

# SIXTY-FIFTH DAY

## MORNING SESSION.

TUESDAY, April 30, 1912.

The Convention met pursuant to adjournment, was called to order by the president, and was opened with prayer by the Rev. A. J. Wagner, of Columbus, Ohio.

The journal of yesterday was read and approved.

Mr. COLTON: I introduce a resolution.

The PRESIDENT: By unanimous consent the resolution may be introduced.

Mr. COLTON: I introduce this resolution because Judge Worthington, who is a member of this committee on Arrangement and Phraseology, is ill at his home and will probably be unable to serve, and we would like some one in his place.

The resolution was read as follows:

Resolution No. 112:

*Resolved*, That the president is hereby authorized to appoint one additional member of the committee on Arrangement and Phraseology.

Mr. COLTON: I move a suspension of the rules, and that the resolution be placed on its passage at once.

Mr. PECK: I saw Judge Worthington's law partner yesterday, and he said that the judge was quite ill.

By unanimous consent the rules were suspended and the resolution was considered at once.

The resolution was adopted.

Mr. PECK: I move that the debate on the pending proposal be limited to fifteen minutes to each person on the main question, and five minutes to each speaker on each amendment.

Mr. STEVENS: Last Thursday Proposal No. 25 was up for consideration and the minority report was disagreed to. The roll call disclosed the fact that I voted with the prevailing side, and in view of the fact that at that time thirty-five or forty members were absent, and that there was a spirit of inattention abroad in the Convention, I do not believe the subject had a fair consideration, and I therefore move its reconsideration. It was Mr. Bowdle's divorce proposal.

Mr. DOTY: The member making the motion at this time saves the situation so far as the proposal is concerned, and as we now have a program that we are trying to work to I therefore move that further consideration of the proposal be postponed until tomorrow and that it be placed on the calendar.

The motion was carried.

The PRESIDENT: The president will announce the appointment of the member from Allen [Mr. HALFHILL] as the new member on the committee on Phraseology. The question now is on the adoption of the amendment offered by the member from Mahoning to Proposal No. 272.

Mr. DOTY: And on that I demand a division when it comes to a vote.

Mr. LAMPSON: I would like to have the secretary read that amendment.

The amendment was again read.

Mr. ANDERSON: Gentlemen: If you will examine

Proposal No. 272 you will find that municipalities have a right to make all laws of all kinds except and save only when the legislature in express terms prohibits the municipality from making such laws.

Mr. SMITH, of Hamilton: Will the gentleman yield to a question?

Mr. ANDERSON: Yes.

Mr. SMITH, of Hamilton: Does not the member know that under this no municipality can fall short of what the statute requires, but that it only has power to go beyond the statute, that only when it is additional restriction is the ordinance legal?

Mr. ANDERSON: All I know is that the section reads as follows:

Section 3. Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as the welfare of the state as a whole; and no such regulations shall by reason of requirements therein, in addition to those fixed by law, be deemed in conflict therewith unless the general assembly, by general law, affecting the welfare of the state as a whole, shall specifically deny all municipalities the right to act thereon.

In other words, if this proposal becomes a part of the constitution, the present order in things pertaining to the police power of the state which the municipality can not now exercise, except by authority of the general assembly, will be reversed, and the municipality will have the superior and supreme right to act in all things pertaining to the police power unless it is specially taken away from it, or unless the legislature in express terms has prohibited all municipalities from acting on that particular thing. There is no doubt at all that the question of the regulation of the liquor traffic comes within the so-called police power. Therefore, if this becomes the organic law of the state of Ohio and the legislature fails to prohibit the municipalities from acting in that particular, then the municipalities can make laws affecting that subject as such municipal authorities or lawmaking bodies see fit.

Mr. KING: Would they have the right to repeal the state law on the same subject having general operation throughout the state affecting all municipalities?

Mr. ANDERSON: In reference to the police power, I am very much of the opinion, and I am not alone of that opinion, for I have not been responsible for it, but it is the opinion of some of the best legal minds in the state that have passed upon this question, that in reference to the police power the municipality would have full right to act, unless inhibited by the general assembly, and that inhibition would have to be clear and certain, because these advocates of home rule for cities want that very thing. The thing they most complain of is that the city as such has no right to make any laws or exercise any power unless the legislature clearly gives them that right. They want clearly to reverse the proposal, and they want the right to make all laws and to do all things that the municipality wants to do

## Municipal Home Rule.

under the police regulations, save only as the legislature has prohibited. Now, say that Proposal No. 151 is ratified and this policy is ratified, then what is the situation? Each municipality can regulate the liquor traffic as the officers of the lawmaking body of that municipality may see fit, and they can continue to do so until the legislature in clear and express terms prohibits the municipality from acting. Therefore, what would we have? We would have Proposal No. 151 null and void in reference to every municipality in the state of Ohio unless the legislature sees fit to put it in power and in working order with reference to that municipality by saying to each municipality that in all things with reference to intoxicating beverages the state reserves the right to act.

The PRESIDENT: The time of the gentleman has expired.

Mr. WOODS: I move that his time be extended.

Mr. DOTY: That is the beginning of the end.

Mr. ANDERSON: I do not care for any more time. I would suggest that one section of the initiative and referendum proposal should be read in connection with section 3 of Proposal No. 272. Please do that, and it will give you food for thought. Section 1f should be read with Proposal No. 272.

Mr. SMITH, of Hamilton: Mr. President and Gentlemen of the Convention: If the Anderson amendment which strikes at the essence of home rule shall prevail and no substitute is provided the municipalities in Ohio will have no measure of home rule. The committee put in those words "affecting the welfare of the state as a whole" for this reason: If any police, sanitary or other regulation passed by a city may be limited by state law, we are no further along the road to home rule than today. If any act of the city can be rendered null and void by a law of the state, where are we? Only where we are today.

Mr. ANDERSON: What in your opinion would be the effect, provided this were the law, and Proposal No. 151 also the law, and the legislature failed to inhibit the municipalities from making laws in reference to the liquor traffic? Would it nullify Proposal No. 151?

Mr. SMITH, of Hamilton: It would have no effect whatever. The only effect of the clause you refer to, that the state is required to specifically deny the municipalities the right to act, only applies, in lines 19 and 20, to those provisions which the city council may pass in addition to those passed by the general law. Take the automobile city ordinance. The state may have a general law which provides that automobiles cannot go faster than six miles an hour. Suppose the city comes along and provides by ordinance that they cannot go faster than four miles an hour. Under this proposal the city has the right to so legislate. They increase the limitation on automobile speed which the state has provided, and so, unless the legislature says by general law specifically that no city in the state has a right to do this, the city ordinance controls.

Now take the Anderson liquor proposal. The state may pass a law that there shall be but two saloons on one block. Suppose the city says that there can be but one saloon on one block. The state cannot interfere with that limitation unless the state says specifically or

denies specifically all municipalities the right to act on the question. We want in Ohio to be as far along the road of home rule as California, and unless we have these or other qualifying words we are nowhere. For example, the city cannot by city ordinance establish a police force or a fire department, cannot regulate the width or grade of a street and cannot say where the trees shall be planted, if you take those words out, because the state by general law can say cities shall have their streets just so wide, and cities shall have the tree-boxes so far from the sidewalk, and nothing whatever that the city can do is safe from interference by the state unless you put in the words that the municipality shall not be interfered with by general laws unless those general laws are on a matter affecting the welfare of the state as a whole.

Take the great health regulations—the flow and pollution of streams, for instance, and the height of the buildings and the number of cubic feet of air space in tenement houses. I say the state should not have any right to interfere with those matters peculiar to certain localities. The cities ought to have a chance to work out their own problems in their own way if it does not interfere with the general welfare of the state.

Why are we behind the great European cities in the matter of municipal government? Is it because democracy has fallen down in our cities? No, it is because the city is not a democracy; because we have never had democracy in American cities. We have never had representative government in our cities in Ohio. We have not been free from outside domination. Take Cleveland or Springfield or Cincinnati. They want something that they think will be a reform in their local government, and the municipal bosses of Cincinnati and Cleveland, and the smaller bosses in the state, come here to the legislature and so change the reform measure that it is really no reform. We in Ohio cities are not allowed to make progress; we are not allowed to solve our own problems; we are hampered by the state legislature. I tell you the state of Ohio and all the other states have treated their cities much as Great Britain treated the colonies before the revolution. We want and need some measure of home rule. I am afraid this won't do much. I am afraid the courts may say to cities you can't legislate on this or that matter because this is a matter that concerns the welfare of the state as a whole. It is hard to think of something that does not concern the welfare of the state as a whole, but your committee felt that those words ought to go in to be a notice or warning to the court, so that when they come to interpret it they will say, "We think the Convention meant that the city should have some freedom." I hope, therefore, you will give us this much home rule. I want the members of this Convention to see justice done to the cities. The farmer is just as much interested in good city government in the cities as the citizens of cities themselves are. The good of the cities is the good of the whole state. I know the bugaboo of Wet vs. Dry is raised. In the committee there was a proposition made to insert after "affecting the welfare of the state as a whole" the words "in application, in effect, and in execution," but the committee thought that would be going too far, and that it would raise a great wet and dry fight on this floor. I do not know what the courts will say, but I

## Municipal Home Rule.

want to give the courts a chance to say that the cities have some right to control themselves.

