THE ARTICLE ON THE EXECUTIVE
IN THE MISSOURI CONSTITUTION OF 1875

by

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INTRODUCTION

It is the purpose of this paper to give an account of the Executive Department of the Government of the State of Missouri as considered in the Constitutional Convention in 1875 and as finally adopted by the voters of the State. Article five of the constitution dealing with the executive will be taken up section by section. Each section will first be quoted as finally adopted, immediately following will appear an account of the introduction of the section, its progress through the convention, and its final adoption by that body. Then a comparison will be made between the section under consideration and the Missouri constitutions of 1820 and 1865. Lastly the section being discussed will be compared with the thirty-six other state constitutions in existence in 1875 in an effort to determine which of these constitutions may have been influential in its framing.

Sections in other articles of the constitution which require discussion but which frequently are only incidentally concerned with the executive will be given a somewhat less detailed consideration. Ordinarily the section will not be quoted in full unless necessary to set forth clearly its content. The further discussion will follow the steps outlined above for sections of the article dealing directly with the executive.

FACTS ABOUT THE ORGANIZATION AND PROCEDURE OF THE CONVENTION.

In pursuance of an act of the general assembly of the State of Missouri, entitled "An act to authorize a vote of the people to be taken upon the question whether a convention shall be held for the purpose of revising and amending the constitution of this state," approved ~~by a vote of the people~~ March 25th, 1874, sixty-eight delegates, elected under said act from the thirty-four senatorial districts met at Jefferson City on May 5th, 1875. The following officers were chosen, president - Waldo P. Johnson; vice-president, - N. W. Watkins; secretary - G. N. Nolan; assistant secretary, - J. B. Adams; sergeant-at-arms, - Mr. Carr; doorkeeper, - H. E. Moore.

A committee of five was appointed by the president to draw up and report rules for the government of the convention, whose report was adopted by the convention(J.p.26).

For the purpose of formulating a draft of the various parts of a new constitution the following committees were appointed by the president (J.p.23), committee on the executive and ministerial department of state government, committee on the executive and ministerial offices of county and municipal governments, committee on the legislative department, committee on the judiciary, committee on preamble and bill of rights, committee on electors and elections, committee on military affairs, committee on banks and corporations, committee on miscellaneous affairs, committee on the mode of amending the constitution, committee on

education, committee on boundaries and subdivision of the state, and finally a committee on revision.

Of these committees the first, having the task of drafting the part of the constitution with which this paper is primarily concerned, is the only one whose work will be considered at length. In the discussion of article five dealing with the executive this committee will be referred to as the select committee, meaning by that the special committee selected by the president of the convention to draw up the article on the executive and ministerial department of state government.

On May 8th, the fourth day of the convention, a number of resolutions were introduced for the instruction of the committee on the executive department, and referred by vote of the convention to the consideration of the committee. Practically the entire content of all these resolutions was embodied in the committee's report or introduced by amendment from the floor of the convention.

On May 21st, the report of the committee on the executive was read to the convention (J.p.123), and, on June 7th, the consideration by sections was begun (J.p.190) as is discussed at length in the body of this paper. The article on the executive as drawn up and amended was adopted and referred to the committee on revision on June 12th (J.p.241), which committee reported it back to the convention on July 29th, and on July 31st, it was finally adopted and ordered enrolled as Article V, sections 1-25 of the new constitution (J.Sup.July 29 pp.10 to 14, and July 31 p.9).

The reports of the other committees previously mentioned, with which this paper is only incidentally concerned, followed that of the executive committee, and in their turn were considered, referred to the committee on revision, and finally adopted by the convention.

On August 2nd, the completed constitution was brought up for final consideration and was adopted by the unanimous vote of the sixty members present. The eight members absent having given a written power of attorney to certain members present for signing the constitution, the signatures of all the members of the convention were affixed thereunto. The work of the convention being completed it accordingly adjourned sine die August 2nd.

ARTICLE V. THE EXECUTIVE DEPARTMENT.

Section 1. (Executive officers, residence, and duties of.) "The executive department shall consist of a governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, and superintendent of public schools, all of whom, except the lieutenant-governor, shall reside at the seat of government during their term of office, and keep the public records, books, and papers there, and shall perform such duties as may be prescribed by law."

This section was adopted by the convention in exactly the form in which it was reported by the select committee. An amendment was offered and rejected providing for striking out "superintendent of public schools" (J.P.190.)¹

The Missouri constitution of 1865 contains substantially this same section except that it omits any provision for a superintendent of public schools.² That of 1820 contains no similar section but in separate sections provides for a governor and lieutenant-governor, and for

¹This would seem to indicate that there was a move to abolish the office. However, according to a personal statement of Professor Richard D. Shannon, who was then superintendent, there was no attempt made to abolish the office.

The office of superintendent of schools had been originally established in 1839 but had not had a continuous existence since that date, the duties of the office being imposed upon the secretary of state from 1841 to 1854. Since 1865, when the office had been reestablished by constitution, it had had a continuous existence. (See Phillips' History of Education in Missouri, pp.124-5.) It is probable that the move in the convention was merely to leave it as it had been under legislative provision instead of its proposed inclusion in the constitution.

² Mo. 1865, V.16.

a state auditor and secretary of state appointed by the governor and the senate.³

In framing this section, Missouri followed the general rule that obtained among the states in providing for practically the same offices of the Executive Department. Of the thirty-six other state constitutions then in existence, thirteen⁴ provided for keeping of "public records, books, and papers at the seat of government," by the officials of the department in practically the same manner as that in which it is provided for in this section. Of these thirteen states, the following, Illinois, Michigan, Nebraska, and West Virginia, contained identical provisions and perhaps were influential in the framing of this section. Michigan, however, is the only one of the four whose constitution was framed before the Missouri constitution of 1865 which was probably very largely the model for this section.

Section 2. (Terms of office-Governor and Treasurer ineligible to re-election- Times of holding elections.) "The term of office of the governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general and superintendent of public schools shall be four years from the second Monday of January next after their election, and until their successors are elected and qualified; and the governor and state treasurer shall be ineligible to re-election as their own successors. At the general election to be held in the year one thousand eight hundred and seventy-six, and every four years thereafter, all of such officers, except the superintendent of public schools, shall be elected, and the superintendent of public schools shall be elected at the general election in the year one thousand eight hundred and seventy-eight, and every four years thereafter."

3. Missouri 1820. IV. 1, 12, 14, 21.

4. Ala. 1867, V. 1; Ark. 1874, VI.1; Ill. 1870, V.1; Ind. 1851, VI.5; Mich. 1850, VIII.1; Minn. 1858, V.1; Neb. 1875, V.1; Nev. 1864, V.22; & XV.12; N.Car. 1868, III.1; Ohio 1851, III.1; Penn. 1873, IV.1; Tex. 1868, IV.1&3; W.Va. 1872, III.1.

This section as reported to the convention by the select committee was substantially the same as finally adopted, except that the treasurer was to hold office only two years, and there was no provision regarding ineligibility of any officer for re-election to succeed himself. (J.p.124.) This final form was not arrived at without considerable discussion. All of the proposals for change had to do with the length of term and the question of eligibility for re-election. Thirteen amendments were proposed, five of which were accepted, and eight substitutes were offered (J.p.191-200), the last of which being adopted provided that all officers of the executive department, except the treasurer, should hold office for a term of four years, the latter to hold for two years, and all to be ineligible for re-election (J.p.200). The adoption of this provision of ineligibility was probably due to an effort to place all officers of the department in the same status in that respect as that in which the governor had been under the constitutions of 1820 and 1865. Later in the convention a motion was carried to reconsider this section. An amendment to change the treasurer's term from two to four years was adopted; another to change the term of all to two years was rejected; and finally, an amendment restricting the ineligibility clause to the governor and the treasurer was adopted which gave the section the form in which it now appears (J.pp.558-60).

The extraordinary amount of attention given to the question of re-eligibility of the treasurer and the length of his term was due perhaps to the traditional policy of keeping those officers who handle public funds closely responsible to the voters. This policy had not been followed,

however, in framing the sections on the treasurer's office in the earlier constitutions of Missouri.

No section in the Missouri constitution of 1820 or of 1865 was an exact counterpart of section two, here under consideration. In that of 1820, the term of office was four years and the governor was ineligible for re-election, but the secretary of state was not elective until made so by an amendment of 1851.¹ Under that of 1865 the terms of the officers named were two years, except the superintendent of public schools, whose term was four years. Only the governor was made ineligible for re-election and that only in case he had served two terms, being eligible only four years in six.²

With respect to the term of office of the officers in the executive department, there was considerable variation among the thirty-six states then in the union. Seventeen had a four year term, two a three year term, twelve a two year term, and five a one year term.³

It is interesting to note in passing the tendency toward a longer term of office that had been developing since the time Missouri's first constitution was adopted in

1. Mo.1820, IV. 3. and amendment VIII. 8.

2. Mo. 1865. V. 3 and 16.

3. The seventeen having four year term: Cal. 1849, V.2; Del. 1831, III.3; Fla. 1868, VI. 2; Ga. 1868, IV.1; Ill.1870, V.3; Ind.1851, V.9; Ky.1850, III.3; La. 1868, 50; Md.1867, II.2; Miss.1868, V.22; Nev.1864, III.2; N.C.1868, III.2; Ore.1859, V.7; Penn.1873, IV.3; Tex.1868, IV.4; Va.1870, IV.1; W.Va.1872, VII.1; The two having three year term: N.J.1844, V.3; N.Y.1846, IV.1. The twelve having a two year term: Ala.1867, V.2; Ark.1874, VI.1; Ia.1857, IV.2; Kan.1859, I.1; Mich.1850, V.1; Minn.1858, V.3; Neb.1875, V.1; O.1851, III 2; S.C.1868, III.2; Tenn.1870, III.4; Vt.1793, II.41; Wis.1848, V.1. The five having a one-year term: Conn. 1818, amend.VI.; Me.1820 V.2; Mass.1780, Ch.II.I, 2; N.H.1792, II.41; R.I. 1842, VIII.1.

1820. Of the twenty-three states then in the union, only three, Kentucky, Louisiana, and Illinois, had a four year term, Missouri making the fourth state. Ten states still adhered to the early rule of a one year term, six had a two year term, and four a three year term.⁴ Three states that had a two year term for governor provided that the auditor should serve four years.⁵

The provision of the Missouri constitution of 1875 for ineligibility to re-election had no general existence in the constitutions of the time. Eight states, all of which had a four year term for governor, provided that the governor should be ineligible to re-election to succeed himself.⁶ Tennessee, having a two year term provided that the governor should not be eligible for more than six years in any eight.⁷ Pennsylvania was the only state that specified that the treasurer should be ineligible to re-election; while both Indiana and Nebraska, having a treasurer elected for a two year term, specified that he should not be eligible more than four years in any six.⁸

The provision concerning the time of holding elections is similar to that included in all other constitutions.

Of the thirty-six other state constitutions then in existence, Illinois and Kansas contained sections most similar to section two of the Missouri constitution of 1875.

4. Shoemaker - The First Constitution of Missouri. p.64.

5. Ala.1867, V.2; O.1851, III.2; Minn.1858, V.5.

6. Del.1831, III.3; Ind.1851, V.1; Ky.1850, III.3; La. 1868, 50; N.C.1868, III.2; Penn. 1873, IV.21; Va.1870, IV.1; W.Va.1872, VII.4.

