearings is avoided by carefully scheduling meetings); no secret sessions, since they have now public announcement of hearings and full press reports of the discussions; and there are no secret sessions of committees, the public is excluded, but the press is not.<sup>30</sup>

There is no last minute rush of legislation in Nebraska. In 1947, three-fourths of the bills ultimately reported out of committee were so reported by the time the session was half over. In 1949, the only bill passed on the last session day was the general appropriations bill.<sup>31</sup>

Sessions of the legislature. The Model State legislature would be a continuous body, while that of New Mexico

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<sup>30</sup>John F. Senning, op. cit., p. 60-66.

<sup>31</sup>R. C. Spencer, "Nebraska Idea 15 Years Old", (National Municipal Review, February, 1950) pp. 83-86.



The present situation is not very different from that which has been the case in the past. The same old problems are still with us, and the same old solutions are still being sought. The only difference is that the problems are now more complex and the solutions are more difficult to find. The same old problems are still with us, and the same old solutions are still being sought. The only difference is that the problems are now more complex and the solutions are more difficult to find.

There is no doubt that the situation is serious, and that the only way to deal with it is by a complete reorganization of the whole system. This is not a task for the day, but for the future. It is a task that requires the cooperation of all concerned, and the support of the public. It is a task that requires the courage to face the facts, and the wisdom to choose the right course of action. It is a task that requires the strength to stand up to the opposition, and the determination to see the job through to the end.

is authorized to meet for only sixty days biennially (special sessions not to last longer than thirty days).

There are now six states holding annual legislative sessions as opposed to the biennial ones--California, Massachusetts, New Jersey, New York, Rhode Island, and South Carolina. Massachusetts, after a six-year trial of the biennial session, returned to the annual session in 1945.<sup>32</sup>

New Mexico is one of the twenty-six states which limit the length of regular sessions,<sup>33</sup> and it is also one of the sixteen which limit the length of special sessions.<sup>34</sup> Many authorities claim that this limitation of sessions forces real deliberation from legislative chambers into committee rooms, where an inadequate record is kept of proceedings. Harvey Walker, a prominent political scientist, claims that many types of legislation cannot safely be postponed until the next biennial session. He further states that constructive legislative labor is not able at times to give their answers in a fixed time.<sup>35</sup> In other words, it would seem

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<sup>32</sup>Book of the States (Council of State Government: Chicago, 1948) p. 102.

<sup>33</sup>It has been pointed out that the holding of more legislative sessions does not necessarily mean a total length of session much in excess of the number of days many legislatures now sit in session.

<sup>34</sup>Book of the States, op. cit., p. 102.

<sup>35</sup>Harvey Walker, The Legislative Process, (Ronald Press Company: New York, 1948) p. 170.





that normal legislative problems should be faced when the need arises as a regular process, not in periodic spasms nor as emergencies for special sessions. Moreover, legislative problems require study for solution.

Frederic H. Guild, director of research, Kansas Legislative council, says of this problem:

"The periodic piling high of the legislative hopper, the waste of legislative time waiting for committees to digest hundreds of bills, and the frantic congestion of the closing days of the session, all because legislation must come only once in two years, has long been noted as a grave evil."<sup>36</sup>

Compensation. The Model State legislature would have control over compensation of its legislators; in New Mexico this is constitutionally determined--ten dollars a day during the session, and ten cents a mile travel expense.

Twenty-six states now pay annual salaries to their legislators, the maximum is \$2,500 per year found in Illinois, Massachusetts, and New York. Only Arizona, Florida, Kansas, North Dakota, Oklahoma, Oregon, Rhode Island, and Tennessee fall below the New Mexico salary limit. Kansas is down at the bottom with three dollars per day.<sup>37</sup>

Legislative councils. Legislative councils are

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<sup>36</sup>Frederick Guild in an article in Model State Constitution, p. 27.

<sup>37</sup>Book of the States, op. cit., p. 108.





essentially continuous joint legislative committees available to study any subject of importance to a state legislature. New Mexico is not among the twelve states in which legislative councils or comparable agencies, are now functioning.<sup>38</sup>

The arguments against a council are that it would be nothing more than a continuous committee; paying a full-time body would not make them experts; they might not be continuous since the council's membership might change with elections; remaining at the capitol would keep them out of touch with their constituents; under the present system the work is delegated to committees and each member is an expert on only a few things.<sup>39</sup>

Arguments for a legislative council include the fact that legislators are essentially laymen and need time and experience to formulate good laws; a body of experts in whom the legislature had confidence can help guide and direct the legislature when it meets; the control of the legislature would not be lost, but its deliberations made more accurate through the aid of a council; and several states have legislative councils and find them very useful.<sup>40</sup>

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<sup>38</sup>Ibid., p. 115.

<sup>39</sup>Paul Walp, "The Tennessee and the 'Model' Constitution," (University of Tennessee News Letter, May, 1941) p. 3.

<sup>40</sup>Loc. cit.





Twelve recommendations proposed by the Committee on Legislative Processes and Procedures of the Council of State Governments. The Committee on Legislative Processes and Procedures of State Governments published a report on "Our State Legislatures" in 1946, making the following recommendations for improving legislatures and legislation:<sup>41</sup>

1. Restrictions should be removed from the length of legislative sessions.
2. Compensation of state legislators should be increased.
3. Legislative terms should be lengthened and staggered.
4. Skilled and essential full-time legislative employees should be appointed on a basis of merit and competence.
5. Committees should be reduced in number and organized with regard to related subject matter, equalization of work, and cooperation between legislative houses.
6. Public hearings should be held on all major bills.
7. Legislative councils or interim committees with adequate clerical and research facilities should be established.

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<sup>41</sup>Our State Legislatures, Report of the Committee of Legislative Processes and Procedures, (Council of State Governments, Chicago, 1946) p. 28.





8. Reference, research, bill drafting, and statutory revision services should be provided.

9. Improved methods of drafting, printing, and introducing bills should be considered.

10. Legislative rules should be reviewed and revised.

11. An adequate legislative budget should be provided.

12. The amount of local and special legislation should be reduced by provision for judicial settlement of claims against states and by increasing home rule for political subdivisions of the state.

Some examination of their legislative bodies has been made by twenty-eight states, but New Mexico is not among them. In four--Alabama, Connecticut, Missouri, and New York--these studies have been extensive and have led to some reform.<sup>42</sup>

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<sup>42</sup>Book of the States, op. cit., p. 101.



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## CHAPTER VIII

### INITIATIVE AND REFERENDUM

#### I. MODEL STATE PROVISIONS

The use of both the initiative and the referendum are included in the Model State Constitution. The initiative includes the power to propose ((by petition) laws and amendments to the constitution, and to vote directly upon their acceptance or rejection at the polls.<sup>1</sup>

The initiative petition must contain either the full text of the proposed measure or an adequate summary thereof. To be valid the petition must be signed by a certain percentage (to be constitutionally stipulated) of the qualified voters who voted in the last general election at which a governor was chosen. A greater percentage of signatures would be required for a constitutional amendment than for other proposals. Initiative petitions would then be filed with the secretary of the legislature for report by the legislative council. If the legislature did not then pass favorably upon the bill at its next session, the measure would be submitted to the electorate not less than sixty days after the end of the legislative session. A constitutional

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<sup>1</sup>Model State Constitution, (National Municipal League: New York, 1948) Article IV, Section 400.





amendment may be submitted at the second regular election after the legislative session. The legislature may provide for a procedure by which the initiative proposal may be withdrawn (by the sponsors) prior to its submission to the people.<sup>2</sup>

The referendum is the power to require that the proposed measures enacted by the legislature be submitted to the qualified voters for their rejection or approval.<sup>3</sup>

The requirements for a referendum petition are similar to those required for the initiative. To be valid, the petition must be signed by a stipulated percentage of the qualified voters who cast their vote for governor at the last general election at which a governor was chosen. The petition must then be filed with the secretary of the legislature within ninety days after the adjournment of the session at which the bill was approved. The question of approval would then be submitted to the voters at the first regular or special election held not less than thirty days after the filing.<sup>4</sup>

If the referendum is ordered upon an act, the operation of the act is suspended until it has been approved by

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<sup>2</sup>Ibid., Article IV, Section 401.