Mr. ANDERSON: These words "affecting the welfare of the state as a whole" were not in the original draft of the home rule proposal?

Mr. SMITH, of Hamilton: I am glad you asked that question. They were in the Worthington proposal.

Mr. ANDERSON: I mean in the Cleveland draft?

Mr. SMITH, of Hamilton: Yes; a similar qualification was in Mr. FitzSimons' draft. The legislature was free to interfere with cities in all matters "except in municipal affairs," and we objected to the words "municipal affairs," because the state of California has had such endless litigation relating to a definition of words similar to these.

Mr. ANDERSON: Is it not a fact that the so-called wet lobby—the gentlemen here representing the wet side—have been insistent on getting that term in?

Mr. SMITH, of Hamilton: What words?

Mr. ANDERSON: "Affecting the welfare of the state as a whole."

Mr. SMITH, of Hamilton: I believe the liquor lobby would like to have the words remain, and every patriotic citizen interested in the welfare of our cities would like to have the words or some other limitation in the proposal.

Mr. ANDERSON: Why do they want them in?

Mr. SMITH, of Hamilton: I assume you refer to the wets again. They may feel they are getting a little more than if the words are not in. I am not going to stand here and say that the courts of the state might not say that with those words in that the city might have a little more freedom, and might say that the city could pass a Sunday baseball ordinance for example. I am not going to say that I know that the courts could not say that cities would have a right to allow outdoor amusements on Sunday with these words in. But what I am afraid of is that without these or similar words in that all local laws, such as Sunday baseball, the regulation of traffic in the streets, the way the streets are built and even the question of determining the different departments that the city may have—I am afraid that the courts may hold that these are all matters that affect the welfare of the state as a whole. But nevertheless, let us try to make some headway in home rule for cities. Let us put the cities of Ohio on a plane with the cities of Europe. Let us place the cities in a position where they may work out their own problems in their own way, where they may reach the goal that they want to reach. Let us put the cities in a position where they are self-governing communities, where they may solve the great and intricate problems of local government for themselves. Let us give them a chance to so manage affairs as to give a square deal to every man, rich and poor; let us make it possible for them to regulate big business and little business, so that every man shall have all those rights and only those rights, shall have all those privileges and only those privileges which in the clear light of truth and justice he ought to have.

Mr. HARRIS, of Hamilton: If my colleague will permit me, I would like to answer the question of the gentleman from Mahoning [Mr. ANDERSON] as to whether the liquor lobby is speaking for these words "affecting the welfare of the state as a whole." If they

are, the liquor lobby has not advised any member of the committee of the fact. No member had the slightest intimation of it, and we would never believe that the liquor lobby has had anything to do with the words "affecting the welfare of the state as a whole." What we did believe was that the liquor interests were very much interested in those four words in the letter from the attorney in Cincinnati of high character to wit, "in their application, operation, effect and execution." We have thought that there was something concealed in those words, and therefore we refused to let them come before this Convention. I make this statement as the best practical evidence of the good faith of the committee.

In reference to section 3, I shall now take the liberty of reading to you from the brief prepared by Professor Hatton and John H. Clarke, both of Cleveland, the latter an attorney whose name needs but to be mentioned to the attorneys in this Convention or elsewhere in the state—to be recognized as a man of great ability and integrity, and we are further informed in the letter from the Municipal League that a half dozen others of the best attorneys in Cleveland and Toledo carefully considered these various sections.

In original section 3 the words "affecting the general welfare of the state," were omitted and they were inserted because in the judgment of Mr. Smith, of the committee, they give us real home rule. The committee feared that a great many statutes might be passed by the legislature under the guise or name of general laws which would bind the municipalities as they have been bound in the past and are bound now.

I read to you from the brief sent down to our committee, with respect to section 3:

Attention has already been called to the fact that the police power is not considered a local function and that there are many other powers, not strictly local in character, which municipalities should be permitted to exercise subject to control by the state. Many such powers are granted to municipalities, by enumeration, in the ordinary statutory municipal code. The intention of the above proposed section is to confer upon municipalities the right to exercise all such powers except where municipal action would come in conflict with state laws, or had been specifically forbidden by general laws.

Mr. ANDERSON: Was not that the point I made, that the municipality had a right to exercise to the full all of those things carrying out the police power unless prohibited by the laws of the state, or unless they came in conflict with the state, but under the wording of section 3 cannot come into conflict with the state laws unless they clearly inhibit?

Mr. HARRIS, of Hamilton: I think you are correct. Let us see if we cannot agree on the general statement that all local police power not particularly denied by the state is clearly within the province of the municipality.

Mr. ANDERSON: But notice, under Proposal No. 272, each municipality has all of the police power that any political subdivision or the state as a unit can exercise. Therefore, the police power of the state becomes local by reason of Proposal No. 272, and there-

## Municipal Home Rule.

fore, according to your wording, unless the general assembly prohibits each municipality from using the police powers, the city has the natural right to use them.

Mr. HARRIS, of Hamilton: Certainly.

Mr. SMITH, of Hamilton: Is it not true that a brief was sent down with the original draft and the limitations were less than in the draft we adopted?

Mr. HARRIS, of Hamilton: Unquestionably. But even taking Mr. Anderson's statement, and there is practically no disagreement between us on that, and assuming that Mr. Anderson's statement is correct, and his interpretation is correct, the moment that the municipality exercises any power which the general assembly thinks beyond the province of the municipality, the general assembly would enact a general law forbidding the municipality from exercising that particular power.

Mr. ANDERSON: Assuming that Proposal No. 151 is the law, if this is passed would not Proposal No. 151 be nullified all over the state of Ohio so far as municipalities are concerned, unless the legislature would act and say to the municipalities, "You shall not exercise police power with reference to selling intoxicating liquors within your borders?"

Mr. HARRIS, of Hamilton: As a layman my legal logic is probably very bad—

Mr. ANDERSON: No, sir; it is not—it is better than that of most of the lawyers.

Mr. HARRIS, of Hamilton: My contention is this: You assume that Proposal No. 151 is adopted by the people, and it then becomes a constitutional provision. Now how in the world can a municipality do something contrary to that constitutional provision, assuming there is a conflict between the two powers, the powers granted in Proposal No. 151 and the powers granted in Proposal No. 272?

Mr. ANDERSON: There will be no conflict for the reason that unless the legislature speaks Proposal No. 151 remains inactive. After the legislature speaks and puts it into life, by designating the power that grants the license, then that part becomes a law of the state, and unless in that law they inhibit municipalities from exercising police powers under Proposal No. 272 each municipality in the state of Ohio will have a right to do as it pleases with reference to the liquor traffic, and it puts up to the next legislature a fight between the Anti Saloon League on one side and the foreign brewer on the other to determine whether the legislature will write that inhibition in or not—

Mr. HARRIS, of Hamilton: That is too hard a nut for me as a layman to crack.

Mr. ANDERSON: And we simply transfer from this Constitutional Convention to the general assembly the right to say whether Proposal No. 151 amounts to the paper that it is written on.

Mr. HARRIS, of Hamilton: According to this draft of Mr. Clarke and of Professor Hatton, I should not think so, but I make that statement with all due deference and humility, for I appreciate the fact that the fine questions of law do not penetrate the layman's mind. Here is what they further say in that brief:

The intention of the above proposed section is to confer upon municipalities the right to exercise all such powers except where municipal action

would come in conflict with state laws, or had been specifically forbidden by general laws. The language used is substantially that of the California constitution (art XI, sec. 11), with the addition of a provision giving a constitutional status of the interpretation placed upon the California grant by the courts of that state. Should this action be written into the constitution of Ohio any municipality in the state could make all necessary police and other regulations without the power to do so having been conferred by statute. As to these powers, it would reverse the presumption which now lies against the municipality in any case where a specific grant of a particular power is not found in the municipal code. It would introduce the principle which has so long been applied on the continent of Europe, that cities are granted full power of action in all cases not denied.

Mr. ANDERSON: Of course you know that the cities of Europe have absolute control over their municipal affairs?

Mr. HARRIS, of Hamilton: I think the cities of the United States ought to have the same power.

Mr. ANDERSON: Is not that true of the cities of Europe?

Mr. HARRIS, of Hamilton: Yes.

Mr. ANDERSON: According to those gentlemen, you would have the same conditions here as in Europe. I agree that this is a very good brief.

Mr. HARRIS, of Hamilton [continuing the reading]:

This grant of power to cities would not preclude state action on the same subjects. Indeed, statutes would supersede municipal regulations when in conflict therewith. Conflict could not be held to exist, however, if the municipal regulation merely went beyond that required by the state unless the state had denied to municipalities the right to act on the particular subject involved.