7. Tenn. 1870, III.4.

8. Penn. 1873, IV.21; Ind. 1851, VI.1; Neb.1875, V.3.

Kansas, however, provided for a two year term for all executive officers, and Illinois provided that the treasurer should hold only two years while other officials hold four years. The latter perhaps was the model for section two as reported by the select committee providing for a four year term for all officials except the treasurer who was to serve only two years.⁹

Section 3. (Returns of election- tie, how determined.)---"The returns of every election for the above named officers shall be sealed up and transmitted by the returning officers to the secretary of state, directed to the speaker of the house of representatives, who shall, immediately after the organization of the house, and before proceeding to other business, open and publish the same in the presence of a majority of each house of the general assembly, who shall for that purpose assemble in the hall of the house of representatives. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more shall have an equal and the highest number of votes, the general assembly shall, by joint vote, choose one of such persons for said office."

This section was adopted by the convention with but little change. As reported by the select committee (J.p.124), it was verbatim as it now stands except that it included a provision for the determining of contested elections which was stricken out and embodied in section twenty-five¹, and one regarding the length of the term of the governor which was also stricken out and embodied in section two.² These provisions having been eliminated by amendments, the section was adopted in its present form.(J.p.202.)

Sections similar to this one were included in the Missouri constitution of 1820 and of 1865.³

9. Ill. 1870, V.3; Kan. 1859, I.1.

1. See section twenty-five, page , of this paper.

2. See section two, page of this paper.

3. Mo.1820, IV.19 and 20; 1865, V.3, 17 and 18.

Of the thirty-six state constitutions then in existence, all save three contained similar provisions regarding election returns and determining ties. The following contained no such provisions: Florida, Nevada, and New Hampshire. Of the remaining thirty-three, twenty had provisions similar in a general way, six distinctly similar, and seven identical.⁴ It is probable that the constitutions of Illinois and Mississippi were influential in the original framing of this section as they contained such a provision at the time this was first framed by the Missouri convention in 1820.⁵

Section 4. (Supreme Executive.) "The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the State of Missouri.'"

This section was adopted by the convention (J.p.202) verbatim as it was reported by the select committee, (J.p.125) no proposals for change being offered.

On framing this section the committee merely reproduced in its exact form the corresponding section in the Missouri constitutions of 1865¹ and of 1820². By adopting this section the convention was adhering to the rule of a

4. The twenty with general similarity: Ark.1874,VI.4; Conn.1818,IV.2; Ind.1851,V.5; Ia.1857,IV.3 & 4; Kan.1859,I.2; Ky.1850,III.24; Me.1820,V.3; Md.1867,II.3; Mass.1780,ch.II.I.3; Mich.1850,VIII.4; Minn.1858,V.2; N.J.1842,V.2; N.Y.1846,IV.3; O.1851,III.3; Ore.1859,V.5; Penn.1873,IV.2; R.I.1842,VIII.3; Tenn.1870,III.2; Vt.1793,II.39; Wis.1848,V.3. Those distinctly similar: Ala.1867,V.3;& VII.7; Ga.1868,IV.2; La. 1848,48; Nev.1864,V.4; S.C.1868,III.4; Tex.1868,IV.3; Those identical: Cal.1849,V.4; Ill.1870, V.4; Miss.1868,V.2; Neb.1875,V.4; N.C.1868,III.3; Va.1870,IV.2; W.Va.1872,VII.3.
5. Ill. 1818, III.2; Miss. 1817, IV.2.

1. Mo. (1865) V.1.

2. Mo. (1820) IV.1.

single headed executive which all the states of the union have consistently followed from the earliest time.

Section 5. (Qualifications of the Governor.)
"The governor shall be at least thirty-five years old, a male, and shall have been a citizen of the United States ten years, and a resident of this State seven years next before his election."

This section was reported by the select committee in the exact form in which it was adopted. (J.p.125). It was not accepted by the convention in this form, however, until after nine amendments and two substitutes had been proposed, all of which were rejected. (J.p.202-207). One of the proposed amendments was to insert the word "white" before "male", but was voted down. No less than five of the proposals had to do with the age qualifications; thirty (J.p.203), forty(J.p.206), forty-five(J.p.206), and twenty-five(J.p.206), were each offered in the place of thirty-five. Other proposals had to do with a prohibition against holding any other office, or being a candidate therefor, during the term for which the governor is elected(J.p.204-5).

The Missouri constitution of 1865 contained this section in the same form with the one exception that the word "white" appeared before "male"¹, which was probably the model for the proposed amendment to add this to the present section. That of 1820 was the same in only one respect, that of the age qualification.²

As for the other states then in the union, none had an exact prototype of this section tho many were alike

1. Mo. (1865) V.2.

2. Mo. 1820, IV. 2.

in some of the requirements. A complete comparison can only be made by dealing with each provision of the section separately. First, with respect to age, the requirement of thirty-five years is high as compared with other state constitutions. It is true that both the constitution of 1865 and of 1820 contained this requirement, but the majority of other states set a lower minimum age. In fact only two other constitutions in existence in 1875 set an age limit of thirty-five years for the chief executive, those being the constitutions of Kentucky and of the United States.³ Earlier constitutions of Louisiana had contained such a provision⁴ but the one in force in 1875 made no age qualification whatsoever. Of the thirty-five other state constitutions then in effect, twenty-two set the age qualification at thirty years,⁵ three at twenty-five⁶, while the remaining ten contained no provision with respect to age.⁷ This provision for an age limit, especially when placed as low as twenty-five, seems practically superfluous for there is little likelihood that a man below that age would be able to rise to the position of governor of his state.

The second qualification, that the governor must be a male, is one not found in any other state constitution in 1875. A majority of the states, however, required a voting

3. Ky. 1850, III.4; U.S.II.1.

4. La. 1812, III.4; & 1846, III.39; & 1864, IV.44.

5. Ark. 1874, VI.5; Conn. 1818, IV.1; Del. 1831, III.4; Ga. 1868, IV.3; Ill. 1870, V.5; Ind. 1851, V.7; Ia. 1857, IV.6; Me. 1820, V.4; Md. 1867, II.5; Mich. 1850, V.2; Miss. 1868, V.3; Neb. 1875, V.2; N.H. 1792, 42; N.J. 1842, V.4; N.Y. 1846, IV.2; N.C. 1868, III.2; Ore. 1859, V.2; Penn. 1873, IV.5; S.C. 1868, III.3; Tenn. 1870, III.3; Tex. 1868, IV.4; Va. 1870, IV.3.

6. Cal. 1849, V.3; Minn. 1858, V.3; Nev. 1864, V.3;

7. These being - Ala., Fla., Kan., La., Mass., Ohio, R.I., Vermont, W.Va., and Wis.

qualification which would restrict the office to males, as that was before the introduction of woman suffrage.

The third requirement, that he shall have been a citizen of the United States ten years, is one ordinarily found in the state constitutions of the time, tho considerable variation exists as regards the length of the period of citizenship. Two states, Mississippi and New Jersey, provide that he must have been a citizen of the United States for twenty years, while Maine requires him to be a natural born citizen.⁷ Georgia requires fifteen years, Delaware twelve, Maryland ten, and Florida nine.⁸ Of the remaining twenty-nine, seven set the period at from two to five years,⁹ thirteen merely state that he must be a citizen of the United States,¹⁰ and four provide that he must be a qualified voter,¹¹ which in those states, amounts to a citizenship requirement. Five states are entirely silent on this point.¹²

Residence within the state is a general requirement, tho the constitutions of Alabama, Connecticut, and Kansas make no mention of such a qualification. Of the remaining thirty-three, twenty-eight contain such a requirement, varying the period of residence from one year in Minnesota to seven years in Arkansas, Massachusetts, New Hampshire, New Jersey, Pennsylvania, and Tennessee.¹³ Maine merely

8. Miss. 1868, V.3; N.J. 1844, V.4; Me. 1820, V.4.

9. Ga. 1868, IV.3; Del. 1831, III.4; Md. 1867, II.5; Fla. 1868, VI.3.

10. Cal. 1849, V.3; Ind. 1851, V.7; Ia. 1857, IV.6; Mich. 1850, V.2; Neb. 1875, V.2; N.C. 1868, III.2; S.C. 1868, III.3.

11. Ark. 1874, VI.5; Ill. 1870, V.5; Ky. 1850, III.4; La. 1868, III.49; Minn. 1858, V.3; N.Y. 1846, IV.2; Ore. 1859, V.2; Penn. 1873, IV.5; Tenn. 1870, III.3; Va. 1870, IV.3; W.Va. 1872, III.4; Wis. 1848, V.2;

12. Conn. 1818, IV.1; Nev. 1864, V.12; O. 1851, XV.4; R.I. 1842, IX.1.

13. Ala., Kan., Mass., N.H., Vt.

requires residence within the state without specifying any period and Ohio, Rhode Island, West Virginia, and Wisconsin require that he be a qualified voter which is equivalent to a residence requirement.¹⁴

It is difficult to say what state constitutions were of most influence in the original framing of this section in the constitutional convention of 1865.¹⁵ That of Kentucky and of the United States were, in all probability the model for the age qualification as originally included in the Missouri constitution of 1820.¹⁶ In other respects perhaps that of Delaware and New Jersey were most influential, both of which were in existence before the Missouri constitution of 1865 was framed.

Section 6. (Governor's Duties.) "The governor shall take care that the laws are distributed and faithfully executed; and he shall be a conservator of the peace throughout the State."

This section was adopted (J.p.207) by the convention in the exact form in which it was reported by the committee, (J.p.149-50) no proposals for change being made. It is a verbatim copy of the corresponding section in the Missouri

14. Ark.1874,VI.5; Cal.1849,V.3; Del.1831,III.4; Fla. 1868,VI.3; Ga. 1868,IV.3; Ill.1870,V.5; Ind.1851,V.7; Ia.1857, IV.6; Ky.1850,III.6; La.1868,49; Md. 1867,II.1&2; Mass.1780, 2,I.2; Mich.1850,V.2; Minn.1858,V.3; Miss.1868,V.3; Neb.1875, V.2; Nev.1864,V.3; N.H.1792,IV.2; N.J.1894,V.4; N.Y.1846, IV.2; N.C.1868,III.2; Ore.1859,V.2; Penn.1873,IV.5; Tex.1868, IV.4; Vt.1793,4,II.30; Va.1870,IV.3.

15. Me.1820,V.4; O.1851,XV.4; R.I.1842,IX.1; W.Va.1872, III.4; Wis.1848,V.2.

16. Mo. 1865,V.2. Practically identical; see above, p.

17. Mo. 1820, IV.2. See above page .

constitution of 1820,¹ and is also contained in that of 1865.² No other state in the union had in its constitution a section identical with this one, Missouri being the only state to include the duty of distributing the laws and acting as conservator of the peace. All the state constitutions, however, except that of Georgia and of New Hampshire contain a provision for faithful execution of the laws by the governor.³

Section 7. (Governor, Commander-in-chief of Militia.) "The governor shall be commander-in-chief of the militia of this State, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion; but he need not command in person unless directed so to do by a resolution of the general assembly."

This section was adopted by the convention (J.p.208) verbatim as reported to it by the select committee (J.p.125).

The constitutions of Missouri of 1820 and of 1865 contained the same section except the provision for calling out the militia.¹ All of the thirty-six state constitutions in existence in 1875 contained a provision similar to this one;² only two, however, those of Kentucky and Maryland, contained the latter provision regarding the direction by the general assembly. Several merely provided that the governor

1. Missouri 1820. IV. 8.

2. Missouri 1865, V. 6.

3. Ala.1867,V.5; Ark.1874,VI.7; Cal.1849,V.7; Conn.1818, IV.9; Del.1831,III.13; Fla.1868,VI.6; Ill.1870,V.6; Ind.1851, V.16; Ia.1857,IV.9; Kan.1859,I.3; Ky.1850,III.14; La.1868,65; Me.1820,V.12; Md.1867,II.9; Mich.1850,V.6; Minn.1858,V.4; Miss.1868,V.9; Neb.1875,V.6; Nev.1864,V.7; N.J.1844,V.6; N.Y. 1846,IV.4; N.C.1868,III.7; O.1851,III.6; Ore.1859,V.10; Penn. 1873,IV.2; R.I.1842,VII.2; S.C.1868,III.12; Tenn.1870,III.10; Tex.1868,IV.10; Vt.1793,II.20; Va.1870,IV.5; W.Va.1872,VII.5; Wis. 1848,V.4.

should be Commander-in-chief. Kentucky is the only state whose constitution contains the same section verbatim as here found, and was, perhaps, influential in the framing of this by the convention. This provision was contained in the constitution of Kentucky in force in 1820 and probably was the model for the similar provision in the Missouri constitution of that date.³

Section 8. (Governor, grant Pardons, report to General Assembly.) "The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall, at each session of the general assembly, communicate to that body each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of commutation, pardon or reprieve, and the reason for granting the same."