<sup>3</sup>Ibid., Article IV, Section 402.

<sup>4</sup>Ibid., Article IV, Section 403.



THE UNITED STATES OF AMERICA  
DO hereby certify that  
[Name] is a citizen of the United States  
and is entitled to the rights and  
privileges of citizenship.

WITNESSETH my hand and seal  
this [Date] day of [Month], 19[Year].

ATTEST:  
[Signature]

THE [Name]  
[Address]  
[City, State, ZIP]

the voters. <sup>4</sup>The referendum may apply to most acts, the exceptions being acts making appropriations for amounts less than those for the preceding year. Except for emergency measures, no act may take effect before ninety days after the legislative bodies adjourn. Emergency measures become effective immediately. If a referendum petition is filed against an emergency measure the act remains in operation until such time as the voters, by a majority vote, repeal it.<sup>5</sup>

Special elections for any referendum measure may be called if ordered by the governor or by a separate petition, requesting a special election, signed by a stipulated percentage of the qualified voters. If the special election is called it must be held not less than one hundred and twenty nor more than one hundred and fifty days after the adjournment of the legislative session which passed the act.<sup>6</sup>

The executive veto does not extend to measures initiated by, or referred to, the qualified voters. To become law the proposal must be approved by a majority of the votes cast for governor at the last election at which a governor was chosen. If approved, the measure would take effect

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<sup>5</sup>Ibid., Article IV, Section 404.

<sup>6</sup>Ibid., Article IV, Section 405.

<sup>7</sup>Ibid., Article IV, Section 406.





thirty days after the date of its approval.<sup>7</sup>

Certain restrictions are placed upon direct legislative procedure by the Model State Constitution. The initiative may not be used to make appropriations of public funds, nor for the enactment of local or special legislation. No initiative proposal may contain the name of any person to be designated to serve in any office, department, or agency. Any measure adopted by the vote of the people under the provisions of the initiative or the referendum may not be repealed or amended by the legislature for a period of three years except by a two-thirds vote of all of the members.<sup>8</sup>

## II. NEW MEXICO PROVISIONS

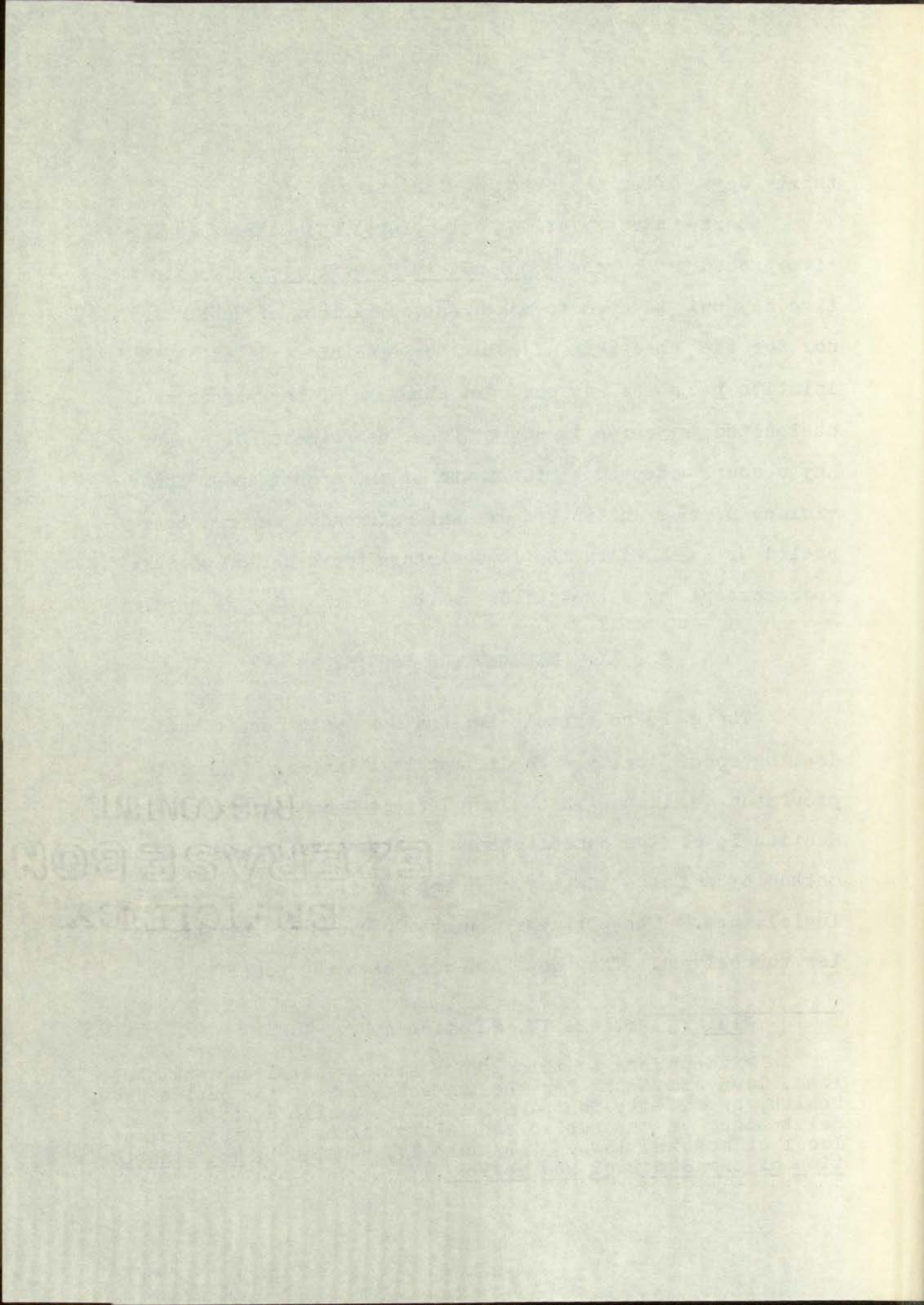
There is no article in the New Mexico constitution dealing specifically with direct legislation. (The only provision dealing with the subject is found in Article II, Section 1, of the constitution of the state.) The only method by which a law may be proposed is through the state legislature. The citizenry cannot propose or initiate any law themselves. They do, however, have the power to

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<sup>8</sup>Ibid., Article IV, Section 407.

<sup>9</sup>Exceptions to this power are: general appropriation laws, laws providing for the preservation of the public peace, health, or safety; for payment on the public debt; for the maintenance of the public schools or state institutions; and local or special laws. (Article IV, Section 1, The Constitution of the State of New Mexico.)





disapprove, suspend, or annul any law enacted by the legislature.<sup>9</sup>

The referendum provision of the constitution is long and detailed. A petition disapproving a law must be submitted to the secretary of state not less than four months prior to the next general election. Such petitions must be signed by not less than ten per cent of the qualified electors of each of three-fourths of the counties, and in the aggregate by not less than ten per cent of the qualified voters of the state. By qualified voters is meant the total number of votes cast at the last preceding general election. The proposed measure is then submitted by the Secretary of State to the electorate for their approval or rejection. If a majority of the votes cast is for rejection of the measure, it is annulled. This majority must constitute at least forty per cent of the total number of votes cast at the last preceding election.<sup>10</sup>

A law may be suspended and thus prevented from going into effect in an easier manner. If a petition signed by a minimum of twenty-five per cent of the voters in three-fourths of the counties and by twenty-five per cent of the voters of the entire state, requesting the suspension of a law, it is suspended until the next general election. This

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<sup>10</sup>The Constitution of the State of New Mexico, loc. cit.