That covers the point made by Mr. Smith, of Hamilton, that the state might pass a law saying that no buildings should be more than one hundred feet high, and the city might come along and say, "We don't want any building one hundred feet high; we won't allow the buildings to be any higher than sixty feet," and if this particular inhibition is less than the inhibition by the state, then under this proposed section it would be legal for the municipalities to so regulate this and kindred matters.

Mr. LAMPSON: As a matter of fact if it is not intended at all by section 3 to give municipalities the power to nullify the local option laws, what possible objection can there be to that part of Mr. Anderson's proposed amendment, which limits the exercise of that power?

Mr. HARRIS, of Hamilton: I would consider it criminal to introduce into this home rule proposition any word or words relating to the liquor traffic.

Mr. LAMPSON: But that would not affect the home rule proposition at all upon any subject other than the liquor subject.

Mr. HARRIS, of Hamilton: Whether it affects the home rule proposition or not, I would still consider it

## Municipal Home Rule.

criminal, because in my judgment there is not a word in the present home rule proposition which has any bearing whatsoever on the liquor question.

Mr. LAMPSON: But that is the bone of contention.

Mr. HARRIS, of Hamilton: I know the bone of contention is on those words "affecting the welfare of the state as a whole," and you must always bear in mind that while I am pretty positive in some of my opinions I have the knowledge that I am only giving an opinion of a layman, but lawyers on the other side, who are dry as summer's dust, do not hesitate to say to me that in their judgment the phrase would not have the effect charged by the drys. Of course, I recognize the right of the Convention to strike those words from the proposal and so end the whole controversy, but I do not think it is wise for the Convention to do so. But what I am trying to keep out of this discussion is the bitterness that the mere raising of the ghost of the liquor question seems unconsciously and unintentionally to invite.

Mr. LAMPSON: Do you not think that words should be used which would dispose of the ghost at once and remove all objection?

Mr. HARRIS, of Hamilton: The point I am making is that the words "affecting the general welfare of the state," are words which can be used and are used properly to dispose of that ghost. If we can possibly do it, I appeal to the Convention to leave out all reference to the liquor fight. Do not let the wide divergence on the liquor question appear in this proposal, so that this can go out from this Convention, signed by delegates representing fifty-three municipalities and representing two million people, as a proposal not from the Municipal Government committee especially, but from all the people who have sent us here, as well as representing the mature judgment and wisdom of the entire Convention on this proposal.

Mr. LAMPSON: Suppose you leave the words in there, and still adopt something like the Anderson proviso, which makes it perfectly clear that it is not intended and does not in fact grant the power to municipalities to nullify local option or other temperance laws of the state. Would not that greatly strengthen your home rule proposal and get you almost unanimous support?

Mr. HARRIS, of Hamilton: I do not think so. I object strenuously to the liquor fight, either in favor of the wets or the drys, being brought in here and incorporated in our proposal. For three months your committee refused to let the fight creep in. There were two proposals covering everything that we thought was proper to be covered in the municipal scheme. There were dozens of proposals which had merit, but we finally considered two, one from Cleveland and one from Cincinnati. The mayor of Cleveland asked me to introduce their proposal. Cincinnati thought that I should bear the authorship of theirs. I refused to do either, because I did not want to lend the influence of my official character as chairman to either proposal, but as chairman of the committee I did use my influence to have the committee consider only the Cleveland proposal, and swept aside the natural pride of citizenship of having Cincinnati given the credit for the proposal on municipal home rule, a proposal which I think your children's children will glory in and refer to the fact with pride that one of their parents or grandparents took part in the

Convention which gave home rule to the cities and villages of the state of Ohio. I surrendered that personal pride because I knew that one of the gentlemen very active in municipal affairs happened to be closely identified with the liquor interests and an attorney for the liquor interests, and fearful that this fact might have some weight in the Convention and that the impression would be that perhaps the liquor interests were gaining some foothold deftly, I refused to consider the Cincinnati proposal and urged the committee to build on the Cleveland proposal.

Mr. LAMPSON: Does the gentleman not believe as much in state rights as he does in home rule?

Mr. HARRIS, of Hamilton: I am a democrat, and I believe a great deal in state rights. I believe in it so much that throughout this proposal we have made the state all powerful in things concerning the state, and the municipality all powerful in things concerning the city and village.

Mr. LAMPSON: Would not the gentleman be willing to make it so certain that the right of the city to home rule does not nullify the right of the state over this matter that we can all see it?

Mr. WINN: I rise to a point of order. The member from Hamilton [Mr. HARRIS] has spoken twenty minutes. I want to know this for the benefit of future guidance—

Mr. HARRIS, of Hamilton: As chairman of the committee I was under the impression that the limit did not apply to me.

Mr. WINN: I asked the president for information.

The PRESIDENT: The president was afraid if he enforced the rule it would be repealed.

Mr. KERR: I move that the gentleman's time be extended.

The motion was seconded.

Mr. DOTY: How long?

Mr. KERR: Fifteen minutes.

Mr. DOTY: I think the member's time should be extended, because he has been laboring under the disadvantage of having many questions put to him.

Mr. HARRIS, of Ashtabula: I move to amend by giving ten minutes.

Mr. KERR: I accept that.

A vote being taken the time of the delegate from Hamilton [Mr. HARRIS] was extended ten minutes.

Mr. ELSON: You acknowledge that you do not wish a liquor ghost to be raised on this question, and you also acknowledge that there is no intention on the part of the committee to nullify Proposal No. 151 by this proposal. Is that true?

Mr. HARRIS, of Hamilton: It is.

Mr. ELSON: Then why should we not prevent all possibility of raising the liquor ghost by inserting at the end of the paragraph these words that the gentleman from Mahoning [Mr. ANDERSON] has put in? Let me ask this question: In what possible way could it be criminal to put in such words?

Mr. HARRIS, of Hamilton: First, the municipal home rule proposal cannot be carried in this state except by the vote of the large cities. Second, by the insertion of any words in this proposal referring to the liquor question, even though there be no merit in their contention, the wets throughout the state, dominant in the large cities,

## Municipal Home Rule.

will destroy this proposal, and I do not propose to be placed in any such position.

Mr. ANDERSON: Then it is your idea that by making no change the wets over the state will believe that Proposal No. 151 is nullified and will vote for this?

Mr. HARRIS, of Hamilton: That is a presumption on your part which I specifically and emphatically deny.

Mr. ANDERSON: Do you not know that Professor Knight said that he did not believe the words "affecting the welfare of the state as a whole" added anything to this proposal?

Mr. HARRIS, of Hamilton: I have a great deal of respect for Professor Knight's construction of law, but Professor Knight took care to say that he was speaking for himself alone.

Mr. ANDERSON: Did you not say that the words "affecting the welfare of the state as a whole" were put in at the last moment, and it was not in the original draft from Cleveland, and that you didn't care much about it?

Mr. HARRIS, of Ashtabula: That is partly accurate. Of course, during the discussion of that question, in section 7 the words "affecting the welfare of the state as a whole" were passed upon. It was discussed by Judge Worthington, Professor Knight and Judge Rockel. I remember the discussion back and forth, and the effect of those words was weighed in an apothecary's scale by Professor Knight, who is here to answer whether I have stated the fact correctly. In section 3 the words "affecting the welfare of the state as a whole" were, as you correctly state, put in at the last meeting, because we were afraid to take the phrasing from the original Cleveland proposal, but Mr. Smith, of Hamilton, insisted as the words were agreed on in section 7, they could and ought properly to go into the other section in question.

Mr. ANDERSON: Did not some of the members refuse to sign it unless that was put in?

Mr. HARRIS, of Hamilton: No, sir; one of the members refused to sign, but there was no objection to those words. I want the Convention to bear in mind that the words "affecting the welfare of the state as a whole" were weighed by Professor Knight and Judge Worthington as carefully as gold dust is weighed. The words that we refused to insert, because we did not grasp the full meaning of them, were "in their application, operation, execution and effect," which were to follow "affecting the welfare of the state as a whole," and one of the members refused to sign because we would not put in those four words.

Mr. DOTY: If those words had been weighed in the apothecary's scales word for word by experts like Professor Knight and Judge Rockel and Judge Worthington, why is it that their meaning cannot be explained in such simple terms that even an obtuse person, such as I am, can understand it? I understand that I am pretty dumb, but you might at least try to tell me what they mean.

Mr. HARRIS, of Hamilton: The committee are responsible only for furnishing you the words. They are not expected to furnish you with the brains to understand them. I would like to finish. My time is brief—

Mr. DOTY: I would like to have you answer one further question.