This section, as reported to the convention by the select committee (J.p.125), was the same as finally adopted except that there was a provision to the effect that the governor should hold this power of pardon in conjunction with "any two officers of the executive department." This, however, was stricken out by amendment and the section adopted

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1. Mo. 1820, IV.5; 1865, V.5.
 2. Ala. 1867, X.4; Ark. 1874, VI.6&IX.4; Cal. 1849, V.5; & VIII.3; Conn. 1818, IV.5; Del. 1831, III.7; Fla. 1868, VI.4&VIII.4; Ga. 1868, IV.Pt.II.1; Ill. 1870, V.14; Ind. 1851, V.12; Ia. 1857, IV.7; Kan. 1859, VIII.4; Ky. 1850, III.8; La. 1868, 59; Me. 1820, V.7; Md. 1867, II.8; Mass. 1780, II.Pt.1; 7; Mich. V.4; Minn. 1858, V.4; Miss. 1868, IX.5; Neb. 1875, V.14; Nev. 1864, XII.2; N.H. II.50, 1793; N.J. 1844, V.6; N.Y. 1846, IV.4; N.C. III.8&XII.3; O. 1851, III.10; Ore. 1859, V.9; Penn. 1873, IV.7; R.I. 1842, VII.3; S.C. 1868, III.10; Tenn. 1870, III.5; Tex. 1868, VII.1, & IV.6; Vt. 1793, II.20; Va. 1870, IV.5; W.Va. 1872, VII.12; Wis. 1848, V.4.
 3. Shoemaker, "The First Constitution of Mo." p.66.

in its present form. (J.p.208.)

An exact prototype of this section is found in the Missouri constitution of 1865¹, while that of 1820 merely granted the power to remit fines and forfeiture, and grant pardons, in general terms.²

All of the other thirty-six states in the union at that time had some provision in their constitution giving the governor some power of granting pardons. The constitutions of Delaware, North Carolina, and South Carolina, contained provisions practically identical with that of Missouri,³ the former two, being in existence at the time of the adoption of the Missouri constitution of 1865, were probably influential in the framing of this section. Nine states provided that the governor should share this power with a council, or some other body.⁴ In Pennsylvania, the requirement was that he should share the power with any three officers of the executive department, which may have been the model for this section as originally reported by the committee.⁵ Fourteen states, among which are six of the nine that provide for the governor sharing the power with some other body, go further than Missouri and give the governor the power of suspending, for varying periods, execution in case of treason.⁶ The remaining sixteen merely

1. Mo. 1865, V. 6.
 2. Mo. 1820, IV. 6.
 3. Del.1831,III.9; N.C.1868,III.6; S.C.1868,III.11.
 4. Ark.1874,VI.18; Fla.1868,VI.12; La.1868,58;
 Me.1820,V.11; Miss.1868,V.10; Nev.1864,V.14; N.H.1793,II.51;
 N.J.1844,V.10; Penn.1873,IV.9.
 5. Penn. 1873, IV.9.
 6. Ala.1867,V.11; Cal.1849,V.13; Ind.V.17; Ia.1857,
 IV.16; Ky.1850,III.10; La.1868,58; Mich.1850,V.11; Miss.
 1868,V.10; Neb.1875,V.13; N.Y.1846,IV.5; O.1851,III.11;
 Ore.1859,V.14; Tex.1868,IV.11; Wis.1848,V.6.

grant the power of pardon in general terms.⁷

Section 9. (The Governor shall give information to General Assembly, may call extra sessions.)
 "The governor shall, from time to time, give to the general assembly information relative to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the general assembly by proclamation, wherein he shall state specifically each matter concerning which the action of that body is deemed necessary."

This section, as it appears here is in the exact form in which it was recommended to the convention by the select committee except that their recommendation contained a provision to the effect that, when so convened, the general assembly should have no power to act upon any matter not stated in the proclamation, or recommended by special message of the governor. (J.p.125-26.) The convention adopted it as reported by the committee; but later a motion to reconsider was carried (J.p.563) and an amendment adopted striking out the prohibition against the assembly considering matters not recommended by the governor (J.p.564.). This gave the section its present form. The provision here stricken out was embodied in section fifty-five of article four of this constitution dealing with the legislative department.

The Missouri constitutions of 1820 and 1865 each contained sections practically identical with this one, except that the latter contained the prohibition against legislative action on matters not recommended by the governor. This

7. Conn.1818,IV.10; Ga.1868,IV.Pt.II.2; Ill.1870,V.13; Kan.1859,I.7; Md.1867,II.20; Mass.1780,II.Pt.I.8; Minn.1858, V.4; Nev.1864,V.14; N.H.1792,II.51; N.J.1844,V.10; Penn. 1873,IV.9; R.I.1842,VII.4; Tenn.1870,III.6; Vt.1793,II.11; Va.1870,IV.5; W.Va. 1872,VII.11;

was, in all probability, the model for the committee report containing such a provision.¹

This section contains two distinct provisions, one relative to the governor giving information to the general assembly, the other having to do with his power to convene the general assembly in extra session. It will be necessary to consider the two separately. As regards the former of these provisions ten state constitutions contained identical sections.² Three others had provisions very similar³, while the remaining states had no provision regarding this matter other than that granting the general power of sending messages.

With respect to the second provision, granting power to call extra sessions, the constitution of every state then in the union, except Indiana and Vermont, contained some provision for the exercise of such power by the governor. California, Georgia, Iowa, and Oregon had identical provisions.⁴ Seven states provided further that the legislature could not consider any matter not recommended by the governor,⁵ while twenty-one contained the general provision that the governor should have power to convene the legislature in extra session.⁶ North Carolina alone provided that the governor

1. Missouri, 1820, IV. 7; 1865, V.7.

2. Conn.1818, IV.8; Del.1831, III.11; Ind.1851, V.13; Me. 1820, V.2; Md.1867, II.19; Miss.1868, V.8; Ore.1859, V.11; Tenn. 1870, III.11; Wis.1848, V.4;

3. Minn.1858, V.4; O.1851, V.7; Va.1870, IV.5.

4. Cal.1849, V.9; Ga.1868, IV.Pt.II.3; Ia.1857, IV.11; Ore.1859, V.12.

5. Ark.1874, VI.19; Fla.1868, VI.8; Ill.1870, V.8; Neb.1875, V.8; Nev.1864, V.9; N.Y.1846, IV.4; Tenn.1870, III.9.

6. Ala.1867, V.8; Del.1831, III.12; Kan.1859, I.5; Ky.1850, III.13; La.1868, 64; Me.1820, V.13; Md.1867, II.6; Mass.1780, II.5; Mich.1850, V.9; Minn.1858, V.4; Miss.1868, V.7; N.H.1792, 51; N.J.1844, V.6; O.1851, V.8; Penn.1873, IV.12; Va.1870, IV.5; W.Va. 1873, VI.19; Wis.1848, V.4.

should share this power with a council.⁷

It is difficult to say which constitutions may have been influential in the framing of this section, but of the states containing either provision in the exact form found here, only that of Connecticut and of Maine were in existence in 1820, and as the Missouri constitution of that year contained this provision, it is probable that they were followed to some extent by the Missouri convention.⁸

Section 10- (Governor's message - to account for moneys - furnish estimates of expenses.) "The governor shall, at the commencement of each session of the general assembly, and at the close of his term of office, give information by message of the condition of the State and shall recommend such measures as he shall deem expedient. He shall account to the general assembly, in such manner as may be prescribed by law, for all moneys received and paid out by him from any funds subject to his order, with vouchers; and at the commencement of each regular session, present estimates of the amount of money required to be raised by taxation for all purposes."

This section as reported by the select committee was in practically the same form as that in which it now appears (J.p.126) but was laid over without lengthy consideration when the article on the executive was discussed (J.p.208). It was later taken up, and, after being amended by the insertion of the following,- "in such manner as may be prescribed by law," after the clause "He shall account to the general assembly," giving it its present form, was adopted by the convention (J.p.213).

The Missouri constitutions of 1820 and 1865 contained no sections corresponding to this, the nearest approach being

7. N.C. 1868, III. 9.

8. Fourteen states in 1820 had very similar sections. See Shoemaker, "The First Constitution of Missouri", p.67.

those which correspond to section nine of this constitution.

Of the thirty-six other state constitutions then in existence, nineteen contained some such provision as this. Illinois, Nebraska, and West Virginia had sections identical with this framed by the Missouri convention.¹ With respect to the latter part of this section, dealing with the duty of the governor to account for money and to furnish estimates, none of the remaining state constitutions contained a similar provision. As regards the governor's message and recommendations to the Legislature, Arkansas had an identical provision,² and of the remaining states sixteen provided in a general way for the same duties on the part of the governor.³ Seventeen states were entirely silent in this respect, except for the general grant of power to give information to the legislature as noted in the discussion of section nine above.

It is probable that the constitutions of Arkansas, Illinois, Nebraska, and West Virginia were most influential in the framing of this section.

Section 11. (Vacancies in office - Governor may fill.) "When any office shall become vacant, the governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed and qualified according to law."

This section was adopted without change by the

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1. Ill.1870, V.7; Neb.V.7; W.Va.1872,VII.6;
 2. Ark. 1874, VI.8.
 3. Ala.1867,V.7; Cal.1849,V.10; Fla.1868,VI.9; Ga.1868, IV.Pt.II.3; Ia.1857,IV.12; Kan.1859,I.5; Mich.1850,V.8; Minn. 1858,V.4; Nev.1864,V.10; N.Y.1846,IV.4; O.1851,III.7; Penn.1873, IV..11; S.C.1868,III.15; Tex.1868,IV.9; Wis.1848,V.4.

convention (J.p.208).¹ It is a verbatim copy from the constitution of 1865, and that of 1820 contained a provision practically identical except that the words "unless otherwise provided by law" before "shall appoint" were omitted.²

All of the state constitutions except five contained some such provision as this.³ That of Georgia had an identical provision and that of Arkansas one distinctly similar.⁴ The remaining twenty-nine constitutions provided in a general way for the filling of vacancies by the governor.⁵

Since this provision was practically a copy from the earlier constitutions of Missouri, the majority of these other state constitutions, having been framed since 1820, could not have influenced the framing of this section. Of these, however, those of Georgia, Kentucky, Louisiana, Mississippi, and Ohio contained such provisions before 1820 and may have been influential at that time.⁶

Section 12. (Governor's duty as to bill and joint resolutions presented to him). "The governor shall consider all bills and joint resolutions, which, having been passed by both houses of the general assembly, shall be presented to him. He shall, within ten days after the same shall have been presented to him, return to the house in which they respectively originated, all such bills and joint resolutions, with his approval indorsed thereon, or accompanied by his objections: Provided, That if the general assembly shall finally adjourn within ten days after such presentation, the

1. Section reported by committee (J.p.126).

2. Missouri 1865, V.8; 1820, IV. 9.

3. Conn., Mass., N. H., N.J., N.Y., Wis.

4. Ga.1868, IV.Pt.II.4; Ark.1874, VI.23.

5. Ala.1867, V.18; Cal.1849, V.8; Del.1831, III.8; Fla.1868, VI.7; Ill.1870, V.11; Ind.1851, V.18; Ia.1857, IV.10; Kan.1859, I.14; Ky.1850, III.9; La.1868, 61; Me.1820, V.8; Md.1867, II.11; Mich.1850, VIII.3; Minn.1858, V.4; Miss.1868, V.13; Neb.1875, V.11; Nev.1864, V.8; N.C.1868, III.13; O.1851, III.18; Ore.1859, V.16; Penn.1873, IV.8; R.I.1842, VII.5; S.C.1868, XI.4; Tenn.1870, III.14; Tex.1868, IV.7; Vt.1793, II.11; Va.1870, IV.5; W.Va.1872, VII.9;

6. Shoemaker, "First Constitution of Missouri", p.68.

governor may, within thirty days thereafter, return such bills and resolutions to the office of the secretary of state, with his approval or reasons for disapproval."