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must be done ninety days before the law is to take effect. In the general election if a majority of the votes cast favors rejection of the law, it is annulled. This majority must constitute at least forty per cent of the total vote cast.<sup>11</sup>

### III. COMPARISON

Initiative. The New Mexico constitution makes no provisions for the use of an initiative. There have been many initiative advocates in the state (including those in the constitutional convention), but they have not been successful in seeing their proposal adopted.

The Model State Constitution does advocate the use of the initiative. Such proposals are not subject to the governor's veto, nor must they be submitted to the legislature for its approval.

Such direct legislation is a "gun behind the door" for the protection of the people against its legislative bodies or those who might control the legislature. It is good insurance against minority legislation.

South Dakota was the first state to adopt the legislative initiative (1898). During the period, 1900-1920, approximately twenty states adopted the initiative. This

<sup>11</sup>The Constitution of the State of New Mexico, loc. cit.





was the era when the Progressive movement was at its height. Of these early states which adopted the initiative and the referendum, only New Mexico ((1911) and Maryland (1915) use the referendum alone. In the past thirty years there have been no additional adoptions of the initiative, but neither have there been any repeals by those states which have adopted it.<sup>12</sup>

There is wide variation among the states using the initiative as to the number of signatures required on the initiative petitions. The percentage required is generally higher for constitutional amendments than for the statutory initiative.

Colorado and California require eight per cent of the voters signatures for both the statutory and an amendment initiative. Arkansas requires ten per cent for the statutory initiative and fifteen per cent for proposal of a constitutional amendment. South Dakota has the lowest number of signatures required (five per cent) for the statutory initiative and prohibits the initiative on constitutional amendments. At the other extreme, Wyoming requires a minimum of thirty per cent of the voters' signatures for its

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<sup>12</sup>The Book of the States, (The Council of State Governments: Chicago, 1948) p. 155.





initiative.<sup>13</sup> A few states require a stipulated number of signatures for the initiative petition. Among the states using this requirement are Massachusetts (twenty-five thousand signatures), Maine (twelve thousand signatures), and North Dakota (ten thousand signatures for the statutory initiative and twenty thousand for constitutional amendments).<sup>14</sup>

New Mexico does have the initiative for city measures only. It applies to the statutory initiative and requires the signature of at least twenty per cent of the voters. This is provided by statute and not in the constitution.<sup>15</sup>

Direct legislation has not been the panacea claimed by its enthusiastic advocates. It has often been useful in directing public attention to certain evils in need of correction which the legislators have neglected. The existence of the initiative has probably stimulated legislative bodies to action. On the other hand it is difficult to insure intelligent action by the voters on initiated matters

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<sup>13</sup>In Wyoming, the initiative and the referendum apply only on ordinances in commission cities. A proposal by the legislature to amend the state constitution to provide for the initiative and the referendum was defeated by a vote of the people.

<sup>14</sup>The Book of the States, op. cit., pp. 157-160.

<sup>15</sup>New Mexico Statutes Annotated (1941) Chapter 14--1013 to 14--1015, 41-810 to 41-811, 48-505 to 48-509, 56-401 to 56-409.





The cost of printing petitions, securing signatures, etc., is high. The initiative is a worthy check upon legislative action, but reform and improvement of legislatures is probably a better way of securing good government than reliance upon direct legislation.<sup>16</sup>

Referendum. Both the New Mexico and the Model State Constitution provide for the use of the referendum. The provisions of the Model State Constitution are much simpler and more easily attained than are those of the New Mexico document. A referendum petition in New Mexico requires an aggregate number of signatures in at least three-fourths of the counties. The referendum in New Mexico is very tedious and exceedingly cumbersome in its workings. It has rarely been used successfully.<sup>17</sup> It would probably be well to eliminate much of the stringent requirements regarding the referendum in order to make it more workable.

The signature requirements for referendum petitions are generally smaller than for the initiative. Five per cent is the most common figure required. This is the requirement in Arizona, California, Colorado, Michigan, Oklahoma, Oregon, Missouri, South Dakota, Montana, and Arkansas. Ohio and

<sup>16</sup>Harvey Walker, The Legislative Process, (The Ronald Press Company: New York, 1948) p. 457.

<sup>17</sup>T. C. Donnelly, The Government of New Mexico, (The University of New Mexico Press: Albuquerque, 1947) p. 107.



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Washington require six per cent. Nevada, Nebraska, North Dakota and New Mexico require ten per cent. The referendum may also be used in over three hundred cities. The signature requirements in city charters vary from five to fifteen per cent.<sup>18</sup>

Conclusion. The initiative is a positive and the referendum a negative check upon the state legislature. Both would appear to be desirable in that they do help in keeping state legislatures in line.

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<sup>18</sup>Harvey Walker, op. cit., p. 454.