Mr. HARRIS, of Hamilton: I have not the time. I want to finish this [continuing reading from the brief]:

This is a valuable agreement, especially in matters of police regulation. In legislation of this character it is the duty of the general assembly to enact laws, general in form, which will apply to all parts and sections of the state. In doing so it can do little more than set a standard below which no locality must fall. To enact a general police code which would provide the requisite regulation and protection for communities widely different in character and population is an obvious impossibility. The true solution of this difficult problem is found in the section proposed above. Under such a provision the municipalities of the state, building upon the foundation laid by the general assembly, could provide themselves with a system of police and other regulations which would fit their peculiar needs. (See in re Hoffman, 105 Cal. 114; Cuzner v. California Club, 155 Cal. 303; Mayor v. Craig, 109 Pac. 842.)

It should be noted that this section grants these powers to all municipalities, and not merely to those framing and adopting their own charters.

Mr. REDINGTON: I am not in favor of the amendments because I do not believe they are necessary. If Proposal No. 151 should pass and be adopted it would become part of the constitution of the state of Ohio, and wherever territory is wet it is expressly stated that no license shall be issued except under certain conditions and the business is regulated absolutely by the organic law of the state, and where territory is dry we have in Proposal No. 151 expressly reserved the regulatory statutes to the state, and they are a part of the organic laws of the state and so recognized. Now, if Proposal No. 151 should be adopted I cannot see the object of this Convention in asking for the amendment, for where the territory is wet, where they have saloons, the constitutional provision will control, co-ordinate and equal to this constitutional provision, and it takes the business specifically out of the police regulation of the state and makes it a part of the constitution.

While it is now a police regulation, we put it in the constitution, and no legislature can add to it, and if Proposal No. 151 should not pass and this provision (Proposal No. 272) should pass we have been very careful to make the police power of the cities at all times subservient to the state laws. If the state makes a general law, and the state has a right to so far as police and sanitary regulations are concerned, and makes the regulation more stringent, in that particular city the stringent state law will be the law of the city. If the state passes a general law more stringent than the city ordinance, then the city ordinance is nullified and the state law takes effect. While you are in this proposal giving to the city full police and sanitary powers, at any time they may be stripped of some of these powers by the state, the supreme authority. The city has to go at all times to the state for power. In case the state neglects to pass proper police and sanitary regulations, the city may do so, and if the state then passes laws beyond and more strict than the city laws, the city laws are nullified.

I think it is unnecessary to adopt these amendments



## Municipal Home Rule.

because if Proposal No. 151 passes and the regulation of saloons, being a police regulation, is put into the constitution, so that no city and no legislature can change it, it must follow that such regulation will be upheld to be the mandate of the constitution, as provided therein for wet and dry territory. The constitutional provision in Proposal No. 151 expressly reserves all the regulatory laws of the state and says other similar laws may be passed. In case Proposal No. 151 should fail to become a law and Proposal No. 272 should pass and become a part of the constitution, we have provided for this in Proposal No. 272, expressly in section 3 and elsewhere—we have taken great precaution, where we are going to give the city rights to pass the police and regulatory measures, that the state can control and pass laws beyond those of the city, and the object of putting that in was that, as was stated, oftentimes laws are passed pretending to be general laws, but they are not so, and therefore it was insisted that the city should not be controlled by a general law unless it was a law that affected the state as a whole.

The only idea I have in arguing the matter is that the amendment is unnecessary, and that it simply calls attention to this part of the liquor proposal by putting in the liquor clause, and if Proposal No. 151 is passed it cannot add to or take from the other, and we do not want the liquor proposal mixed up with the municipal proposal. We do not want any fight in the city on this matter with regard to wet and dry questions. We believe the city should have home rule, and if we can give it home rule without entering into the liquor fight we would like to do it. I do not believe putting the amendment in would weaken or strengthen it one iota, because I think the whole proposition is plain and fair, so that if Proposal No. 151 should fail the cities are still subject to the sovereign powers of the state. Nobody is undertaking to do what he has no right to do—to take that power from the state—and no matter what police or sanitary measure is passed for cities they would be subject to the state. The city cannot be over or bigger than the state. The city can make stronger and more stringent laws than the state, if the state neglects so to do, but when the state goes beyond anything that the city has done the state laws take effect. I think the amendment should fail.

Mr. WINN: Mr. President and Gentlemen of the Convention: If this proposal meant just what the member from Lorain has stated it means no one would have any objection to it. But it is because some can not see it that way that there is more or less confusion. There is such uncertainty about it that the member from Cuyahoga [Mr. DORV], who generally is able to see through ordinary propositions, is unable to understand this one; and I may say in this connection to the member from Hamilton [Mr. HARRIS] that it is not a sufficient answer for him to say to the member from Cuyahoga that the committee put the words in the proposal but is not responsible for the lack of brains to understand them. That is not a good answer to the citizenship of Ohio. If this proposition goes to the electors of the state what will be the attitude of the member from Hamilton [Mr. HARRIS] or of the committee if the the electors ask us what is meant by this? Will the answer be, "We put the words there but we are not responsible for the lack of brains

in the electorate to understand them?" Now, Mr. Harris, of Hamilton, is not the only one who would regard it as criminal to see these words taken out. I can tell you of others who would look upon an act of that sort as being a crime. They are the men who constitute the liquor lobby, who crowded the halls of the Convention the first day we came together; who, after the passage of the liquor proposal went to their homes, and who came back here yesterday, and who were here last night and are here this morning. I have seen them with their arms around the necks of members of this Convention yesterday and last night and this morning, until the Convention was called to order. They are here to assert that they believe it would be criminal if we would take these words out. There is no use in attempting to conceal the fact that those words were put in the proposal at the behest of the liquor interests of the state.

Mr. REDINGTON: I deny that.

Mr. WINN: I weigh every word I say and I say them knowing when I say them that they are true. I say these words are in this proposal at the behest of the liquor interests of the state. I am not here to say that the liquor interests of the state came to the committee and requested any member to put those words there. That probably is not a fact, but I say that those words are here for the very purpose of nullifying so far as possible the effect of Proposal No. 151. Let me show you how it can be done. Proposal No. 151 provides, among other things, that upon the conviction for violations of any liquor law of the state the licensee shall forfeit his license and not again be eligible to secure a license. One of the laws of Ohio is that saloons can not be opened on Sunday. Pass this proposal and every city can throw its saloon doors open on Sunday. Now can you see why the liquor lobby wants this?

Mr. CROSSER: Do you contend that in spite of the fact that provisions of Proposal No. 151 say that the existing laws shall remain in full force and effect?

Mr. WINN: Proposal No. 151 does not provide that. Do you undertake to say that if this is placed in the constitution the legislature could not repeal the Rose law?

Mr. CROSSER: No; if they want to repeal the Rose law they can do it, but that is not our fault.

Mr. WINN: I can point it out in a moment so that anybody can understand it. I will read the amendment:

And no such regulation shall by reason of the requirements therein in addition to those fixed by law be deemed in conflict therewith unless the general assembly by general laws specifically deny the municipalities the right to act thereon.

So that unless the general assembly by specific law shall deny the right to municipalities to say that the saloons may be opened on Sunday they might do it, and when they have done it they have nullified that part of the liquor proposal.

Mr. HARRIS, of Hamilton: Don't you know that that requirement or statement "specifically deny" applies only to those municipal requirements put in in addition to those fixed by the general law, so it would only apply in case the city said saloons should not open Saturday as well as Sunday, and then the only way for them to become operative would be to deny the municipi-

## Municipal Home Rule.

pality specifically the right? Don't you know that is only where the city makes an additional requirement?

Mr. WINN: There are others besides the member from Cuyahoga [Mr. DOTY] who have not brains enough to understand it in that way. Must we have this committee going around over the state with this proposition, and carrying brains with it to make the electors understand it? I say that unless the general assembly by specific enactment shall say to the municipalities of the state "You shall not carry in your charter any provision respecting Sunday closing of saloons, or any other similar question," it may be carried into their charters and become a part of the municipal law.

Mr. REDINGTON: Do you overlook line 18?

Mr. WINN: No, sir; I have not overlooked line 18.

Mr. REDINGTON: I would like to put a question for my own information: "Municipalities shall have the power to enact and enforce within their limits, such local police, sanitary and other similar regulations, as are not in conflict with general laws affecting the welfare of the state as a whole." Would you call Sunday closing laws passed by the general assembly general laws?

Mr. WINN: Yes, I would, but down in the latter part of the proposal it is especially provided that those things shall not be deemed in conflict with general laws unless the legislature specifically says so. Now this does not apply only to liquor traffic, but to everything else. We have in Ohio a department of workshops and factories. There is an officer of the state who looks over the public buildings and all sorts of buildings to ascertain whether they are in sanitary condition and whether the fire escapes are put up properly, etc. There has been enacted a state law regarding certain other safety devices, as you know, and you probably know how much trouble has been encountered by officers of that department, who have gone over the state requiring owners of buildings to put fire escapes on buildings.

Now it is proposed that by the charter of any municipality that it may control those matters, as well as sanitary matters, unless the general assembly by some specific law shall say that the municipality may not enact an ordinance regulating such matters. Then the municipality may go ahead and have full control of it.