As originally reported by the select committee this section embraced not only the provisions as here set forth regarding the governor's duty as to bills and joint resolutions presented to him, but also the provisions regarding the power of the governor to veto items in appropriation bills as contained in section thirteen as adopted,¹ together with provisions for the legislative proceedings when a bill is returned without the governor's approval, as contained in section thirty-nine of the article four of the constitution dealing with the legislative department (J.p.126-27).²

Upon being taken up for discussion by the convention, this section, as reported by the committee was referred to the joint action of the committee on the executive and ministerial department which had reported it, and the committee on the legislative department, for the purpose of separating the section for distribution under appropriate heads. (J.p.211).

As finally reported by the joint committee the original section was divided into three sections. That part dealing with the governor's duty as to bills and joint resolutions presented to him was embodied in one section in the exact form quoted above as section twelve. A motion to strike out the word "thirty" and insert "twenty" before

1. See section 13.p.27.

2. See page 26 .

the word "days" in the latter provision being rejected, the convention adopted the section without change (J.p.240).

That part of the original committee report having to do with the power of the governor to veto special items of appropriation bills was reported as a separate section and will be discussed as section thirteen.³

That part of the original section which had to do entirely with the legislative procedure when a bill is returned without the governor's approval was placed, by the joint committee, in section thirty-nine of the article on the legislative department and will only be discussed in so far as it effects the power of the executive.⁴

Section twelve as adopted is practically the same in substance as corresponding sections of the Missouri constitutions of 1820 and 1865 except that Sundays were excepted from the computation of time in both.⁵

Of the thirty-six other state constitutions under consideration all except four contain some such general provision, these four do not give the governor the power of veto,⁶ Ten states have provisions practically the same except for the fact that all provide that Sundays shall be excepted from the computation of time, some set the period of time in which the governor is to return bills at three and five days instead of ten, and some set the period for filing with the secretary of state in case of adjournment at three, five, ten, and twenty instead of thirty days.⁷ The remaining

3. See page 27 for discussion of section 13.

4. See page 26 .

5. Missouri 1820, IV.10; 1865, V.9.

6. Del., N.C., Ohio, and R.I.

twenty-two states have provisions similar in a general way, some providing that when the legislature adjourns before the return of a bill the return must be made at the beginning of the next session of it shall become a law notwithstanding the governor's disapproval, others that it shall become a law unless filed with the secretary of state within a certain number of days after adjournment.⁸

With respect to that part of the original committee report concerning the legislative procedure when a bill is returned without the approval of the governor, which was embodied in section thirty-nine of the article on the legislative department, consideration need be given only to the provision fixing the legislative majority necessary to overcome the governor's veto. As provided in the above mentioned section a vote of two-thirds of all the members elected to each house is necessary in order that any bill, having been disapproved by the governor, shall become a law.

The Missouri constitutions of 1820 and 1865 had provided that the disapproval of the governor could be overcome by a majority of all the members elected to each house.⁹

Of the thirty-six other state constitutions under consideration all that give the governor the veto power specify the vote necessary to pass a law over his veto.¹⁰

7. Ark.1874,VI.15; Ill.1870,V.16; Ia.1857,III.16; Mich.1850,IV.14; Minn.1858,IV.11; Nev.1864,IV.35; Neb.1875,V.15; N.Y.1846,IV.9; Penn.1873,IV.15; W.Va.1872,VII.14;

8. Ala.1867,IV.16; Cal.1849,IV.17; Conn.1818,IV.12; Fla.1868,V.27; Ga.1868,IV.Pt.II.6; Ind.1851,V.14; Kan.1859,II.14; Ky.1850,III.22; La.1868,66; Me.1820,IV.2; Md.1867,II.17; Mass.1780,I.Pt.I.2; Miss.1868,IV.24; N.H.1792,II.43; N.J.1844,V.7; Ore.1859,V.15; S.C.1868,III.22; Tenn.1870,III.18; Tex.1868,IV.25; Vt.1793,II.11; Va.1870,IV.8; Wis.1848,V.10.

9. Missouri 1820, IV.10; 1865, V.9.(1109) (1147).

10. Del., N.C., O., and R.I., did not give the governor the veto.

Eight provide that a mere majority of the members elected to each house shall be sufficient,¹¹ eighteen fix the majority at two-thirds of all elected,¹² two at three-fifths,¹³ and four at two-thirds of those present.¹⁴

In adopting this section, Missouri was following the general tendency to increase the governor's power over legislation by increasing the majority necessary to overcome his veto.

Section 13. (Governor may object to part of an appropriation bill.) "If any bill presented to the governor contain several items of appropriation of money, he may object to one or more items while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the appropriations so objected to shall not take effect. If the general assembly be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If it be not in session; then he shall transmit the same within thirty days to the office of the secretary of state, with his approval or reasons for disapproval."

This section was not reported by the joint committee in the exact form in which it appears here. After the word "reconsidered" was the following provision: "If on reconsideration, one or more such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All

11. Ala.1867,IV.16; Ark.1874,VI.15; Conn.1818,IV.12; Ind.1851,V.14; Ky.1850,III.22; N.J.1844,V.7; Tenn.1870,III.18; W.Va.1872,VII.14.

12; Cal.1849,IV.17; Ga.1868,IV.Pt.II.6; Ill.1870,V.16; Ia.1857,III.16; Kan.1859,II.14; La.1868,66; Me.1820,IV.2; Mass.1780,I.Pt.I.2; Mich.1850,IV.14; Minn.1858,IV.11; Miss.1868,IV.24; Nev.1864,IV.35; N.H.1792,II.43; N.Y.1846,IV.9; Penn.1873,IV.16; S.C.1868,III.22; Tex.1868,IV.25; Vt.1793,II.11.

13. Md.1867,II.17; Neb.1875,V.15.

14. Fla.1868,V.27; Ore.1859,V.15; Va.1870,IV.8; Wis.1848,V.10.

the provisions of this section in relation to bills not approved by the governor, shall apply in cases in which he may withhold his approval from any item or items contained in a bill appropriating money." By amendment this provision was stricken out and one inserted respecting the course to be followed in case the general assembly was not in session. This gave the section its present form and it was adopted by the convention and ordered enrolled as a part of the constitution (J.p.240-241).

No provision giving the governor power to veto special items in appropriation bills is to be found in the Missouri constitutions of 1820 or 1865. This had not become an ordinary provision by 1875, only seven states having similar provisions in their constitutions.¹ None of these provided for such power on the part of the governor prior to 1868 when Georgia and Texas adopted constitutions containing such a provision. The constitution of New York adopted in the year 1874 was, perhaps, the most influential in the framing of this section as it contained an identical provision.

By incorporating such a provision as this in her constitution, Missouri was adhering to the tendency, then in its beginning, to increase the power of the executive over legislation.

Section 14. (Concurrent resolutions must be presented to the governor - exceptions - proceedings.)
 "Every resolution to which the concurrence of the senate and house of representatives may be necessary, except on questions

1. Ark.1874,VI.17; Ga.1868,IV.Pt.II.6; Neb.1875,V.15; N.Y.1846,IV.9; Penn.1873,IV.16; Tex.1868,IV.25; W.Va.1872,VII.15.

of adjournment, of going into joint session, and of amending this constitution, shall be presented to the governor, and before the same shall take effect, shall be proceeded upon in the same manner as in case of a bill: Provided, That no resolution shall have the effect to repeal, extend, alter, or amend any law."

This section appears in exactly the same form in which it was reported by the select committee. It was, however, not adopted without considerable discussion and was referred along with the previous section, to the joint consideration of the executive committee and the legislative committee (J.p.211). No change was made by the joint committee and when reported back to the convention it was adopted without amendment. (J.p.241).

This section is practically a reproduction of a corresponding one in the Missouri constitution of 1865 except for the proviso at the close; that of 1820 differing further by making a single exception of resolutions of adjournment instead of the three in the present section.¹

No state constitution under consideration contained a provision identical with this. Eighteen contained a similar provision, fourteen of which were practically identical with the corresponding provision of the constitution of 1820,² while four provide that all resolutions, with no exceptions, shall be presented to the governor.³

1. Missouri 1820, IV.11; 1865, V.10.

2. Ala.1867, IV.17; Ark.1874, VI.16; Ga.1868, IV.Pt.II.7; Ky.1850, III.23; La.1868, III.62; Me.1820, IV.2; Mich.1850, IV.14; Miss.1868, IV.25; Neb.1875, V.15; Penn.1873, III.26; S.C.1868, III.22; Tenn.1870, III.18; Tex.1868, IV.26.

3. Kan.1859, II.14; Mass.1780, I.Pt.I.2; N.H.1792, II.44; Va.1870, IV.8.

Section 15. (Lieutenant-governor, qualifications and duties.) "The lieutenant-governor shall possess the same qualifications as the governor, and by virtue of his office shall be president of the senate. In committee of the whole he may debate all questions, and when there is an equal division he shall give the casting vote in the senate, and also in joint vote of both houses."

This section appears in the exact form in which it was originally reported to the convention (J.p.127). No proposals were made for change. It is an exact reproduction of the corresponding section in the Missouri constitution of 1820 and of 1865.¹

There were in 1875, twenty-six other states that provided for the office of lieutenant-governor and made the incumbent ex officio president of the senate.² All of these except three, - Massachusetts, Minnesota, and Vermont, - gave him the casting vote in the senate. As regards the other provisions of this section there was considerable divergence, about half of the states specified that his qualifications should be the same as that of the governor,³ the other half were silent on this matter. Only six states gave him the right to debate in committee of the whole,⁴ and Mississippi alone provides for him giving the casting vote when a joint vote of both houses is being taken.

1. Mo.1820, IV.14 & 15; 1865, V. 12 & 13.

2. Ala.1867, V.16; Cal.1849, V.16; Conn.1818, IV.13; Fla.1868, VI.14; Ill.1870, V.18; Ind.1851, V.21; Ia.1857, IV.18; Kan.1859, I.12; Ky.1850, III. 15 & 16; La.1868, III.55; Mass.1780, II. Pt.II.1; Mich.1850, V.14; Minn.1857, V.6; Miss.1868, V.14&15; Neb.1875, V.17; Nev.1864, V.17; N.Y.1846, IV.7; N.C.1868, II.21; O.1851, III.16; Penn.1873, IV.4; R.I.1842, VI.2; S.C.1868, III.5&6; Tex.1868, IV.15; Vt.1793, II.19; Va.1870, IV.9&11; Wis.V.2&8.