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## CHAPTER IX

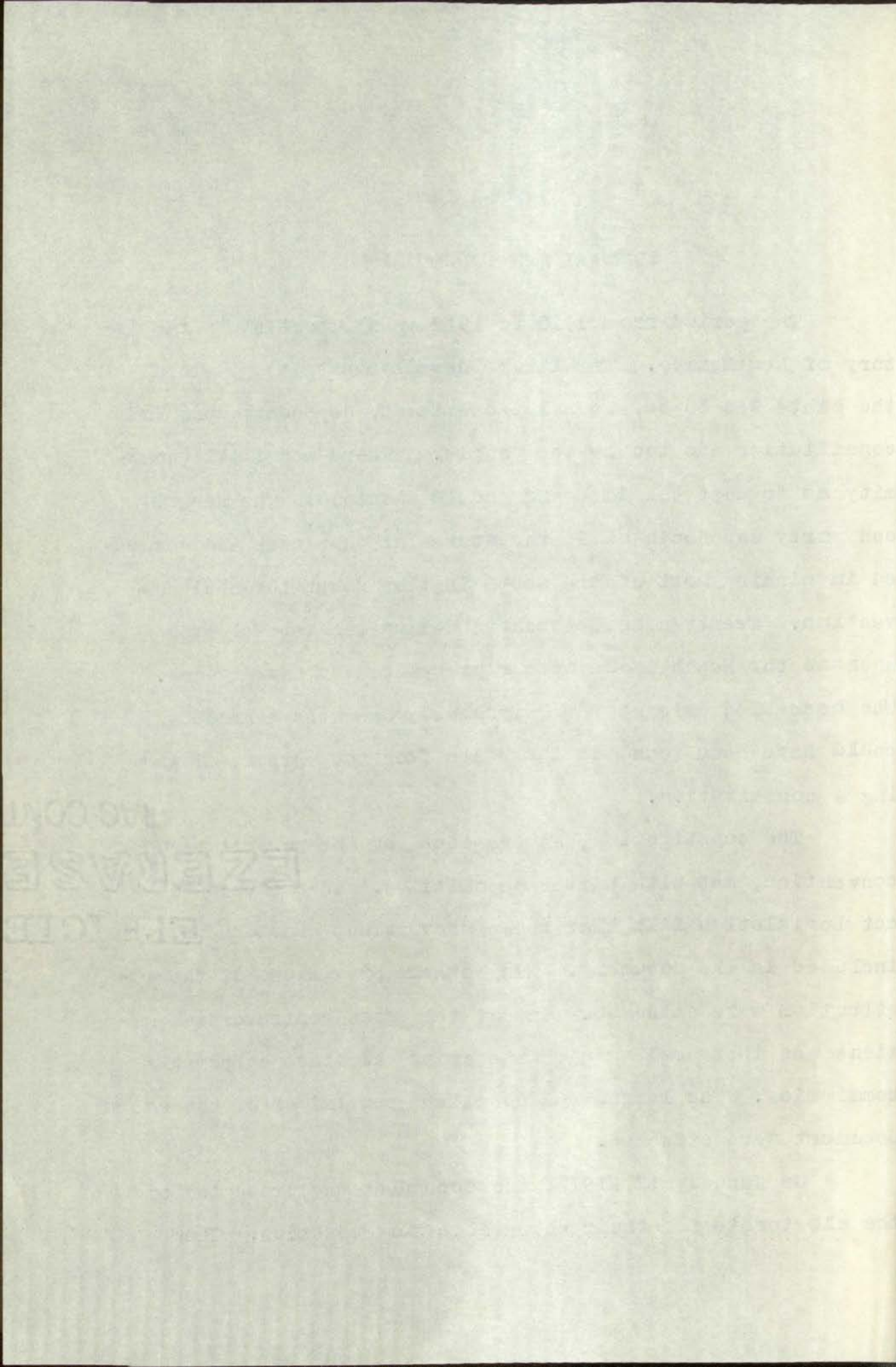
### SUMMARY AND CONCLUSIONS

The period from 1910 to 1912 was important in the history of New Mexico. The future development and growth of the state was to be, to a large extent, dependent upon the constitution adopted by the people. There was little unanimity as to what the document should contain. The Republican party was dominant in the state at that time and succeeded in winning most of the seats in the constitutional convention. Twenty-nine Democratic delegates were elected whereas the Republicans were represented by seventy-one. The assembled delegates were probably as able a group as could have been found in the state for the purpose of writing a constitution.

The constitution, as proposed by the constitutional convention, met with bitter opposition. Advocates of direct legislation felt that these provisions should have been included in the document. Many other provisions of the constitution were attacked. One of the most controversial sections was that dealing with the proposed state corporation commission. The length and detailed provisions of the entire document were attacked.

On January 12, 1911, the document was presented to the electorate for their acceptance or rejection. They





voted overwhelmingly in favor of the constitution and statehood. The document as accepted was a model of conservatism.

The state constitution may be changed by the amending process or by complete revision. The amending process has been frequently used. The state legislature has, since 1912, approved seventy-two proposed constitutional amendments and twenty-seven of these have been adopted by the electorate.

Portions of the constitution are less easily amended. Provisions regarding the education and political rights of persons of Spanish descent have proved unamendable. The amending clause itself of the constitution has never been amended.

Piecemeal amendment has been infrequently used and might indicate a need for general revision. During the last ten-year period there were twenty-four amendments proposed by the state legislature, twelve of which were adopted by the people.

General revision would require the calling of a constitutional convention. A proposal to call a constitutional convention would require concurrence of a two-thirds majority in each house of the state legislature. The question would then be submitted to the electorate at the next general election. A favorable vote by a majority of the electors voting upon the question is sufficient to require the state legislature to issue the call for a constitutional



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convention.

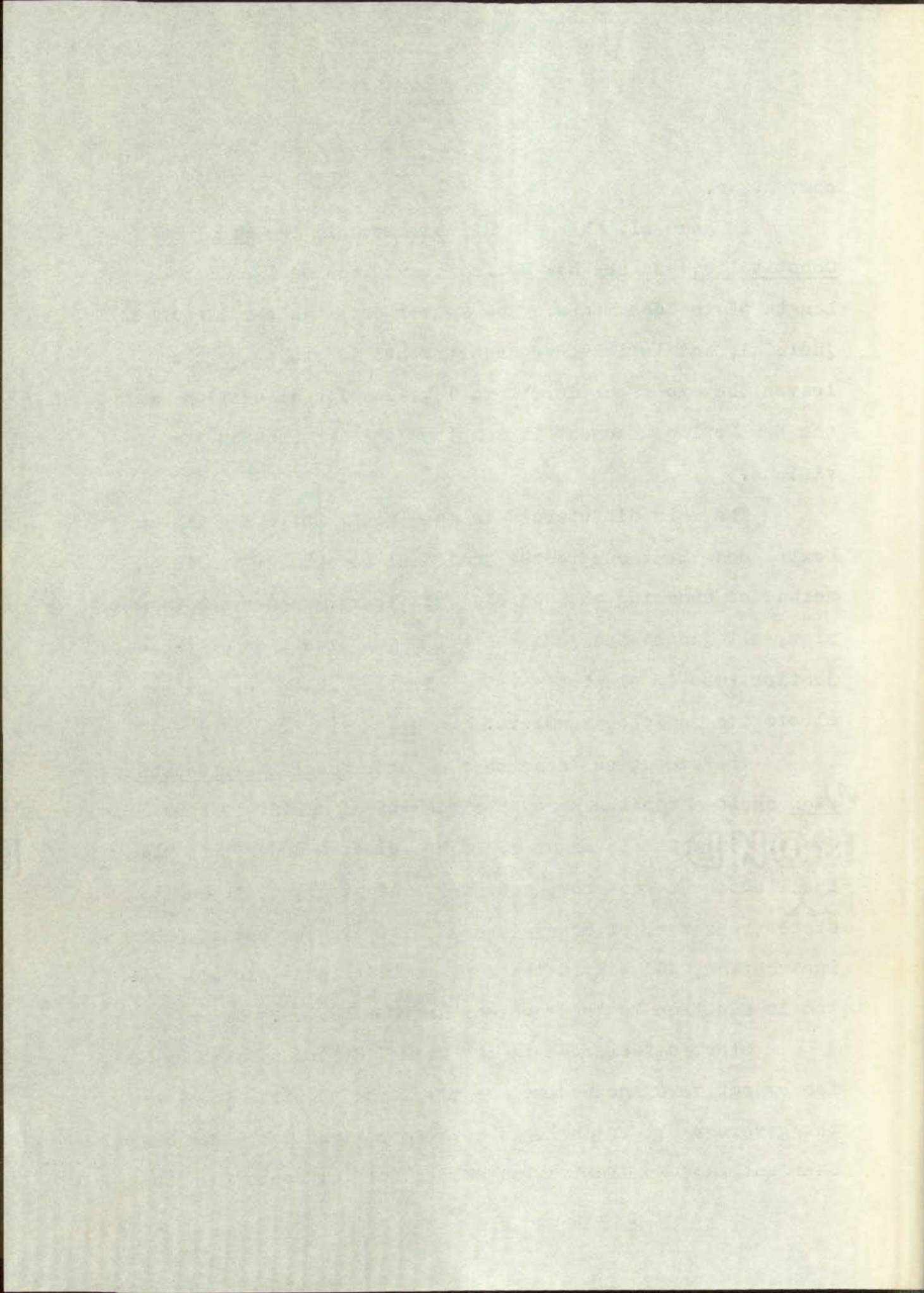
In general, the main differences in the Model State Constitution and the New Mexico constitution lie in the length of the documents. The Model outlines the executive, judicial, and legislative departments in broad terms and leaves the excess of detail to legislative discretion, while the New Mexico document is lengthy and detailed in its provisions.

The main differences in the Model State and the New Mexico constitutions in the judicial department are in the method of choosing the judicial officers. Under the Model plan, all judges and justices with the exception of the chief justice (who is elected) are appointed, while New Mexico elects its judiciary members.

The executive department of the Model State Constitution again advocates more appointment of administrative officials. Only the governor would be elected under this plan; the lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of public instruction, and commissioner of public lands are all elected in addition to the governor in New Mexico.