I am not ready to agree with the member from Hamilton [Mr. SMITH] that the whole world is pointing a finger of scorn at the state of Ohio. Indeed, while it has never been my privilege to visit the cities of the old world, I have heard of them, and read the histories of some of those cities, and I am here to say that I never want to live to see the day when the affairs of the cities of this state shall sink to the level of the cities of the old world if the things exist there that have been recorded in history. The strongest argument I can offer against this proposition is that those who favor it so earnestly were against Proposal No. 151.

Mr. DOTY: Oh, no.

Mr. WINN: I mean those who have spoken. In other words, Mr. Harris, of Cincinnati, says he would regard it as criminal to take these words out and put the amendment in, because it would inject into the proposal the disagreeable liquor question and we should not do it. But it is here, it is in the proposal, and now you ask every man opposed to it to stultify his conscience by keeping his mouth shut for fear there may be some debate in-

jected into it. I can not support this measure unless it is amended so it may be made reasonably certain that all of the efforts of the friends of Proposal No. 151 have not been defeated by its enactment. I can not support it here or at the polls. I would feel like thousands and hundreds of thousands of others, obliged to go out, on the stump and elsewhere, and combat it. If the friends of this measure—and I am a friend of home rule for cities—would have something submitted to the people which would meet the approval of the people at the ballot box, let the proposal be amended so every one will know it does not contain these dangerous sleepers it is now suspected of having.

Mr. HURSH: Gentlemen: I have the greatest respect in the world for the learning of our professional brethren—and that includes the legal fraternity—but I want to say as one who comes from the rural districts that we have our problems to solve as well as the cities have theirs, and when I find the gentlemen learned in the legal profession can agree on any proposition, when I find that they write a proposal and pass it and say it is good, when they say it will carry and can not be defeated and is good constitutional and organic law and very popular, I conclude that probably they have as lawyers gotten somewhere, but here is Proposal No. 151 with specific provisions stating what shall and shall not be and what can and can not be done.

Why, until yesterday, nobody doubted that that was good organic law. It deals specifically with the saloon problem. I thought all liquor questions would be solved by that because in explicit words it tells how to regulate the saloon, and here this home rule proposition for cities comes up and it tries to say what powers the cities can have. It says absolutely nothing about the liquor traffic, and then certain gentlemen here have injected this liquor proposition into this discussion. I for one resent it, and I believe there are many others who resent it. We are not all lawyers, so I am going to talk to you a little while and appeal to my brother farmers and other laboring men. Let us consider this question. We of the country have our problems and you of the city can not understand them as we do, yet we need your help to solve them. You of the city have some great, grave, serious problems in your great congested centers of population that we do not understand, yet through the daily press, I think we do know a little, in a general way, as to your problems. I came here with some ideas of what the cities wanted. If they knew what they wanted, and we were able to give it to them, if we succeed in giving you something that will give you a better condition, it will help our condition. We realize there are certain conditions and certain interests that have grown up in your cities that must be corrected, and by giving you larger opportunities we are helping ourselves by giving us also larger liberty. Now we were hoping, and I hope it is yet the sense of this Convention, that you will confine yourselves to those problems and confine yourselves to a consideration of home rule for cities.

Mr. HARRIS, of Ashtabula: Mr. President—

Mr. HURSH: I refuse to be interrupted.

Mr. HARRIS, of Ashtabula: Are you speaking for farmers?

Mr. HURSH: Yes, and I refuse to be interrupted. I have been noticing the proceedings of the Convention



## Municipal Home Rule.

and I have noticed that the interruptions have not been alone for information, but for the purpose of confusing the speakers, and for that reason at present I refuse to yield.

Now I wish to say that I believe this is a good proposal. I have at different times, when not too busy, attended the meetings of this committee. They have labored seriously, honestly and earnestly to give a proposal to this Convention that would give relief to the cities. Assuming that these gentlemen understand what they want, I think it is a pretty good proposition on general principles to adhere pretty close to this proposal, and I am sorry this liquor question has been injected here. As I said in the beginning, Proposal No. 151 covers that liquor proposition entirely and well, and I can not see, in the light of organic law, how Proposal No. 272 can in any way infringe upon the right of Proposal No. 151, and I hope you will brush aside this matter injected into the discussion and consider this question upon its merits alone.

The cities of the state have a right to home rule. We can not solve their problems and they can not solve ours, and we owe it to the toilers of the cities who are trying to work out their salvation to ignore the matter that has been injected here and exclude it from our consideration and give these people the right to home rule. I, as one of the middle-of-the-roaders upon the liquor proposal, insist that we refuse to consider that matter in connection with the home rule proposal, for when you inject this bitter contest of the wet and dry question into this measure you are going to lose sight of its merits and you are going to decide and determine the angle by which you reach your conclusions from an entirely biased standpoint. I say it is unfair. I say we have surely advanced enough in our civilization to give the cities a chance to work out their salvation. As one gentleman said, it is remarkable that the cities have done as well as they have. I want the time to come when the people of Cleveland and of Columbus and of Cincinnati, who know their own problems, can work them out themselves. I do not want their big businesses to be able to send lobbyists down here and work something through the legislature and tie their hands, and for that reason I hope the conservative men of the Convention will not inject this liquor project into this proposal.

Mr. HOSKINS: I want to ask a question. I want somebody who is in favor of letting section 3 stand as it is—I will say frankly I have not made up my mind how to vote on it—but I want somebody standing sponsor for this, Mr. Harris or someone else, to tell the Convention why you cannot end section 3 with the words "general laws" in line 18, and mean everything you want to cover? Tell us why.

Mr. HARRIS, of Ashtabula: I am astonished that the member from Auglaize should be at all in doubt or be unsettled after the very lucid explanation of the member from Hardin. It seems to be clear to the agricultural fraternity in so far as Hardin county is concerned. Now I want to call attention to this, that there need be no doubt about the fact as to the purpose of this amendment. That is settled. We farmers have agreed to it and it ought to go. The suggestion has been made here that there was some difference between the legal brethren on the floor as to what it meant. Certainly the members of the com-

mittee do not seem to be altogether clear. I have a great deal of respect for the clear-headedness of the member from Franklin [Mr. KNIGHT]. If Professor Knight will get up and say that he knows exactly what this will do I shall be a great deal relieved. In other words, I think I shall know a good deal more definitely what it means than I do now. Of course, as a farmer I ought to know off hand, but I do not, and when a question so pertinent as the one put here, that refers to the uncertainty that obtains in the minds of some men without brains in regard to this proposition, when you can relieve that uncertainty so easily by putting in a few words supplementing this third section, it is criminal, they tell us, to do it. That is the reason it can not be done. We do not want to do anything criminal here, even if the cities want it done, and in this case they do not want it done. I think the whole thing is settled and we ought to be able to vote for it right away.

Mr. JONES: This provision applies to municipalities. That does not mean only the big cities of the state. It means the smaller cities and the villages as well. Now the rule, as already stated here with reference to municipalities, big or little, in the state of Ohio, is that they can exercise such powers and such powers only as are conferred upon them by legislation. The proposition here is to reverse that rule, under which we have been living for sixty years, and establish the rule that municipalities, big and little from the merest village of one hundred or two hundred population in the state up to the larger cities, can do anything they want to do that is not prohibited by the legislature or the fundamental law. Now I make that statement advisedly and I think upon reflection. The statement as a general proposition is that if this proposal passes the ruling of the state of Ohio will be that every municipality, big or little, can do anything and everything that is not denied to it by law. That is clear, because under this proposal you first provide that they are to be subject in their legislation and in their action to general laws, but in addition to that you say to them they may exceed the general law upon any particular subject and go as far as they want to, and the only way then of checking or interfering with their action is for the legislature to pass a new special act denying them the extra authority which they have sought to exercise. So, after all, it comes right down to the bald proposition that the rule must be established in Ohio that municipalities shall be permitted to do anything they want to do that they are not specifically denied by the legislature from doing.

Do we want to adopt that rule and apply it to municipalities in the state of Ohio with reference to all the matters contemplated by this proposal? For one I say if this proposal is submitted to the voters as it now stands I shall be compelled to vote against it for that reason, and I heartily agree with the suggestion in the question of the gentleman from Auglaize [Mr. HOSKINS] that the whole of this matter in section 3 after the word "laws" in line 18 ought to be stricken out, and then you would have this matter resting in the position that the municipalities in the state of Ohio may do whatever they are not prohibited by general law from doing. The term "general law" is one that has been the subject of interpretation for many years. Courts have thoroughly well settled the construction of that term and we need have no doubt

## Municipal Home Rule.

about what the future rule will be. Therefore you are not launching on any untried sea. You simply open the doors and lay down the bars for the municipality, big or little, to do everything it is not prohibited from doing by general laws.

It only takes a little illustration to show the evils that would follow from what is contemplated by the latter clause of this section 3 and I do not care to take the time to cite authority. It is clear to every member of the Convention. Why should a municipality of three hundred population be granted any different rights from those a township of a thousand population has? The county has its problem and the township has its problem to solve just as the cities and villages have theirs, and why any different rule applying to the county and township than apply to the municipality? Let them all be subject to the same general law without any special legislation applicable to either one of them.