3. Cal., Fla., Ky., Mass., Miss., Nev., N.Y., Penn., S.C., Tex., Va., Wis.

4. Conn., Ind., Ky., Mich., Miss., Tex.

The constitutions of Kentucky, Mississippi, and Texas contain provisions which, as a whole, most closely resemble the one under consideration, that of Mississippi being identical. As Texas was not in existence as a state in the union in 1820 its constitution could not have been referred to in the original framing of this section for the Missouri constitution of that date, but the constitutions of Kentucky and Mississippi of 1799 and 1817 respectively contain this provision and were probably influential in the framing of the corresponding part of the first constitution of Missouri.⁵

It might be noted here that since the adoption of Missouri's first constitution in 1820 there seems to have been a tendency to provide for the office of lieutenant-governor in the constitutions framed during this period. In 1820 only ten states out of the twenty-three in the union provided for the office,⁶ while in 1875 twenty-five out of thirty-six had such provisions, and of those not having such provision two had constitutions adopted prior to 1820,⁷ two others prior to 1850.⁸

Section 16. (Lieutenant-governor to act as governor, when). "In case of death, conviction on impeachment, failure to qualify, resignation, absence from the State of other disability of the governor, the powers, duties and emoluments of the office for the residue of the term, or until the dis-

5. Ky.1799,III.16&17; Miss.1817,IV.18&19. The constitutions of Conn.,Ill.,& Ind., also had such provision in 1820-- See Shoemaker,--"First Constitution of Missouri"-- page 73.

6. Conn.1818,IV.3; Ill.1818,III.13; Ind.1816,IV.15; Ky.1799,III.16; Mass.1780,II.2; Miss.1817,IV.18; N.Y.1777,20; S.C.1790,II.3; Vt.1793,10; Va.1776.

7. Me., and N.H.

8. Del. and N.J.

ability shall be removed, shall devolve upon the lieutenant-governor."

This section was adopted by the convention without change. Substantially the same provision was included in the Missouri constitution of 1820 and of 1865.¹

Of the thirty-six other states, all that provided for a lieutenant-governor had provisions in their constitutions the same in substance as the one here under consideration.² Of the ten states that do not provide for a lieutenant-governor all except one place the succession in the president of the senate.³ Oregon alone provides for the succession of the secretary of state.⁴

Section 17. (President pro tempore of the senate - other persons to act as governor - when). "The senate shall choose a president pro tempore to preside in cases of the absence or impeachment of the lieutenant-governor, or when he shall hold the office of governor. If there be no lieutenant-governor, or the lieutenant-governor shall, for any of the causes specified in section sixteen of this article, become incapable of performing the duties of the office, the president of the senate shall act as governor until the vacancy is filled or the disability removed; and if the president of the senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house of representatives, in the same manner and with the same powers and compensation as are prescribed in the case of the office devolving upon the lieutenant-governor."

1. Mo.1820, IV.16, 1865, V.14.

2. Ala.1867,V.15; Cal.1849,V.17; Conn.IV.14; Fla.1868, VI.15; Ill.1870,V.17; Ind.1851,V.10; Ia.1857,IV.17; Kan.1859,I.11; Ky.1850,III.17; La.1868,III.55; Mass.1780,II.Pt.II.3; Mich.1850, V.12; Minn.1858,V.6; Miss.1868,V.17; Neb.V.16; Nev.1864,V.18; N.Y.1846,IV.6; N.C.1868,III.12; O.1857,III.15; Penn.1873,IV.13; R.I.1842,VII.9; S.C.1868,III.9; Tex.1868,IV.15; Vt.1793,II.19; Va.1870,IV.10; Wis.1848,V.7.

3. Ark.1874,VI.12; Del.1831,III.14; Ga.1868,IV.4; Me.1820, V.14; Md.1867,II.7; N.H.1792,II.48; N.J.1844,V.12; Tenn.1870, III.12; W.VA.1872,VII.16.

4. Ore. 1859, V. 8.

This section appears in the exact form in which it was reported by the select committee (J.p.127), no proposals for change being offered.

The Missouri constitution of 1820 and 1865 contain provisions substantially the same.¹

Of the thirty-six other constitutions under consideration seven have provisions identical with this one.² Seven of the states that do not provide for a lieutenant-governor have provisions regarding the succession of the president of the senate and the speaker of the house of representatives which are practically identical with the section under consideration.³ Fourteen states provide for the succession of the president of the senate pro tempore after the lieutenant-governor without making any provision for the succession of the speaker of the house of representatives.⁴ Of these fourteen, four make provision for a vacancy in the office of president of senate pro tempore occurring during a recess of the legislature by imposing upon the secretary of state the duty of calling the senate into session for the purpose of electing a president pro tempore.⁵ Delaware provides that the speaker of the house of representatives shall succeed to any vacancy in the office of governor, and in case of the inability of the speaker the secretary of state

1. Mo. 1820, IV.16; 1865, V.14.

2. Ala. 1867, V.17; Ill. 1870, V.19; Ia. 1857, IV.19; Kan. 1859, I.13; Miss. 1868, V.17; Neb. 1875, V.18; O. 1851, III.17;

3. Ark. 1874, VI.13; Ga. 1868, IV.4; Me. 1820, V.14; Md. 1867, II.7; N.J. 1844, V.14; Tenn. 1870, III.12; W.Va. 1872, VII.16.

4. Cal. 1849, V.16; Conn. 1818, IV.15; Fla. 1868, VI.14; Ky. 1850, III.18; Mich. 1850, V.13; Minn. 1857, V.6; Nev. 1864, V.17; N.H. 1792, II.48; N.Y. 1846, IV.7; N.C. 1868, III.12; Penn. 1873, IV.14; R.I. 1842, VII.10; S.C. 1868, III.7; Tex. 1868, IV.16.

5. Conn., Ky., N.C., Texas.

is to occupy the office.⁶ Oregon and Wisconsin provide for the succession of the secretary of state in case of any vacancy in the office of governor.⁷ Four states have no provisions in their constitution regulating succession after the lieutenant-governor except to give the legislature power to provide the manner of succession.⁸ Massachusetts makes no provision for succession after the lieutenant-governor.

Section 18. (Pay of lieutenant-governor and president pro tempore.) "The lieutenant-governor or the president pro tempore of the senate, while presiding in the senate, shall receive the same compensation as shall be allowed to the speaker of the house of representatives."

This section was adopted by the convention (J.p.211) in the exact form in which it was reported by the select committee (J.p.128).

The Missouri constitutions of 1820 and 1865 contained exactly the same provision.¹

Of the other thirty-six states then in the union Kentucky alone has an identical provision.² Three states have the same provision with respect to the lieutenant-governor but are silent with respect to the president pro tempore.³ Two states fix the pay of the lieutenant-governor at twice that of a senator.⁴ The remaining thirty either specify a definite salary or leave the matter to legislative control.

This section as originally framed by the constitu-

6. Del.1831, III.14.

7. Ore. 1857, V.8; Wis.1848,V.8.

8. Ind.1851,V.10; La.1868,53; Vt.1793,II.24; Va.1870,IV.10.

1. Mo.1820,IV.18; 1865,V.15.

2. Ky.1850,III.19.

3. Ind.1851,V.23; N.C.1868,III.11; Va.1870,IV.11.

4. Ia. 1857,IV.15; Minn.1858,V.6.

tional convention in 1820 was probably copied from the Kentucky constitution of 1799 which contained an exact prototype.⁵

Section 19. (Qualifications of other executive officers.) "No person shall be eligible to the office of secretary of state, state auditor, state treasurer, attorney-general, or superintendent of public schools, unless he be a male citizen of the United States and at least twenty-five years old, and shall have resided in this state at least five years next before his election."

This section was adopted without change by the convention (J.p.211).

The constitution of Missouri of 1865 contains this provision with the exception that no reference is made to a superintendent of public schools.¹ That of 1820 mentions only the offices of state auditor, secretary of state, and attorney-general, and prescribes no special qualifications.²

Among the other thirty-six state constitutions under consideration there is no provision which is the exact counterpart of this one. It is probable, however, that no one would be either elected or appointed to fill any of these offices who would not measure up to the qualifications here specified.

Section 20. (Seal of the state). "The secretary of state shall be the custodian of the seal of the State, and authenticate therewith all official acts of the governor, his approval of laws excepted. The said seal shall be called the "Great Seal of the State of Missouri", and the emblems and devices thereof, heretofore prescribed by law, shall not be subject to change."

5. Ky. 1799, III.20.

1. Mo. 1865, V. 16.

2. Mo. 1820, IV. 12 & 21; V. 18.

This section was adopted by the convention without change (J.p.212).

The Missouri constitution of 1865 contains an exact prototype of this section, that of 1820 contains provisions substantially the same.¹

Among the thirty-six other state constitutions in force in 1875, three have provisions identical with the section under consideration.² Four have provisions distinctly similar and three provide in a general way for a state seal to be kept by the secretary of state.³ Of the remaining twenty-six states thirteen provide for a state seal to be kept and used by the governor,⁴ the others leave the matter to legislative control.

Section 21. (Secretary of state, duties of.)
 "The secretary of state shall keep a register of the official acts of the governor, and when necessary, shall attest them, and lay copies of the same, together with copies of all papers relative thereto, before either house of the general assembly whenever required to do so."

This section as it appears here is in the exact form in which it was reported by the select committee (J.p.128), no proposals for change being offered.

The Missouri constitutions of 1820 and 1865 contain sections of which this is a verbatim copy.¹

1. Mo.1865,V.20; 1820,IV.22.
 2. Mich.1850,V.18; Minn.1857,XV.4; Wis.1848,XIII.4.
 3. Ga.1868,IV.Pt.II.9; Ill.1870,V.22; Neb.1875,V.23;
 Ore.1857,VI.3; Conn.1818,IV.18; Fla.1868,VIII.2; Penn.1873,IV.22.
 4. Ala.1867,V.12; Ark.1874,VI.9; Cal.1849,V.14; Ind.1851,
 XV.5; Ia.1857,IV.20; Kan.1859,I.8; Miss.1868,V.11; Nev.1864,V.15;
 N.J.1844,VIII.2; O.1851,III.12; Tenn.1870,III.15; S.C.1868,III.18;
 Tex.1868,IV.18.

1. Mo. 1820, IV. 21; 1865, V. 21.

Among the thirty-six other states then in the union three had provisions in their constitutions identical with this one.² Thirteen were identical except for the duty of attesting the acts of the governor when necessary.³ Four merely provide for the keeping of the official records of acts of the executive and legislative departments by the secretary of state,⁴ while the remaining sixteen simply stated that he should perform such duties as might be prescribed by law.⁵

It is probable that the constitutions of Kentucky and Louisiana were most influential in the framing of this section as both states had constitutions containing identical sections at the time this section of the Missouri constitution was first framed by the convention of 1820.⁶

Section 22. (Executive officers, managers of institutions, duties, accounts, penalties.) "An account shall be kept by the officers of the executive department of all moneys and choses in action disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the governor under oath. The governor may at any time require information, in writing, under oath, from the officers of the executive department, and all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions; which information, when so required, shall be furnished by such officers and managers, and any officer

2. Ky.1850,III.21; La.1868,68; Va.1870,IV.13.

3. Ark.1874,VI.21; Cal.1849,V.19; Del.1831,III.15; Fla.1868,VIII.2; Me.1820,V.4; Miss.1868,V.19; Nev.1864,V.20; Ore.1857,VI.2; Penn.1873,IV.18; Tenn.1870,III.17; Tex.1868,IV.17; Wis.1848,VI.2.

4. Conn.1818,IV.18; Md.1867,II.23; Mass.1780,II.Pt.IV.2; N.H.1792,67.

5. Ala.1867,V.1; Ga.1868,IV.Pt.II.8; Ill.1870,V.1; Ind.1851,VI.5; Ia.1857,V.3; Kan.1859,IV.2; Mich.1850,VIII.1; Minn.1857,XV.4; Neb.1875,V.1; N.J.1844,VIII.1; N.Y.1846,V.1; N.C.1868,III.1; O.1851,III.1; R.I.1842,VII.12; S.C.1868,III.1; Vt.1793,II.10; W.Va.1872,VII.1.