Other differences in the Model State and the New Mexico executive branches include the fact that the Model has the governor sit in on legislative sessions while New Mexico does not, and New Mexico includes an "item" veto for its





governor which the Model does not..

In the legislative department, the Model State plan advocates a unicameral legislature and that of New Mexico is bicameral. Only Nebraska at present has the unicameral plan. Legislative sessions under the Model plan would also be continuous, while New Mexico limits their sessions to sixty days biennially. Six states now hold annual sessions of their legislatures, but none have continuous sessions.

New Mexico is not among the twelve states which have a legislative council--another item recommended by the Model State plan.

The referendum is included in the New Mexico constitution, but not the initiative--both are included on the Model State Constitution. The initiative is a positive and the referendum a negative check upon the state legislature. Most authorities agree that both are desirable.



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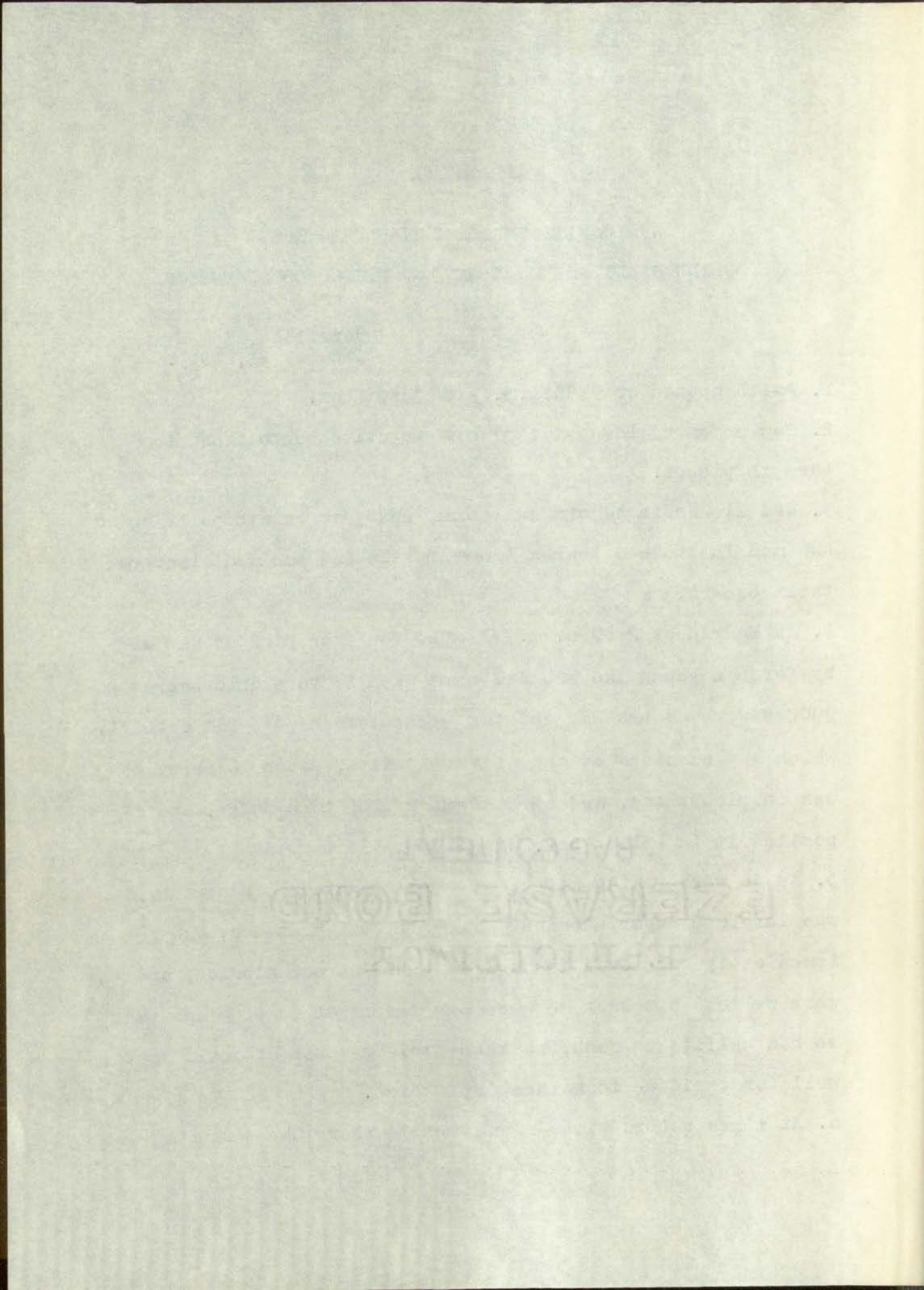
## APPENDIX A

### AFFIDAVITS ON ELECTION PRACTICES DURING BALLOTING ON THE NEW MEXICO CONSTITUTION

Cerrillos, New Mexico,  
January 21, 1911.

1. Polls opened at 9:30 a.m. at Cerrillos.
2. Saw a man relieve another of negative ballots and tear them in pieces.
3. Had liquor in adjoining room,, and just before polls closed saw men in there drinking from bottle and smelled liquor on their breath.
4. In Madrid at 2:00 p. m., I saw four men pick up and carry by force a young man who did not wish to vote into where the judges were assembled, and the secretary handed him a ticket, which was examined by one of the judges, given to party who was carried there, and he handed ticket to a judge, who deposited it in ballot box.
5. As we were taking notes, we were sighted by secretary, who informed Superintendent Holean of our presence, and he immediately came over to us and asked us our mission, and when we told him that we were on the negative side and that we had ballots as such, he then told us that it would not be well for us if we took them out there.
6. At times voters were around table where the judges sat.





7. Saw men frequenting stage seat rear end of hall where uiges were, stay there some length of time, and then come out from behind the curtain and depart..
8. In Cerrillos, heard two men trying to persuade another man while he was drinking from bottle to vote for the constitution.
9. Saw two men give one a drink and take him to the polls and hand him a ballot and he deposited it.

(signed) Charles A. Enderle

. . . . .

Albuquerque, New Mexico,  
February 15, 1911.