Mr. FACKLER: The townships have no housing problem, have they? They do not have any problem of crowded districts.

Mr. JONES: There are many problems in the county and township that do not arise in the municipality and you can not make a law of a general nature that will apply to all of those details, but the proposition as a general one that there is no reason for a different rule applicable to cities and villages than is applicable to townships and counties is sound. In other words, we are all people of Ohio, we who live in the small villages and in the counties. We, who are near to cities are just as much interested in the laws that shall regulate the life of a community as the city is. We are just as much interested in the police regulations as the people in the city are. A man who is rearing a family on a farm in the neighborhood of a city is just as much interested in the question of saloons in a city as a man in the city. There can be no difference in that situation. You will assume the people in the city are entitled to have some different laws with reference to police regulations—I mean in its broadest sense, including health and the general welfare of a community—from those the people living in the country have, but I submit there can be no excuse for the latter clause of this section 3, laying down the bars for the municipalities to do everything they desire to do except as prohibited by law and then requiring those who want a different rule to obtain to go and get an act of the legislature. Why not let the application be made to the legislature in the first instance for authority to adopt certain regulations in the municipality? There are those who desire those things; let them be put to the bother of securing things from the legislature, while if this rule is adopted those who are opposed to them will be driven to the legislature to get legislation to prevent or nullify the action of the municipality.

Mr. DOTY: It seems to me there is a habit in this Convention on all big questions to have extremes on one side and extremes on the other. Heretofore I have always been one of the extremes and I have never had the pleasure of being in the middle of the road. It appears in this I am the only one who is in the middle of the road. There may be some who will get with me, but at present I am alone.

It appears from the member from Defiance [Mr. WINN] that the liquor lobby was very active last night

and this morning on this particular thing. I want to say to this Convention that I had the pleasure of conferring with the liquor lobby last night and this morning at some length and this was never mentioned, so I think we can take with a grain of salt the rest of the gentleman's remarks. I have been trying to find out from both of the members from Hamilton [Mr. HARRIS and Mr. SMITH] very able men, but I have not been able yet to find out what these words are there for. The member from Fayette has called attention to the fact that the words "general laws" have been adjudicated, as they call it, that they have been talked about by the courts—

Mr. MAUCK: Construed.

Mr. DOTY: Construed "de novo," I suppose it should be. If that is true what is the use of putting in the rest of this language "affecting the state as a whole?"

A DELEGATE: To "safeguard" it.

Mr. DOTY: Yes; to safeguard it. A safeguard you know is a little jigger put in to make trouble. I expect that is what this was intended to do and it will do it. Now at the first opportunity I want to offer an amendment and I will read it now as part of my remarks so that you may know what I would like to do if I have a chance. I would like to strike out all of section 3 after the word "laws" in line 18, and insert a period. Strike out in lines 49 and 50 the words "affecting the welfare of the state as a whole."

Mr. ANDERSON: I understand you wish at the proper time to submit that amendment in place of mine?

Mr. DOTY: Yes.

Mr. ANDERSON: And I further understand the objection of those men who are in favor of home rule to the words of my amendment is because it mentions intoxicating liquor?

Mr. DOTY: Yes.

Mr. ANDERSON: Which it does not.

Mr. DOTY: No.

Mr. ANDERSON: I ask unanimous consent to let the Doty amendment be substituted for my own.

Mr. DOTY: Do you withdraw yours?

Mr. ANDERSON: Yes.

Mr. DOTY: Then I offer this:

The amendment was read as follows:

Strike out all of section 3 after the word "laws" in line 18 and insert a period. Strike out in lines 49 and 50 the words "affecting the welfare of the state as a whole."

Mr. DOTY: Now, I do not know that I am competent to discuss this whole question, but I am competent to discuss the removal of these words, the meaning of which we can not find even after they have been weighed in apothecary scales to the fraction of an ounce. The amendment I have offered, if it carries, will make section 3 read as follows: "Municipalities shall have power to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Now why ought they have that power and why ought they not have any other power?

Mr. REDINGTON: If the section is amended as you suggest that leaves the cities as they are now and gives them only the same power that they now have.

Mr. DOTY: If all there was to this proposal was

## Municipal Home Rule.

section 3 you would be right, but we are attempting to put some other things in this proposal which would make quite a change in municipal government, so I would answer that your assumption is not right.

Mr. REDINGTON: Do you not understand that section 3 is a section that gives home rule and gives power to cities to pass ordinances for their own benefit for police, sanitary and other similar regulations?

Mr. DOTY: No, sir; relying entirely upon my general ignorance, I would have to say I do not understand that.

Mr. SMITH, of Hamilton: Do you know that the cities can not have home rule under your amendment?

Mr. DOTY: No, sir; I have been utterly unable to find anybody who can show me that they won't. It appears that my brain has become an issue. I am glad something has become an issue, even as small as that, but I do not understand why the whole of the home rule principle must stand or fall on section 3 as in the proposal book. As I understand the home rule proposal it is a proposition that allows cities to frame their own charters and make for themselves such laws as they deem wise, provided those laws do not conflict with the general laws of the state. In a general way that is my understanding of home rule. Is there anything else than that in this home rule proposal?

Mr. SMITH, of Hamilton: You admit under your amendment the legislature could by general law take away a license next door—

Mr. DOTY: No, sir; in section 2 it is provided that they can not pass any law applicable to the municipality unless a municipality accepts it by a vote of the people.

Mr. SMITH, of Hamilton: But section 7 says it is subject to general law.

Mr. DOTY: What is the theory of passing a general law excepting that it is a law that affects the general welfare of the state? Can there be any other reason for the passage of a general law?

Mr. CROSSER: Have you not in mind a special law which the city can accept?

Mr. DOTY: That is true; I did have that. But come over to section 7, and what is there in the words "affecting the welfare of the state as a whole" that makes general laws any more effective than if those words were not there?

Mr. HARRIS, of Hamilton: I call your attention to original Proposal No. 272 in your proposal book, which came to the committee on Municipalities. In line 32 of the original proposal we have the words "except in municipal affairs." Those four words were almost demanded by your local people and those words are taken from the California constitution and they were cut out of that draft for the reason stated on the floor and the qualifying words that you now want to eliminate were substituted in their place. I suggest to you that if you are going to cut out everything after the words "general laws" you should add the words "except in municipal affairs," or you will be stoned to death when you reach Cleveland. I tell you you are destroying municipal home rule.

Mr. DOTY: I have no objection to putting in the exception if we can understand what it means or if we have any fair chance of understanding it. I want to say that the words the member called attention to will be

found on page 2 of the regular proposal, the next one after the one you are looking at in line 32. The words are "except in municipal affairs." They have been stricken out, and the words "affecting the welfare of the state as a whole" simply amount to the committee inserting one set of words instead of another. You strike out something and put in something that is not germane, and for the life of me I can not get anybody to answer what they mean. We tried to get Judge Rockel last night to answer the question, and after pinning him down he didn't answer, but afterwards I went to him and got him to answer the question. I would be glad to have Judge Rockel answer the question now publicly.

Mr. ROCKEL: I will answer. I said to the committee that it didn't make any difference whether you put the words in or not.

Mr. DOTY: I tried to get you to say that last night and I couldn't do it, but better late than never.

Mr. KNIGHT: I had not intended to speak any further on this lest I be considered as discourteous to the chairman of the committee. I want simply to make the inquiry whether I did not say last night that in my judgment those words added nothing to the proposal.

Mr. DOTY: I guess you did agree with me all right last night. I understood the chairman of the committee to say these words did not add much, but he reserved the right to hear from his colleague from Hamilton [Mr. SMITH]. Now if I understand this home rule proposal—I made a mistake four or five weeks ago and this may be another one—but as near as I can find out this home rule proposal is to allow cities and villages to run their own government under any scheme they choose, provided their plan and their laws do not interfere with general laws. Is not that definite and certain and specific? How are we missing anything by simply stopping there? You can shake your head all you want to. Of course that disconcerts me for the moment, for I am not against home rule, but when men as able as the gentleman from Hamilton, who have given much more study than I have, charge me with being against home rule because I am in favor of this amendment, I will say it takes more than a shake of the head to answer my question, and I put the question over and over again. I put it last night and the member from Franklin very frankly answered it. The member from Clark answered it today, and if anybody else has answered it it escaped by attention.

Mr. CROSSER: Suppose a legislature should pass a law saying that all municipalities should do certain things. Under your proposed change would not that be binding on the municipality?

Mr. DOTY: Yes.

Mr. CROSSER: Where is your home rule? It is gone, provided it affects municipal affairs only.

Mr. DOTY: Can they not do that with this language in?

Mr. CROSSER: No, sir.

Mr. DOTY: How can you have a law that is not for the general welfare of the state as a whole?

Mr. CROSSER: The legislature might pass a law applying to municipalities which would be a special law and not affect the state as a whole.