6. Ky. 1799,III.24; La.1812,III.19.

or manager who at any time shall make a false report, shall be guilty of perjury and punished accordingly."

This section as it appears here is substantially the same as when reported by the select committee (J.p.128-129). An amendment inserting the words, "which information, when so required, shall be furnished by such officers and managers," in the latter part of the section as it was originally reported was adopted (J.p.212). Three other proposed amendments of very slight importance were rejected (J.p.212).

There is no similar section in the Missouri constitution, either of 1820 or 1865.

Of the thirty-six other states then in the union only two, Nebraska and West Virginia had provisions identical with the one here under consideration.¹ Twenty-four others² contained provisions empowering the governor to require information in the same manner and from the same officers as set forth in this section. Three of these also provided for the semi-annual reports to the governor.³ The remaining ten states have no similar provisions.⁴

It is probable that the constitutions of Nebraska and West Virginia were very influential in the framing of this section.

1. Neb.1875,V.21; W.Va.1872,VII.17.

2. Ala.1867,V.6; Ark.1874,VI.7; Cal.1849,V.6; Conn.1818,IV.6; Del.1831,III.10; Fla.1868,VI.5; Ill.1870,V.21; Ind.1851,V.15; Ia.1857,IV.8; Kan.1859,I.4; Ky.1850,III.11; La.1868,62; Me.1820,V.10; Mich.1850,V.5; Miss.1868,V.6; N.C.1868,III.7; O.1851,III.6; Ore.1857,V.13; Penn.1873,IV.10; S.C.1868,III.14; Tenn.1870,III.8; Tex.1868,IV.7; Va.1870,IV.6.

3. Ill., N.C., O.

4. Ga., Md., Mass., Minn., N.H., N.J., N.Y., R.I., Vt., Wis.

Section 23. (Governor shall commission officers).
 "The governor shall commission all officers not otherwise provided for by law. All commissions shall run in the name and by the authority of the State of Missouri, be signed by the governor, sealed with the Great Seal of the State of Missouri, and attested by the secretary of state."

This section was adopted by the convention (J.p.213) in the exact form in which it was reported by the select committee (J.p.129).

The Missouri constitution of 1865 contained an exact prototype of the one here under consideration, that of 1820 had no similar section.¹

Of the thirty-six other state constitutions under consideration three contained identical provisions.² Nineteen others were identical except for the one provision that "the governor shall commission all officers not otherwise provided for by law".³ Three provide only that "All commissions shall run in the name and by the authority of the state, be signed by the governor, and sealed with the great seal of the state",⁴ The remaining eleven states have no similar provisions.⁵

It is probable that the constitutions of New Jersey and Vermont were most influential in framing section twenty-

1. Mo. 1865, V.25.

2. N.J.1844, VII.10 & VIII.3; S.C.1868, III.17 & 19; Vt.1793, II.11.

3. Ala.1867, V.13; Ark.1874, VI.10; Cal.1849, V.15; Fla. 1868, VI.13; Ind.1851, XV.6; Ia.1857, IV.21; Kan.1859, I.9; La. 1868, 72; Mass.1780, VI.4; Mich.1850, V.19; Miss.1868, V.12; Nev. 1864, V.16; N.C.1868, III.16; O.1851, III.13; Ore.1857, V.11; R.I.1842, VII.8; Tex.1868, IV.19.

4. Penn.1873, IV.22; Tenn.1870, III.16; Va.1870, IV.7.

5. Ga., Del., Ill., Me., Md., Minn., Neb., N.H., N.Y., W.Va., Wis.

three here under consideration, both states having identical provisions with this one in their constitutions at the time this provision was originally framed by the Missouri constitutional convention of 1865.

Section 24. (Salary of executive officers not to be changed - fees to be paid into treasury). "The officers named in this article shall receive for their services a salary to be established by law, which shall not be increased or diminished during their official terms and they shall not, after the expiration of the terms of those in office at the adoption of this constitution receive to their own use any fees, costs, perquisites of office, or other compensation. All fees that may hereafter be payable by law for any service performed by any officer provided for in this article shall be paid in advance into the State Treasury."

This section appears in the exact form in which it was reported by the select committee (J.p.129). No proposals for change were made by the convention (J.p.213).

The Missouri constitutions of 1820 and 1865 contained no sections corresponding to this one. The nearest approach being that providing that the governor shall receive an adequate salary, to be prescribed by law, which shall be neither increased nor diminished during his continuance in office.¹

All of the states then in the union had some provision in their constitution respecting salaries. Arkansas had provisions substantially the same as the one adopted by the Missouri convention in 1875. Illinois had provisions identical with it.² North Carolina also had an identical section except for the final provision respecting the payment

1. Missouri 1820, IV. 13; 1865, V. 11.

2. Ark. 1874, XIX. 11; Ill. 1870, V. 23.

of fees into the state treasury.³ Five states provided for a salary to be fixed by law, not subject to increase or decrease during the term for which an officer is chosen.⁴ One state omitted the statement that salaries shall be fixed by law but included the specification that they should receive no additional fees.⁵ Of the remaining twenty-seven states nine have provisions identical with the provision in the Missouri constitutions of 1820 and 1865 forbidding increase or decrease during the term for which an officer is elected and make it applicable to all the officers of the executive department.⁶ Eight fix a definite salary⁷ while the other ten merely designate that salaries shall be prescribed by law.⁸

It is probable that the constitutions of Arkansas, Illinois, and North Carolina were most influential in the framing of this section, especially that of Illinois of which the corresponding section was identical in all respects.

Section 25. (Contested elections). "Contested elections of governor and lieutenant-governor shall be decided by a joint vote of both houses of the general assembly, in such manner as may be provided by law; and contested elections of secretary of state, state auditor, state treasurer, attorney-general, and superintendent of public schools shall be decided before such tribunal and in such manner as may be provided by law."

3. N.C. 1868, III.15.

4. Ala. 1867, V.19; Del. 1831, III.6; Kan. 1859, I.15; Nev. 1864, IV.28; O. 1851, III.19.

5. Cal. 1849, V.21.

6. Ga. 1868, IV.1; Ind. 1851, V.22; Ky. 1850, III.7; Me. 1820, V.6; N.J. 1844, V.5; R.I. 1842, VII.11; S.C. 1868, III.13; Tenn. 1870, III.7; Tex. 1868, IV.5.

7. Fla. 1868, XVII.4; La. 1868, 56; Md. 1867, II.21; Mich. 1850, IX.1; Neb. 1875, V.24; Ore. 1857, XIII.1; Va. 1870, IV.4; W.Va. 1872, VII.19.

8. Conn. 1818, IV.4; Ia. 1857, III.31; Mass. 1780; Minn. 1858, V.5; Miss. 1868, V.4; N.H. 1792, 57; N.Y. 1846, IV.4; Penn. 1873, V.1; Vt. 1793, II.11; Wis. 1848, VI.3.

This section was not reported to the convention by the select committee, but after the article on the executive had been considered it was referred to the committee on revision and there section twenty-five was added. It is a verbatim copy from the Missouri constitution of 1865,¹ and as respects the governor and lieutenant-governor the same is contained in that of 1820.²

No other state in the union at that time had in its constitution an exact prototype of this section, although many were quite similar. Sixteen states had exactly the same provision as regards contested elections of governor and lieutenant-governor,³ five of which provided that contested elections of all other executive officers should also be decided by a joint vote of both houses of the legislature.⁴ Two provided that all contested elections should be decided by a joint committee of both houses of the legislature.⁵ The remaining eighteen states were silent on the matter of contested elections.⁶

It is doubtful if it may be said that any other state constitution was of any considerable influence in the framing of this section by the convention in 1875, as it was

1. Mo. 1865, V. 18 & 19.

2. Mo. 1820, IV. 20.

3. Ark. 1874, VI. 4; Ga. 1868, IV. 2; Ill. 1870, V. 4; Ind. 1851, V. 6; Ia. 1857, IV. 5; Ky. 1850, III. 24; Miss. 1868, V. 2; Neb. 1875, V. 4; N. J. 1844, V. 2; N. C. 1868, III. 3; Ore. 1859, V. 6; S. C. 1868, III. 4; Tenn. 1870, III. 2; Tex. 1868, IV. 3; Va. 1870, IV. 2; W. Va. 1872, VII. 3.

4. Ark., Ill., Neb., N. C., Tex.

5. Del. 1831, III. 2; Penn. 1873, IV. 2.

6. Ala., Cal., Conn., Fla., Kan., La., Me., Md., Mass., Mich., Minn., Nev., N. H., N. Y., O., R. I., Vt., Wis.

an exact copy from the Missouri constitution of 1865. The part dealing with the governor and lieutenant-governor, as included in the Missouri constitution of 1820, was probably originally influenced by the constitution of Illinois which contained an exact prototype of this provision.⁷

Section nine of article eight dealing with suffrage and elections is practically a continuation of section twenty-five just discussed. It provides that the trial and determination of contested elections of all public officers, whether state, judicial, municipal, or local, except governor and lieutenant-governor, shall be by the courts of law, or by one or more of the judges thereof. It leaves to the legislature the duty to designate by law the court to try the several classes of election contests.

There is no provision similar to this in either the Missouri constitution of 1865 or that of 1820. Neither is there any corresponding provision in any other state constitution at the time this was framed and adopted by the Missouri constitutional convention.

This completes the list of sections adopted by the convention to comprise article five of the constitution on the executive department. There were, however, three other sections reported to the convention by the select committee, but rejected.

The first of these, in accordance with a resolution, introduced immediately upon the organization of the convention, for the instruction of the committee on the executive and ministerial department of state government (J.p.44),

⁷. Ill. 1818, III.2.

provided that the governor should have power to adjourn the general assembly in case the two houses should fail to agree upon a time of adjournment (J.p.126). This is a provision found in a majority of the state constitutions in effect at the time but was immediately rejected by the convention (J.p.208).

The second of these sections provided that the governor should have power to remove any officer that he might appoint, in case of incompetency, neglect of duty, or malfeasance in office, and to appoint a man to fill the vacancy occasioned by the removal (J.p.128). A number of amendments were offered, only three of which would have made any material change in the section as reported. The first provided the governor should not have the power to remove any officer appointed by himself to fill a vacancy in any elective office. The second proposed that the governor should only have the power to suspend officers for the causes mentioned above, judicial officers excepted, and to fill the vacancy by a temporary appointment. Also, to prefer charges against the suspended officer on which he might be tried. The third provided that the existence of the causes, herein mentioned should be determined in a manner prescribed by law and that the governor should make a temporary appointment pending such determination.

All of these amendments were rejected as was also the entire section (J.p.210-211). It is interesting to note, however, the attempt to give the governor an increase of power of such a nature as to enable him to more effectively control the administration for which he is nominally responsi-

ble. Such power is still largely lacking in most of our states.

The last of these reported sections which were not embodied in the constitution as adopted had to do with defining the nature of an office and distinguishing between an office and an employment (J.p.129). This was rejected by the convention (J.p.213).

After the consideration of the report of the select committee was completed by the convention a new section was proposed providing for criminal prosecution by information of any state official for wilful violation and neglect of official duty and for removal from office on conviction (J.p.426). This was referred to the select committee but when reported back to the convention was immediately rejected (J.p.582).

A number of sections follow which are found scattered throughout the various articles of the constitution. Many of these deal only incidentally with the executive. They are discussed in the order in which they appear in the constitution.

Article four dealing with the legislative department contains a few sections which require attention in this discussion. Those relating to the governor's veto have already been disposed of.