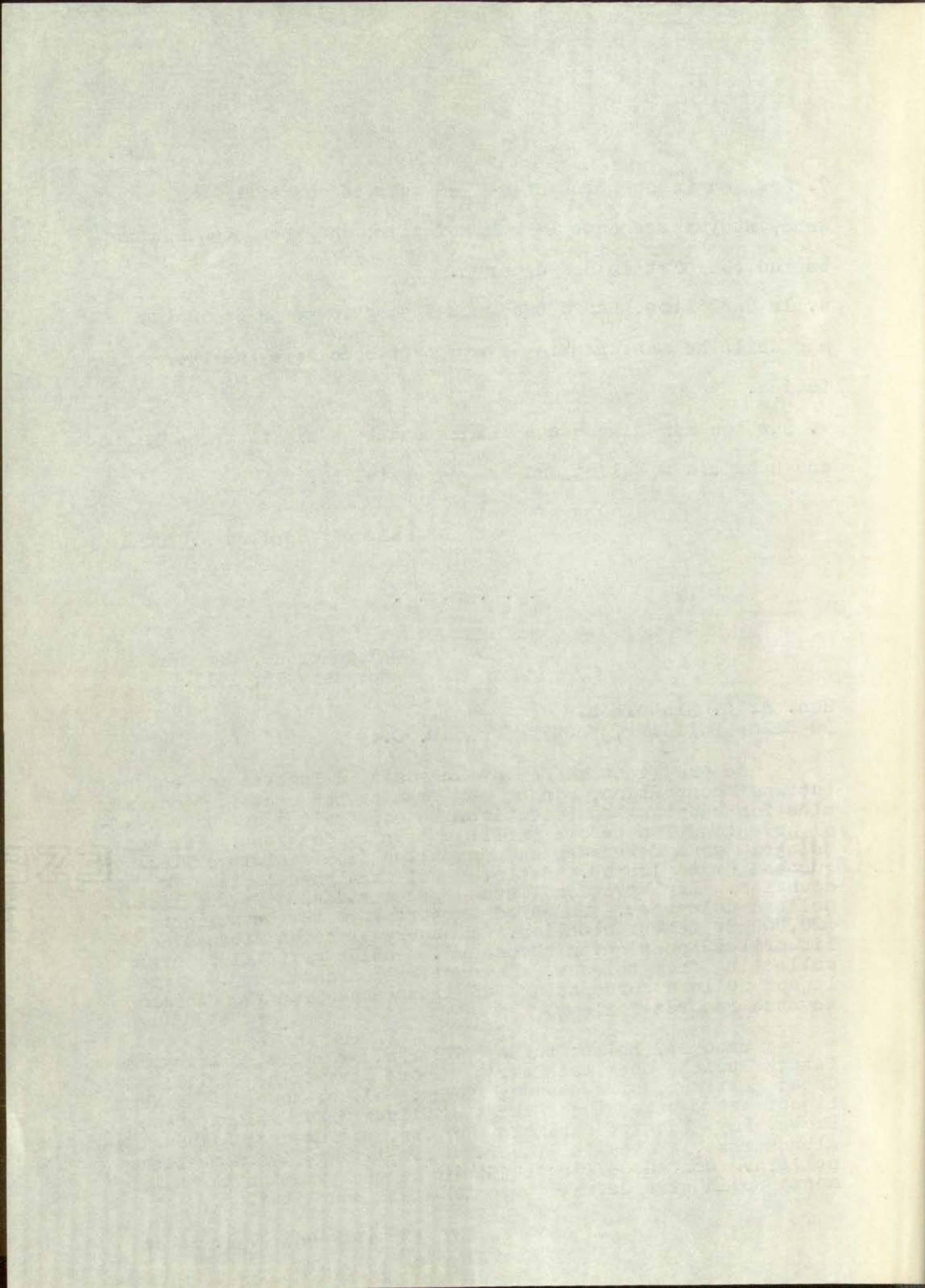
Hon. S. E. Nicholson,  
30 Bliss Building, Washington, D. C.:

We pray that manner of choosing delegates for constitutional convention, manner of framing the constitution, and election adopting constitution be made matter of congressional investigation before ratification by Congress. Foregoing telegram goes Beveridge and Hamilton from Ministers Albuquerque and State league. Ballots not furnished in time in six counties. Registration lists appear padded. Twenty liquor sellers delegates. Undenied report says they contributed \$20,000 September election. January election Albuquerque liquorites spent seven thousand.. Public official reported collecting from saloons. Investigation necessary. Fifteen liquor sellers surnames and addresses secured from internal revenue records follows:

Brecker, Belen; Burns, Tierra, Ararilla; Cassidy, Cleveland; Elboldt, Chamita; Harrt, Taos; Jaramille, Elrito; Mera, Cuba; Martinez, Arroyahonde; Paggie, Gallup; Romero, Las Vegas; liquor and merchandise; Murray, Silver City; Saloon, Bank Brown, Roy, Lucero; Espanola Medina, Wagonmound; Saloons; Stern, Albuquerque, Wholesale liquor. Positively five more liquor sellers. Confessed liquor joker in constitution that liquor money would have defeated prohibition constitution.

(signed) J. I. Seder





APPENDIX B

DELEGATES TO THE CONSTITUTIONAL CONVENTION  
OF 1910 AND PARTY AFFILIATIONS

Bernalillo county:

Herbert F. Reynolds (R)  
A. A. Sedillo (R)  
M. L. Stern (R)  
Anastacio Gutierrez (R)  
Nestor Montoya (R)  
Francis E. Wood (R)  
E. S. Stover (R)  
H. B. Fergusson (D)

Chaves county:

John I. Hinkle (D)  
G. A. Richardson (D)  
Emmet Patton (D)  
Green B. Patterson (D)

Colfax county:

Francisco Guana (R)  
Thomas H. O'Brien (R)  
Charles Springer (R)  
Norman W. Bartlett (R)  
Clarence J. Roberts (R)  
George S. Brown (R)

Curry county:

John W. Childers (D)  
Thomas J. Mabry (D)

Dona Ana county:

Frank W. Parker (R)  
Isidoro Armijo (R)  
Charles E. Miller (R)  
Winfred E. Garrison (R)

Eddy county:

M. P. Skeen (D)  
C. R. Brice (D)

Grant county:

A. H. Harlee (D)  
J. B. Gilchrist (D)  
W. D. Murray (R)  
W. B. Walton (D)

Guadalupe county:

Salome Martinez (R)  
John G. Clancy (R)  
Tranquilino Labadie (R)  
Reymondo Harrison (D)

Lincoln county:

Andrew H. Hudspeth (R)  
Jacobo Aragon (R)  
John H. Canning (R)

Luna county:

James N. Upton (D)

McKinley county:

Gregory Page (R)

Mora county:

E. M. Lucero (R)  
Daniel Cassidy, Sr. (R)  
Anastacio Medina (R)  
Juan Navarro (R)  
Fred S. Brown (R)

Otero county:

Albert B. Fall (R)  
George E. Moffett (D)  
J. Lee Lawson (D)

Quay county:

C. C. Davidson (D)  
Charles H. Kohn (R)  
Edward F. Saxon (D)  
John L. House (D)  
Reed Holloman (R)





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## Rio Arriba county:

Venceslado Jaramillo (R)  
 T. D. Burns (R)  
 Perfect Esquibel (R)  
 Jose A. Lucero (R)  
 Samuel Eldodt (D)  
 J. H. Crist (D)

## Roosevelt county:

James A. Hall (D)  
 C. M. Compton (D)  
 W. E. Lindsay (R)

## Sandoval county:

R. W. Hefflin (D)  
 M. D. Taylor (D)

## San Miguel county:

Margarito Romero (R)  
 Atanacio Roybal (R)  
 J. M. Cunningham (R)  
 S. B. Davis, Jr. (R)  
 Luciana Maes (R)  
 Harry W. Kelly (R)  
 Eugenio Romero (R)  
 Nepomuceno Segura (R)  
 Charles A. Spiess (R)

## Sante Fe county:

B. F. Pankey (R)  
 Jose D. Sena (R)  
 Victor Ortega (R)  
 George W. Pritchard (R)  
 Thomas B. Catron (R)

## Sierra county:

Edward D. Tittman (D)  
 Frank H. Winston (R)

## Socorro county:

H. M. Dougherty (D)  
 James G. Fitch (D)  
 H. O. Bursung (R)  
 A. C. Abeytia (R)  
 J. Frank Romero (R)

## Taos county:

Malaquias Martinez (R)  
 Onesimo Martinez (R)  
 Squire Hartt, Jr. (R)  
 William McKean (R)

## Torrance county:

William McIntosh (D)  
 A. B. McDonald (R)  
 Acasio Gallegos (R)