Mr. DOTY: But it has to be on the theory of affecting the welfare of the state as a whole or it is not a general law?

## Municipal Home Rule.

Mr. CROSSER: In all the history of the state laws have been passed applying to all municipalities and they have been construed as general laws.

Mr. DOTY: I am laboring under the disadvantage that my legal training stopped at page 40 of Blackstone.

Mr. ANDERSON: Will the gentleman yield while I read an authority?

Mr. DOTY: Yes; I need all of the authorities I can get.

Mr. ANDERSON: The constitution of California was passed in 1879. They say this Proposal No. 272 is largely copied after the constitution of California, so much so that the gentleman from Hamilton [Mr. HARRIS] had an extensive brief made by his legal representative on this question. I can clear up just why these words were put in that proposal and it grows out of a decision of the California supreme court in 155 California, page 304, right on the liquor question, and I want to read it:

A municipal corporation, in the exercise of the power to regulate traffic in intoxicating liquors that is a part of the police power conferred upon it by the constitution, may enact prohibitory laws applicable not only to those engaged in the business of selling intoxicating liquors to the public, but also to such transactions of a bona fide social club, and may regulate, by license tax or otherwise, any and all kinds of dealings with relation to such liquors, including such dealings of a social club with its members.

In other words, California under the liquor provision provides that each municipality in California may do just as it pleases with the liquor traffic notwithstanding what the state laws may be, because that right was given in the constitution.

Mr. LAMPSON: I move the previous question on the pending amendment.

The PRESIDENT: The gentleman from Cuyahoga has the floor.

Mr. LAMPSON: I thought you had yielded?

Mr. DOTY: No; I yielded to get some legal help. Now I agree with Mr. Harris, of Hamilton, in some things that he contended for, and I agree that the insertion of words relating to the liquor traffic would be a mistake. I deprecate the bringing of this question in here at all, and I do not believe the question would have been brought in if the proposal had been used as sent from Cleveland.

These three words have precipitated this unfortunate debate so far as the proposal is concerned, and I regret very much that the question has come in at all. As to the liquor lobby the member from Defiance [Mr. WINN] is much mistaken, or else I am not in the confidence of the liquor lobby.

Mr. LAMPSON: I now move the previous question on this amendment.

Mr. SMITH, of Hamilton: I would like an opportunity to answer the gentleman from Cuyahoga [Mr. DOTY].

The PRESIDENT: The question is shall debate close on the pending amendment?

Mr. DOTY: I move that we recess until half-past one.

The motion was lost.

The PRESIDENT: The question is shall debate close upon the pending amendment?

The main question was ordered.

Mr. WINN: I demand the yeas and nays on the amendment.

The PRESIDENT: The question is on agreeing to the amendment offered by the member from Cuyahoga [Mr. Doty].

The yeas and nays were taken, and resulted—yeas 66, nays, 41, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Miller, Ottawa,
Antrim,	Harris, Ashtabula,	Nye,
Baum,	Henderson,	Okey,
Beatty, Morrow,	Holtz,	Partington,
Beatty, Wood,	Hoskins,	Peck,
Beyer,	Johnson, Madison,	Peters,
Brattain,	Johnson, Williams,	Pettit,
Cassidy,	Jones,	Read,
Cody,	Kehoe,	Rockel,
Colton,	Kerr,	Rorick,
Crites,	Kilpatrick,	Shaw,
Cunningham,	King,	Smith, Geauga,
Doty,	Kramer,	Solether,
Dunlap,	Lambert,	Stevens,
Dwyer,	Lampson,	Stewart,
Eby,	Leete,	Stilwell,
Elson,	Longstreth,	Stokes,
Evans,	Ludey,	Tannehill,
Farnsworth,	Mauck,	Wagner,
Fess,	McClelland,	Walker,
Fluke,	Miller, Crawford,	Winn,
Halfhill,	Miller, Fairfield,	Woods.

Those who voted in the negative are:

Bowdle,	Hahn,	Riley,
Brown, Lucas,	Halenkamp,	Roehm,
Brown, Pike,	Harris, Hamilton,	Shaffer,
Collett,	Harter, Stark,	Smith, Hamilton,
Cordes,	Hoffman,	Stalter,
Crosser,	Hursh,	Stamm,
Davio,	Keller,	Tallman,
DeFrees,	Knight,	Tetlow,
Donahey,	Kunkel,	Thomas,
Earnhart,	Leslie,	Ulmer,
Fackler,	Malin,	Weybrecht,
Farrell,	Moore,	Wise,
FitzSimons,	Pierce,	Mr. President.
Fox,	Redington,	

So the amendment was agreed to.

Mr. MILLER, of Crawford: I move that the Convention recess until 1:30 o'clock, p. m.

The motion was carried.

## AFTERNOON SESSION.

The Convention met pursuant to recess.

Mr. Watson rose to a question of privilege and asked that his vote be recorded on the amendment of Mr. Doty to Proposal No. 272. Permission was given and his name being called Mr. Watson voted in the affirmative.

Consideration of Proposal No. 272 was resumed.

Mr. DOTY: The motion pending is an amendment introduced by myself, the amendment I introduced last night. I desire to call your attention to lines 96 and 97. The chairman of the committee explained last night or this morning that part of section 10, beginning with line 95, ought to be a separate section. In other words, the

## Municipal Home Rule.

subject matter of those four lines has not anything to do with the subject matter of the remainder of section 7. Bear that in mind, because it is important. It is important that you keep your mind clear on the two things attempted to be done in the one section. I think before the matter is concluded Mr. Harris, of Hamilton, will offer an amendment to make that a separate section, as the last four lines have nothing to do with the section.

The object of the last four lines is to reinstate and bring into existence again what was the constitution of Ohio from 1851 until about eight years ago—that is to say, the supreme court of Ohio interpreted or construed the present constitution of Ohio to do that which these four lines attempt to do provided the amendment is adopted. That constitution, construed as it was for forty years, provided that in the appropriation of property for public improvements, especially like the opening of a street—the opening of parks can be handled under bond provisions, and is often handled that way, so it is not as important as the matter of opening streets—the supreme court interpreted the constitution for forty-one years to the effect that the appropriation of property for the opening of streets should bring about the distribution of the cost of that improvement upon the property benefited by the improvement, a perfectly fair, square proposition, because when you open a street and thereby enhance the value of somebody's property you are giving them what they do not possess, and, therefore, if you take a part of that which you give them to pay for the improvement you are providing you are really taking nothing from them they ever had; you are simply keeping from them a part of that you are giving them. In the city of Cleveland we are in a particularly unfortunate position on account of that decision of eight years ago. The city of Cleveland is what we may term a fan-shaped town—that is, the big thoroughfares run from the center in every direction. We have certain arteries that run from the east, like Euclid avenue and Superior avenue—those are the only two that come down to the center of the city. When you get out a little way there are some avenues like Chestnut, Carnegie, Cedar and Central that come down part way and stop a little short. When those streets were laid out it did not make much difference, because with a town of from only fifty thousand to one hundred thousand people those arteries were enough to care for the people. Now there are living east of this center not less than three hundred and fifty thousand people, two-thirds of whom have to come into the center of the city through these two arteries, and the congestion is becoming intolerable. It is impossible for us today to put enough street cars on our streets between five and six o'clock to carry the people home. We are up to the limit and we must have more outlets. Now the people who are interested in those four avenues—there are other minor avenues—but the people directly interested are going to get a direct benefit, for their property is going to be enhanced, and they are quite willing for the streets to be opened, but under any law we have it is impossible to provide that they shall pay for thus opening the streets. If it is not done that way we have to issue bonds and levy taxes upon the whole city, so that the two-hundred and twenty-five thousand people living in the western part of the city have to contribute to the opening of these streets that are only useful to the eastern

end of the city. Maybe they are willing to do it and maybe they are not. If they are willing we could get past that problem, but when you get to the minor problems it would be different. The problem is not of sufficient importance for the rest of the city to help out and the result is they don't make the opening. I presume there are one hundred street openings in the city of Cleveland that should be made for the good of the city. As my colleague reminds me, these four openings—Carnegie, Cedar, Central and Chestnut avenues; we call them the four C's—will cost \$2,000,000. The people who get the benefit are willing to pay that amount as it is estimated by conservative men in the city of Cleveland that the opening of those four streets will add \$15,000,000 to the value of the land benefited by the opening of those streets. Now all we ask is a legal way for compelling those people who get the \$15,000,000 to pay the \$2,000,000 to have it done, and that is all my amendment provides.

The gentleman from Hamilton says the word should be "adjacent" instead of "benefited." I would be satisfied with either, but mine is simpler and more direct, and is in fewer words. He has submitted his full amendment to me and I do in one word what he attempts to do in eight words.