Section seven, imposing upon the general assembly the duty of redistricting the state after each decennial census for purpose of senatorial representation, provides that if the legislature should fail to perform its duty in this

respect it shall be the duty of the governor, acting with the secretary of state and the attorney-general, to perform such duty.

This section was adopted by the convention without change (J.p.268).

There is no corresponding provision in the Missouri constitution either of 1865 or of 1820, neither is there any counterpart to be found in any other state constitution in existence in 1875.

It is interesting to note that the legislature has performed its duty in this respect only one time, in 1881. In 1891, 1901, and 1911, it has been left to the officers of the executive department mentioned above.

Section fourteen imposes upon the governor the duty of issuing "writs of election to fill such vacancies as may occur in either house of the general assembly."

No such provision was included in the original report of the committee on the legislative department to the convention, but was inserted by the committee on revision and adopted by the convention without change (J.p.619).

This section is an exact copy from the Missouri constitution of 1865 and 1820.¹ Sixteen other states in 1875 had the same provision in their constitutions,² seven of which had such a section prior to the adoption of the

1. Mo.1865,IV.14; 1820,III.9.

2. Ala.1867,III.20; Ark.1874,V.6; Ga.1868,IV.Pt.II.3; Ill.1870,II.11; Ind.1851,V.19; Ky.1850,IV.13; La.1868,70; Mich.1850,V.10; Minn.1857,IV.17; Miss.1868,IV.9; N.C.1868,II.15; O.1851,I.12; Ore.1857,V.17; Tenn.187,II.15; Wis.1848,IV.14; Tex.1868,III.19.

first constitution of Missouri in 1820 and were probably of influence in the framing of this section at that time.³

In article six dealing with the judicial department, in the seventeenth section, is a provision for the appointment by the governor of three judges of the St. Louis Court of Appeals to serve temporarily until their successors should be elected in 1877, no permanent power of appointment being placed in the hands of the governor with respect to the judicial department. This section was adopted by the convention (J.p.286) exactly as reported by the committee on the judiciary (J.p.221). This provision was, of course, only of temporary importance, and had no counterpart in either the Missouri constitution of 1820 or of 1865. Nor is such a provision to be found in any other constitution of the time.

Section forty-one gives the power to the governor concurrently with two-thirds of each house of the legislature to remove from office any judge of a court of record who had become unable to "discharge the duties of his office with efficiency by reason of continued sickness, or physical or mental infirmity."

This section was adopted by the convention (J.p.338.) without change.

No similar section is contained in either the Missouri constitution of 1865 or of 1820.

Among the thirty-six other state constitutions under consideration none had an exact prototype of this section.

3. Ala.1819,III.12; Ga.1798,II.8; Ill.1818,II.11; Ind. 1816,III.12; Miss.1817,III.18; O.1802,I.12; Tenn.1796,I.12.

Seven states, however, provide for removal in a similar manner in cases where there is not sufficient ground for impeachment, but do not limit it to cases of sickness, or physical or mental inability.¹ Of these seven New York bestows the power upon the governor and the senate.

Article seven dealing with impeachments directly concerns the officers of the executive department and merits a somewhat detailed consideration.

Section one regarding liability to impeachment is as follows: "The governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, superintendent of public schools, and judges of the supreme, circuit, and criminal courts, and the St. Louis Court of Appeals shall be liable to impeachment for high crimes and misdemeanors, and for misconduct, habits of drunkenness, or oppression in office."

This section as originally reported to the convention by the committee on the judicial department (J.p.226) contained no reference to the superintendent of public schools among the officials liable to impeachment, and omitted the "habit of drunkenness" as a cause. It also subjected all judges of courts of record to liability to impeachment.

In the consideration of this section a substitute was offered and rejected (J.p.339-40) providing that only the governor, lieutenant-governor, and the judges of the supreme court should be subject to impeachment, all other executive,

1. Conn.1818,XII. of Amendments adopted 1856; Mass.1780, III.1; Mich.1850,XII.6; Miss.1868,IV.31; N.Y.1846,VI.11; S.C.1868,VII.4; Tex.1868,V.10.

judicial, and ministerial officers to be subject to indictment and punishment according to law. Three amendments were adopted (J.p.340-41) changing the judicial officers included in the original report to only the judges of the supreme court, circuit court, and St. Louis Court of Appeals, adding the superintendent of public schools to the list of officials liable to impeachment and the "habit of drunkenness" to the causes. The section was then adopted by the convention (J.p.341).

The Missouri constitution of 1865 and of 1820 contained an exact prototype of the above section as it was originally reported to the convention except that 'misdemeanor in office' was the only cause stated.¹ This was probably used largely as a model by the committee on the judicial department in framing the section.

Of the thirty-six other state constitutions under consideration all except twelve had substantially the same provision with respect to impeachment.²

Section two of article seven of the constitution as adopted in 1875 provided the procedure in trials of impeachment that should be followed by the two houses of the legislature and set the extent to which judgment may go as being "removal from office and disqualification to hold any office of honor, profit, or trust under this State".

1. Mo.1820,III.29; 1865,VII.1.

2. Ark.1874,XV.1; Cal.1849,IV.19; Conn.1818,IX.3; Del.1831,V.2; Fla.1868,V.28; Ill.1870,V.15; Kan.1859,II.28; Ky.1850,V.3; La.1868,96; Me.1820,IX.5; Mich.1850,XII.1; Minn.1858,XIII.1; Miss.1868,IV.28; Neb.1875,V.5; N.J.1844,V.11; N.Y.1846,VI.1; O.1851,II.24; R.I.1842,XI.3; S.C.1868,VII.3; Tex.1868,VIII.2; Vt.1793,II.24; Va.1870,V.16; Wis.1848,VII.1.

This was adopted by the convention without change and was, in all probability, copied from the previous constitutions of Missouri, both of which contained substantially the same section.³

Fifteen of the thirty-six other states had substantially the same provision in their constitutions.⁴ Rhode Island and South Carolina differed only in that they provided that judgment should extend only to removal from office.⁵

Article ten dealing with revenue and taxation contain three sections which because of their relation to certain officers of the executive department, especially the treasurer, demand consideration.

Section fifteen provides for the deposit of all public funds in the State treasury by the "treasurer to the credit of the State for the benefit of the funds to which they respectively belong, in such bank or banks as he may, from time to time, with the approval of the governor and attorney-general, select, the said bank or banks giving security, satisfactory to the governor and attorney-general, for the safe keeping and payment of such deposit, when demanded by the State treasurer on his check." It also provided that disbursements be made by the treasurer only upon warrants drawn by the State auditor.

This section was adopted by the convention (J.p.500)

3. Mo.1820,III.29; 1865,VII.2.

4. Ark.1874,XV.1; Cal.1849,IV.19; Conn.1818,IX.3; Del.1831,V.2; Fla.1868,V.28; Kan.1859,II.28; Ky.1850,V.3; La.1868,97; Minn.1858,XIII.1; Miss.1868,IV.30; Nev.1864,VII.2; N.Y.1846,VI.1; O.1851,II.24; Va.1870,V.16; Wis.1848,VII.1.

5. R.I.1842,XI.3; S.C.1868,VII.3.

as reported by the committee on revenue and taxation (J.p.411) except for two minor amendments of phraseology which made no substantial change (J.p.499).

No similar section was to be found in the Missouri constitution of 1820 or of 1865, neither was there any model for it in any of the thirty-six other state constitutions under consideration.

Section sixteen regulating the treasurer's accounts and quarterly statements provides that he shall "keep a separate account of the funds, and the number and amount of warrants received, and from whom; and shall publish in such manner as the governor may designate, quarterly statements, showing the amount of state moneys and where the same are kept or deposited."

The convention adopted this section (J.p.503) as reported by the committee on revenue and taxation (J.p.412) except that the original report provided for monthly instead of quarterly reports.

No similar section was contained in the Missouri constitution of 1820 or of 1865.

Among the other thirty-six states four had sections in their constitutions substantially the same as the one here under consideration.¹

Section eighteen provides for a State board of equalization and makes the governor, state auditor, state treasurer, secretary of state, and attorney-general ex officio the members of the board. The duty imposed upon such board

1. Conn.1818,IV.21; Md.1867,II.18; Minn.1858,IX.11; N.H.1792,II.55.

was "to adjust and equalize the valuation of real and personal property among the several counties in the State, and to perform, such other duties as are or may be prescribed by law."

As originally reported by the committee on revenue and taxation (J.p.412) this section provided for such board as might be authorized by the general assembly and appointed by the governor. Three substitutes were offered, providing - to make the board the state senators, to have the members elected by the voters instead of appointed by the governor, to let the governor, attorney-general, secretary of state, state auditor, and state treasurer constitute the board - all of which were rejected (J.p.504-506). Finally a substitute providing for their election by districts instead of appointment was adopted by the convention (J.p.508).

After being reported in this final form by the committee on revision a motion to reconsider this section was carried (J.Sup.July 31.p.6.). A proposed substitute to make the board appointive by the governor and the senate instead of elective was rejected (J.Sup.July 31.p.6). Another providing that the board should consist of one half the state senators, selected from alternate districts was also rejected. Finally a proposal to make the board consist of the governor, state auditor, state treasurer, secretary of state, and attorney-general was adopted by the convention (J.Sup.July 31 p.8) which gave the section its present form.

No section similar to the one under discussion was contained in either of Missouri's previous constitutions; nor was there any counterpart in any of the thirty-six other

state constitutions under consideration.

Article eleven dealing with education contains sections placing the supervision of the educational system of the State under the control of officers of the executive department and thus meriting consideration in this discussion.

Section four places the supervision of the public school system in the hands of a board of education of which the state superintendent of public schools is president. The other members of the board are the governor, secretary of state, and attorney-general.

As reported to the convention (J.p.393) by the committee on education, the president of the State university was included as a member instead of the secretary of state, but he was to have no vote in any proceedings of the board. By amendments the secretary of state was substituted for the president of the State university as the fourth member of the board, and with the same power of voting as the other members (J.p.452-453).

The Missouri constitutions of 1865 contained a section substantially the same as this except that the governor was not made a member of the board.¹ No similar section was contained in the constitution of 1820.

Of the thirty-six other state constitutions under consideration ten had some such provision as section four here discussed. Four of these merely provided for a state superintendent of public schools to have general supervision of education.² The other six had substantially the same

1. Mo.1865, IX.3.

2. Fla.1868, VIII.7; La.1868, 137; Mich.1850, XIII.1; Penn.1873, IV.20.

as the Missouri constitution, there being some slight variation as to the officials who were members of the board.³ Iowa alone of these latter states had such a provision prior to 1865 and may have been the model for this section as contained in the Missouri constitution of that date.

Section five of this article deals with the maintenance of the State university and provides for its government by a board of nine curators to be appointed by the governor, by and with the advice and consent of the senate.

As originally reported by the committee on education (J.p.393) the superintendent of public schools was to be ex officio a member of the board of curators, but without any right to vote. By amendment the reference to the state superintendent was stricken out, and the section was then adopted by the convention in its present form (J.p.459).

No section similar to this one was contained in either the Missouri constitution of 1865 or of 1820. Neither was there any such section in any of the thirty-six other state constitutions under consideration.

Article thirteen dealing with the militia, in section three provided that in case any company or regiment of the militia shall fail to elect their officers as prescribed by law the governor may appoint such officers.

This provision was inserted by the committee on revision (J.sup.July 29,p.28) and adopted by the convention without change (J.sup.July 29,p.31). It is an exact copy

3. Ala.1867,XI.1; Ia.1857,IX.1; Neb.1875,VIII.1; N.C.1868, IX.7; Va.1870,VIII.2; Wis.1848,X.7.

from the Missouri constitution of 1865,¹ no such provision, however, was contained in that of 1820.