## Union county:

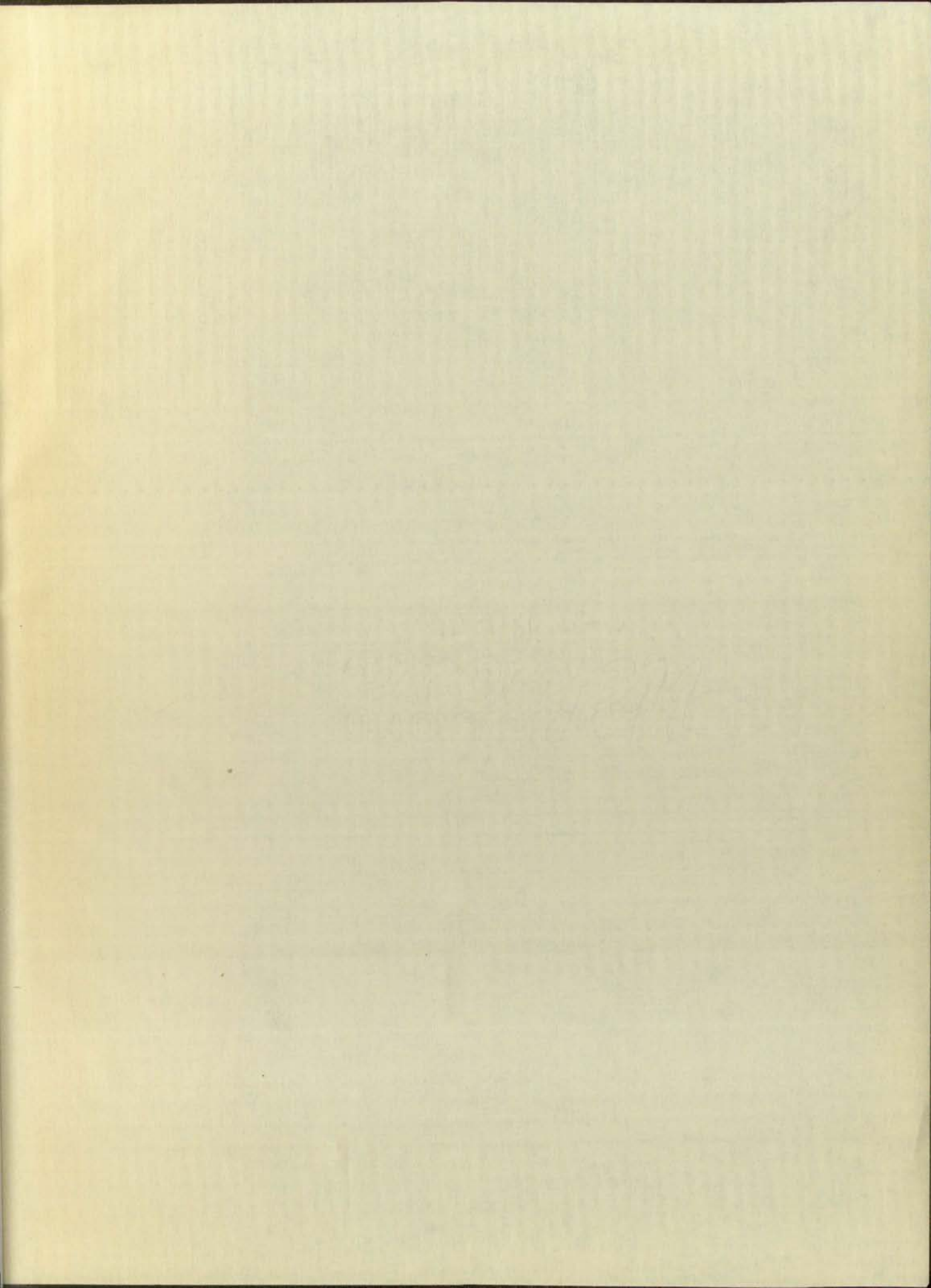
Eufrazio Gallegos (R)  
 Calendario Vigil (R)  
 George W. Baker (R)  
 F. C. Field (R)

## Valencia county:

Soloman Luna (R)  
 John Becker (R)  
 Sylvestre Mirabel (R)