Only one other state constitution, that of New Jersey², contained such a provision. It was perhaps the model for this section as originally framed by the Missouri convention of 1865.

Section six of this article provides that the "governor shall appoint the adjutant-general, quartermaster-general, and his other staff officers. He shall also, with the advice and consent of the senate, appoint all major-generals and brigadier-generals."

This provision was also inserted by the committee on revision (J.sup.July 29,p.28) and was adopted by the convention without change (J.sup.July 29,p.31).

No similar provision was contained in the Missouri constitution either of 1865. That of 1820 contained a provision for the "adjutant-general and all others not otherwise provided for".³

Among the thirty-six other state constitutions under consideration six had sections practically identical with the one here discussed.⁴ Seven contained provisions for the governor's appointment of the adjutant-general, quartermaster-general, and other staff officers.⁵

Alabama and New Jersey were probably most influential

1. Mo.1865,X.3.

2. N.J.1844,VII.7.

3. Mo.1820,IX.3.

4. Ala.1867,X.5; Fla.1868,VI.18,&XII.3; La.1868,145; Miss.1868,IX.6&7; N.J.1844,VII.5; N.Y.1846,XI.3.

5. Ind.1851,XII.2; Ky.1850,VII.2; Md.1867,IX.2; N.H.1792,II.47; O.1851,IX.3; Ore.1859,X.3; Tenn.1870,VIII.2.

in the framing of this section.

The final section for consideration is that dealing with the oath of office, section six of article fourteen on miscellaneous matters. It provides as follows: "All officers, both civil and military, under the authority of this State, shall, before entering on the duties of their respective offices, take and subscribe an oath, or affirmation, to support the constitution of the United States and of this State, and to demean themselves faithfully in office."

This section was adopted by the convention without change (J.Sup.July 30,p.11) as reported by the committee on miscellaneous matters (J.Sup.July 29,p.29).

No similar provision was included in the Missouri constitution, either of 1865 or of 1820.

Of the thirty-six other states in the union in 1875, all except five¹ had substantially the same provision as that here under consideration.²

1. Kan., N.J., Ohio, W.Va., Wis.

2. Ala.1867,XV.1; Ark.1874,XIX.20; Cal.1849,XI.3; Conn. 1818,X.1; Del.1831,VIII.1; Fla.1868,XVII.10; Ga.1868,IV.5; Ill.1870,V.25; Ind.1851,XV.4; Ia.1857,XI.5; Ky.1850,VIII.1; La.1868,100; Me.1820,IX.1; Md.1867,I.6; Mass.1780,VI.1; Mich. 1850,XVIII.1; Minn.1858,V.8; Miss.1868,XII.26; Neb.1875,XIV.1; Nev.1864,XV.2; N.H.1792,84; N.Y.1846,XII.1; N.C.1868,III.4; Ore.1859,XV.7; Penn.1873,VII.1; R.I.1842,IX.3; S.C.1868,III.201; Tenn.1870,X.1; Tex.1868,XII.1; Vt.1793,II.29; Va.1870,III.6.

CONCLUSION

From the foregoing discussion it may be noted that the fundamental organization of the executive department of the government in Missouri is, on the whole, very similar to that (which it occupies) in other state governments of the time. The Constitutional Convention provided for this branch of the government in sections whose provisions differ in few respects from those to be found in various other constitutions in existence in 1875.

As compared with the constitution of Missouri of 1865 which it replaced, there were few significant differences. In preparing an address to accompany the constitution when placed before the voters a committee of the convention set forth the most important differences between the old constitution and the proposed new constitution. Their reference to the executive department was as follows:

"The term of office of the governor and other state officers is lengthened from two to four years.

"As an additional check upon ill-advised legislation, a majority of two-thirds of all members of each house is required to pass a bill over the veto of the governor. It is also provided that when a bill contains several items of appropriation of money, the governor may veto one or more of said items and approve the remainder of the bill." (J. Sup. Aug. 2, p. 10).

In the constitution of 1865, a simple majority was

sufficient to overcome the governor's veto, and he had no power to veto special items of appropriation. This latter provision was included in the constitution to remedy the existing practice, by which appropriation bills were very frequently passed near the close of the legislative session and the governor was then compelled to approve improper items of appropriations or risk an extra session by a veto of the entire bill. As was indicated in the discussion of section thirteen of Article V., several states had provisions similar to this one.

These changes, it will be noted, are all in accordance with the tendency then developing of increasing the power and importance of the executive.

It is difficult to summarize the influence of the various state constitutions upon the framing of the Missouri constitution. This difficulty is due to the fact that verbatim copies from other constitutions are the exception rather than the general rule, and where they are found often more than one constitution contains the section. Also where sections are substantially the same they are to be found in similar form in a number of constitutions. It is thus often impossible to be absolutely sure what constitution may have been of most influence in framing a certain section. In such cases, the probability is indicated.

On the whole, it seems quite certain that the constitutions of Illinois and Kentucky were most influential, next to these in similarity to the Missouri constitution were those of Nebraska and North Carolina. A number of constitutions had a very noticeable influence,- those of

Alabama, Louisiana, Michigan, Minnesota, Mississippi, New Jersey, Virginia, West Virginia, and Wisconsin. Among the other state constitutions considerable similarity with respect to certain sections of the Missouri constitution may be found which would seem to indicate that the members of the Missouri Constitutional Convention gave rather close consideration to the state constitutions then in effect.

It is interesting to note that the constitutions of the same two states,- Illinois and Kentucky,- which influenced most noticeably the framing of the part of the Missouri constitution of 1875 dealing with the executive department, were also most influential in the framing of the article on the executive in the first constitution of Missouri in 1820. Those in existence at that time were, of course, of a much earlier date than those which influenced the Missouri Constitution of 1875.¹

There are some provisions concerning the executive already referred to in this paper, which were unlike anything contained in most, or all, of the state constitutions in existence in 1875. It might be interesting to note a few of these provisions. Some of these may be provided for by statute, though no other state has included them in their constitution.

Only one other state required the governor to be as much as thirty-five years of age. Most states did not set the citizenship qualification so high, and none other definitely specified that the incumbent must be a male, though

1. Shoemaker, "First Constitution of Missouri", p.137.

in restricting it to voters it amounted to the same thing at that time.

No other state specified that the governor should distribute the laws, or that he be a conservator of the peace. No other state gave the governor with two-thirds of the legislature the power to remove judges for "inefficiency due to illness or mental inability" but merely gave the power to remove for offenses not sufficient to justify impeachment.

A number of minor provisions had no exact counterpart in any other state constitutions of the time but provisions similar were to be found.

On the whole, the provisions relating to the executive may be said to have been in accordance with the tendency of increasing the power of the executive.

There have been many recent plans formulated in various states for giving the governor very much greater power, though none have been incorporated in a state constitution. Statutory provisions have, however, done much to accomplish the same result.

Although there is much agitation at present for a new constitution in Missouri, the one framed by the convention of 1875 has operated with at least a fair degree of success for nearly a half century.

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EXPLANATION OF REFERENCES.

All references to state constitutions are made after the following plan: First, the abbreviation of the state; second, the date of adoption of the constitution referred to; third, the Roman numeral refers to the article of the constitution; and fourth, the figure designates the section of that article,- e.g., Ga.1868,V.12 means, the constitution of Georgia adopted in the year 1868, Article V., section 12.

References to the journal of the constitutional convention are made as follows: J.p.126, meaning page 126 of the journal. The supplement to the journal, which contains only the proceedings of the last four days of the convention, is paged separately for each day. References to it are made as follows: (J.Sup.July 29,p.10) meaning page ten of that part of the journal supplement devoted to the proceedings of July 29th.

TABLE AND DATE OF STATE CONSTITUTIONS EXISTING IN 1875.

State	Date of Adoption
Alabama	1867
Arkansas	1874
California	1849
Connecticut	1818
Delaware	1831
Florida	1868
Georgia	1868
Illinois	1870
Indiana	1851
Iowa	1857
Kansas	1859
Kentucky	1850
Louisiana	1868
Maine	1820
Maryland	1867
Massachusetts	1780
Michigan	1850
Minnesota	1858
Mississippi	1868
Missouri	1865
Nebraska	1875
Nevada	1864
New Hampshire	1792
New Jersey	1844
New York	1846
North Carolina	1868

TABLE AND DATE OF STATE CONSTITUTIONS EXISTING IN 1875.
(Cont'd.)

State	Date of Adoption
Ohio	1851
Oregon	1859
Pennsylvania	1873
Rhode Island	1842
South Carolina	1868
Tennessee	1870
Texas	1868
Vermont	1793
Virginia	1870
West Virginia	1872
Wisconsin	1848

NAMES OF MEMBERS OF
MISSOURI'S CONSTITUTIONAL CONVENTION OF 1875.

Waldo P. Johnson, President of the Convention, and
 Representative from the County of St. Clair.

N.W. Watkins, Vice-President of the Convention, and
 Representative from the County of Scott.

From the County of Atchison
 Malcolm McKillop

From the County of Bollinger
 J.H. Rider

From the County of Boone
 John Fleming Rucker. William F. Switzler

From the County of Buchannon.
 James C. Roberts

From the County of Cape Girardeau
 Lowndes Henry Davis

From the County of Carroll
 John B. Hale

From the County of Chariton
 Charles Hammond

From the County of Clay
 DeWitt C. Allen

From the County of Cole
 Horrace B. Johnson Alfred M. Lay

From the County of Cooper
 Washington Adams

From the County of DeKalb.
 Henry Boone

From the County of Dent
 John Hyer

From the County of Franklin
 F. W. B. Crews

From the County of Gasconade
 Charles D. Eitzen

From the County of Greene
 Charles B. McAfee

NAMES OF MEMBERS OF
MISSOURI'S CONSTITUTIONAL CONVENTION OF 1875.
(Cont'd)

From the County of Grundy
John H. Shanklin

From the County of Howard
Thomas Shackelford

From the County of Howell
James Henry Maxey

From the County of Iron
John F. T. Edwards

From the County of Jackson
William Christman Francis M. Block

From the County of Jasper
John H. Taylor

From the County of Jefferson
Phillip Pipkin

From the County of Johnson
Edmund A. Nickerson

From the County of Knox
Louis F. Catty

From the County of Laclede
George W. Bradfield

From the County of Lafayette
Henry C. Wallace

From the County of Lincoln
Archibald V. McKee

From the County of Macon
Benjamin Robert Dysart

From the County of Marion
Edward McCain

From the County of Monroe
A. M. Alexander

From the County of Newton
B. F. Massey

From the County of Pemiscott
George W. Carleton

NAMES OF MEMBERS OF
MISSOURI'S CONSTITUTIONAL CONVENTION OF 1875.
(Cont'd)

From the County of Pike
 Neil Cammeron Hardin

From the County of Platte
 Elijah Hise Norton

From the County of Polk
 John W. Ross

From the County of Ralls
 William Priest

From the County of Randolph
 John Ray

From the County of Ray
 James F. Farris

From the County of Ripley
 Pinckney Mabrey

From the County of St. Charles
 Henry Clay Lackland

From the County of St. Francois
 Edmund V. Conway

From the County of St. Louis	
James O. Broadhead	Henry Thomas Mudd
Henry C. Brockmeyer	George H. Shields
James C. Edwards	Henry J. Spaunhorst
Thomas Tasker Gantt	Amos Riley Taylor
Louis Gottschalk	Albert Todd
Nicholas A. Morten	

From the County of Saline
 William H. Letcher

From the County of Schuyler
 J. R. Rippey

From the County of Scotland
 L. J. Wagner

From the County of Sullivan
 W. Halliburton

From the County of Vernon
 Samuel R. Crockett

From the County of Webster
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