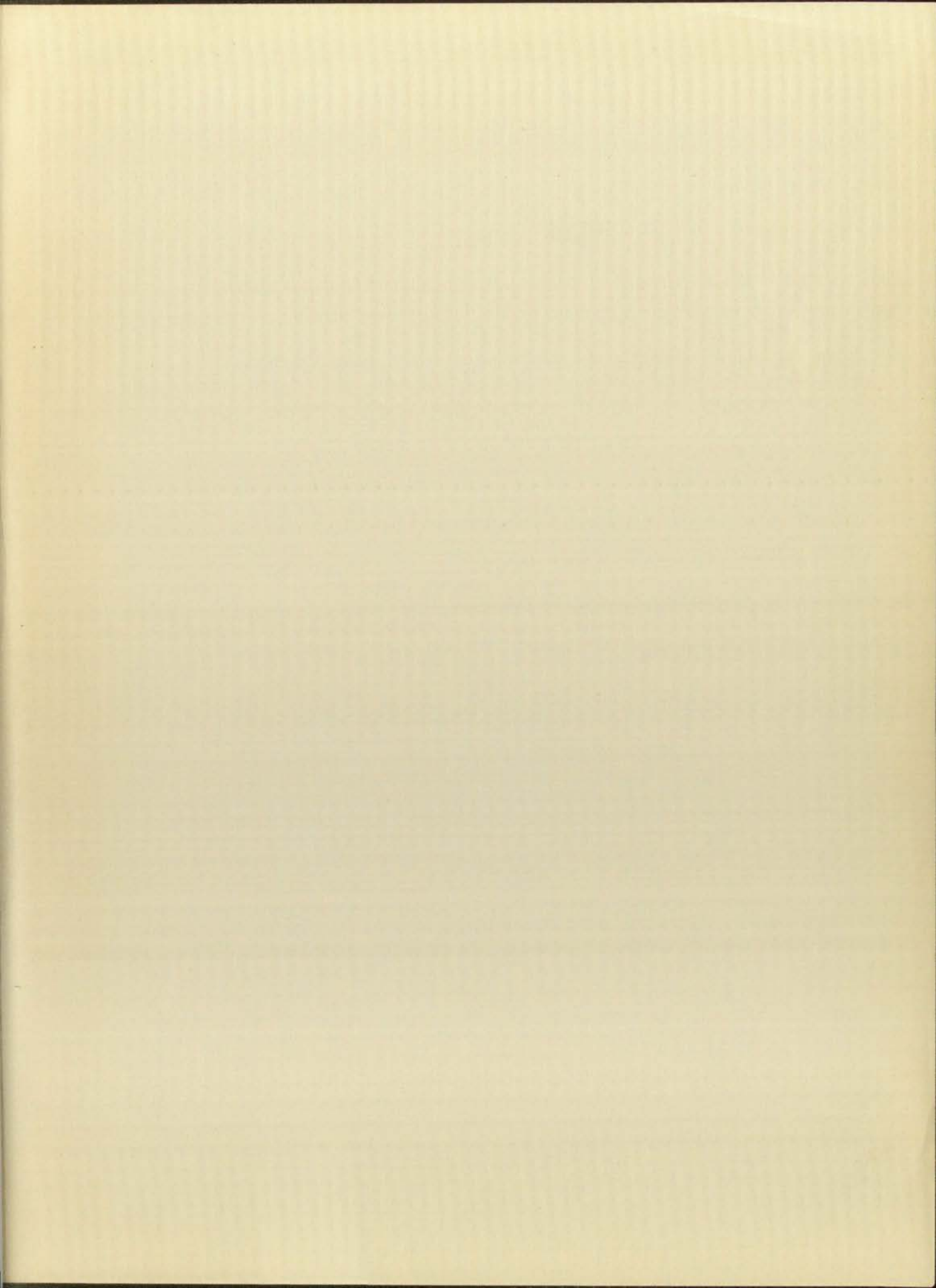


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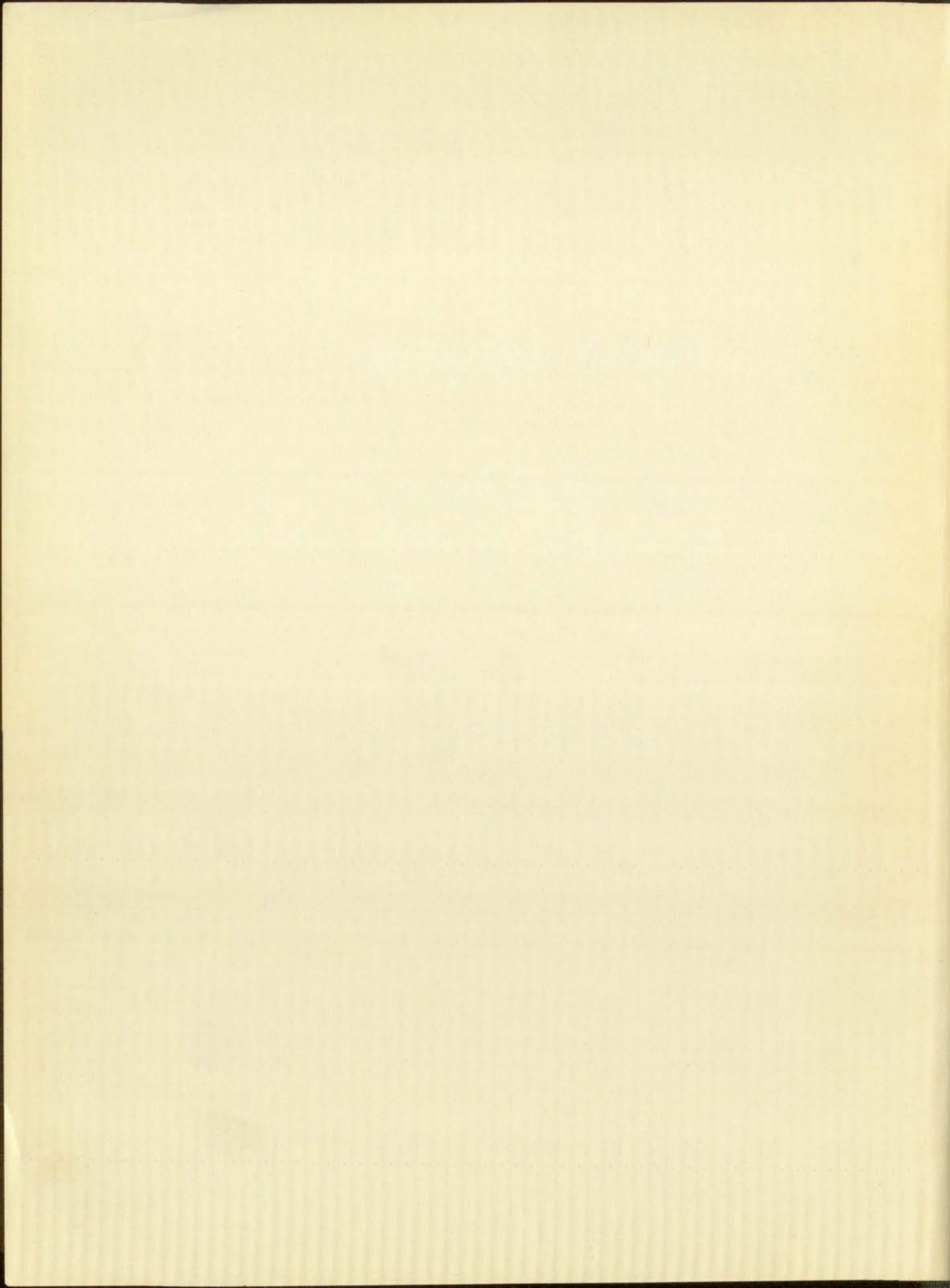


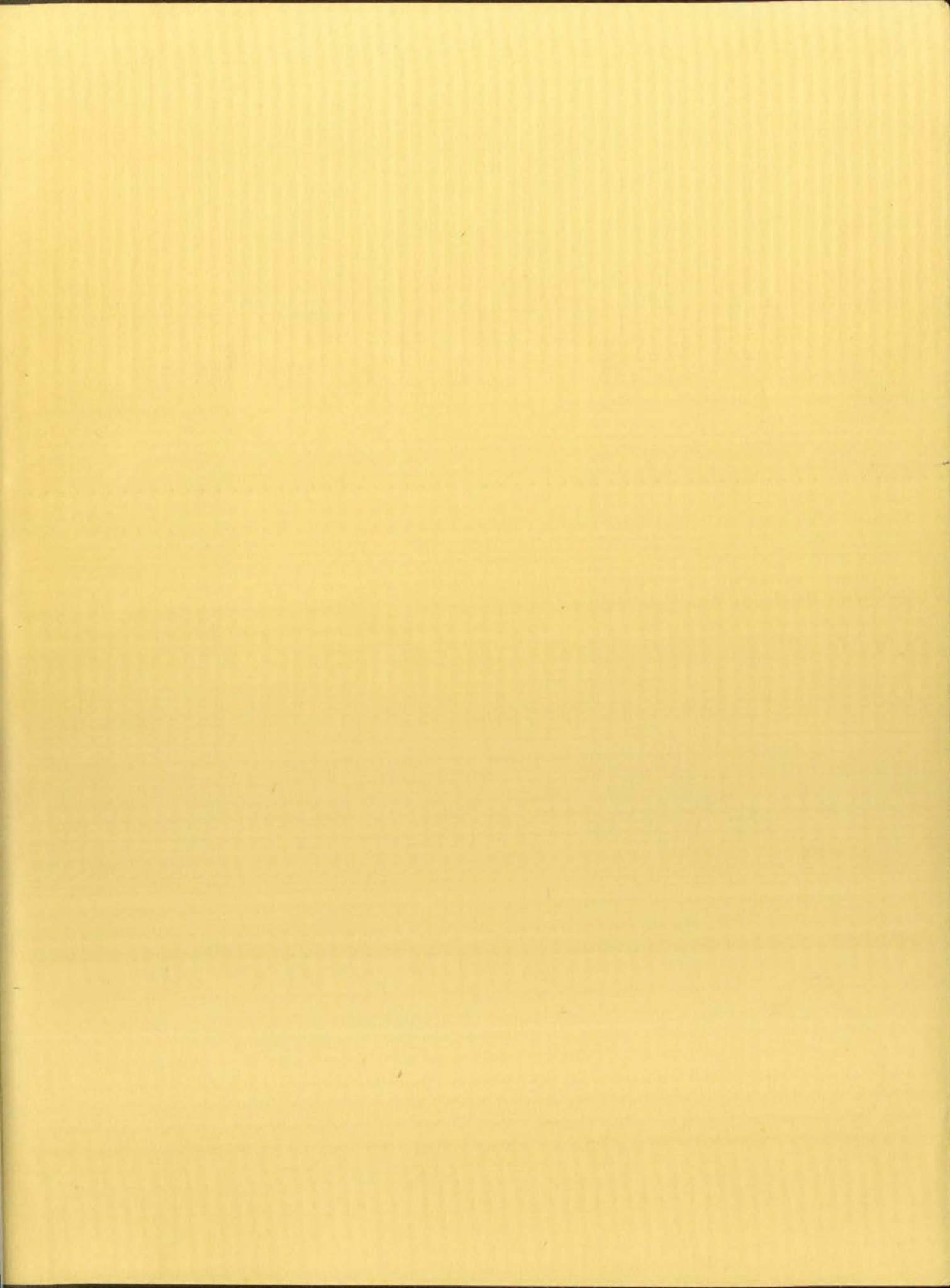














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