Now the other part of the Harris amendment, line 98, at the end of what is now section 10, he proposes to add "said assessment, however, upon all abutting, adjacent and other property in the district benefited shall in no case be levied for more than fifty per cent of the cost of said appropriation." Just see what that would be in the very case I am telling you about. Here we have four street openings that will add \$15,000,000 to certain property and as I understand the Harris amendment we can only assess \$1,000,000 of that \$2,000,000 against the persons who get the \$15,000,000 benefit. I think we should be allowed to assess all of it, for the benefit is greater than that which we attempt to assess. In other words, when they get the benefit of \$15,000,000 those people ought to be willing to pay the \$2,000,000.

Mr. ULMER: If your statement is true, does not that \$15,000,000 that is added in value go on the tax duplicate?

Mr. DOTY: Technically it will. What has that got to do with the question?

Mr. ULMER: Now another question—

Mr. DOTY: Yes; that will be all right, but I want to ask another question right there. What difference does it make if that \$15,000,000 does go on the tax duplicate?

Mr. ULMER: The point is that the community will receive some benefit from that.

Mr. DOTY: They ought to do it. Mind you that \$15,000,000 of value does not exhaust tomorrow with the opening. It continues to exist. Who produced that \$15,000,000? The people of Cleveland by opening the streets. Who gets the benefit? A few of the people. Now all we contend for is that the people who get the \$15,000,000 of benefit shall pay the bill, amounting to \$2,000,000.

Mr. ULMER: That is all right, but if the streets are open do not the people receive the benefit?

Mr. DOTY: Yes.

Mr. ULMER: Ought they not pay some too?

Mr. DOTY: Absolutely not. If the gentleman had heard a while ago or understood—which probably was

## Municipal Home Rule.

my fault—all I said was that we should take a part of what the city creates, a thing which does not exist before and which the private owner does not have, but I claim a man who sits still and lets the community give him \$15,000,000 is getting off lucky when he is asked to only pay \$2,000,000 for the \$15,000,000. I think he is getting off easy.

Mr. ULMER: After this value is created does not the city have a constant income from it in the form of taxes?

Mr. DOTY: Yes.

Mr. ULMER: Does the city lose anything by the transaction?

Mr. DOTY: Absolutely not, unless they have to pay a part. If the city of Cleveland pays fifty per cent of that it will cost the city of Cleveland \$1,000,000 and it is gone forever, and who gets the benefit of it? Comparatively few get the benefit of it. Mind you, these people are not asking to be exempted from paying the fifty per cent. They are willing to pay the whole of it, but if you fix it so they can not pay but half the city will have to pay the rest.

Mr. ULMER: Is it not true that under the present law the city has to pay all?

Mr. DOTY: Yes, and that is what is wrong and that is what has congested the city of Cleveland and the city of Toledo. Toledo can't make a street opening any more than we can, and the city of Toledo up to eight years ago was in the habit, under the old interpretation, of opening streets from time to time. The last one they opened was the straw that broke the camel's back. They opened Bank street one block and I think the property cost \$100,000 or \$200,000 and they attempted to assess that on the property benefited. The owners of some of that property carried it to the supreme court and the supreme court overruled its decision of forty-one years' standing and decided it could not be done. From that time to this the city of Cleveland has not opened a street. We have one hundred or one hundred and fifty streets that require opening, and the worst condition we are in now is about the four street openings that lead toward the heart of the city from the east. On the west of the city there are some that I have not touched upon, but those four are the worst that we have. This amendment of mine seeks to restore conditions as they existed prior to the decision of the supreme court and make it possible for the assessment of all or any part of such improvement upon the benefited property.

Mr. ULMER: Whom do you blame for the situation now existing?

Mr. DOTY: The supreme court.

Mr. ULMER: I blame the city council that adopted the plats.

Mr. DOTY: The trouble is that those men have been dead for fifty years and we can't get at them. We can't even recall them.

Mr. REDINGTON: You assume in every case that a benefit would be derived for the property owner, but can you not imagine a place where it would operate in such away as to hurt the property?

Mr. DOTY: It is conceivably possible that that might happen. I don't think it ever did, but if it ever did the part that is benefited is the only part that should be required to pay. If you have a house and lot worth

\$1,000, and we put an improvement next door that does not add a cent of value to your land, and it is just worth \$1,000 after the improvement is put there, I think that that kind of improvement should be made at the expense of the city, because it would never be made except by the city. There is no local benefit there.

Mr. HARRIS, of Hamilton: The member from Cuyahoga [Mr. Dory] ought not to ask this Convention, acting for the whole state of Ohio, to enact a constitutional provision for the sole benefit of Cleveland. The situation he names may exist in the city of Cleveland. It may be that he is mistaken as to the amount of benefit to be received by the abutting property holders in Cleveland, but if he is right it would not make a particle of difference. What the member from Cuyahoga [Mr. Dory] fails to take into consideration is the sacredness of private property. Now let us see what the present constitution has to say as to the inviolability of private property. Section 19 of article I reads as follows:

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

As stated last evening, and as read from the brief prepared by my own private attorney on this proposition, these four lines, 95 to 98 (which by the way ought to be a separate section) revolutionize the law in the state of Ohio. It says, "Private property may be taken for public use," but I go one step further in my proposed amendment and that step is taken in the interest and for the protection of the individual as against the public. I say that while the municipality may take private property for public uses, it may not put upon the private owners of that public property more than fifty per cent of the cost of making improvements. The present laws of the state of Ohio also carry out the same idea of equity and public morality in the very proposition I have advanced. Under the present laws of the state of Ohio the aggregate assessment of all kinds within a period of five years for improving streets and laying sewers, etc., can not be assessed against the abutting property in excess of thirty-three and one-third per cent of the value of the property. Now in my amendment I have increased that limit to fifty per cent, and I go on the theory that wherever private property is taken for public purposes it must necessarily be also for the benefit of the public. The benefit to the individual is secondary for it is a sacred proposition of law that no private property ought to be taken for public purposes unless the needs of the public are greater than the rights of the private individual. As an illustration, no improvement in the extension of roads through a farm is made save and except on the theory that the public demands, the public requirements, the public uses, imperatively demand the improve-



## Municipal Home Rule.

ment, for otherwise there would not be any occasion for condemning this private property. It sounds well to cite this isolated case of Cleveland, but we are not adopting fundamental laws for the benefit or protection of one particular municipality, where the working of the law in all other instances might bring great hardship.

Mr. ANDERSON: Have you not in your amendment made a mistake in that you have not distinguished between the words "abutting property" and "benefited property"? I have just read your amendment and there is a good deal of difference between distributing the cost upon property that is benefited and property that is abutting.

Mr. HARRIS, of Hamilton: The intent of the amendment is to say that the total cost shall not be in excess of fifty per cent of the improvement. Now it may be provided that total cost may be assessed, twenty per cent on the abutting property and thirty per cent on the non-abutting property benefited in a certain district; the council would determine how this was to be distributed.

Mr. ANDERSON: But you do not distinguish between the words "abutting" and "benefited". There is quite a difference between "abutting" and "benefited"?

Mr. HARRIS, of Hamilton: The idea is to take in all the property benefited.

Mr. ANDERSON: You should not say abutting.

Mr. HARRIS, of Hamilton: I am willing to accept the amendment of the gentleman from Cuyahoga that the cost upon all the property benefited shall not exceed fifty per cent.

Mr. HARRIS, of Ashtabula: Is not that question of "benefited property" very indeterminate?

Mr. HARRIS, of Hamilton: Very hazy and very indeterminate, and that is the reason why there should be a safeguard to the poor man with his house or farm. Of course I can see what might happen. Here is the state or the municipality with its legal department and all of its experts to conduct such affairs as against the individual, who in event of a controversy, would have to employ his attorneys and try to keep the town from confiscating his property. There is all the difference in the world between what real estate experts say is the value of the property and what the property will actually sell for.

Mr. DOTY: The only difference between you and me on this awful thing of confiscating property is not a matter of principle. I want to take all of it and you only want half.

Mr. HARRIS, of Hamilton: That is not a fair statement.

Mr. DOTY: It is as fair as for you to say that I am attempting to confiscate property. I never said any such thing.

Mr. HARRIS, of Hamilton: Then I withdraw the statement, but the proposition I am urging upon you and which you ought to consider is whether the cost of the improvement may all be put upon the property benefited; in my judgment it should not, because I could readily see if the city of Cincinnati extends a road and it goes through Brown's farm and Brown's farm becomes more accessible and it is very much easier to reach the main road, then Brown's farm is benefited and the city may say to Brown that he must pay a large share

of the cost of the improvement, but Brown answers "My farm is not worth that much." Your idea of the pecuniary benefit is too great. You always fail to take into consideration the benefit to the public. If the public is benefited the question of the increase in value to the individual may also be considered to some extent. From my point of view I say the public is benefited to the extent of not less than fifty per cent, otherwise, why does the public appropriate that individual's private property?

Mr. DOTY: Why fifty per cent?

Mr. HARRIS, of Hamilton: It is absolutely arbitrary, just as a great many other things are. It is some point between nothing and one hundred per cent.

Mr. DOTY: Now I want to ask you about Brown's farm. Suppose Brown's farm before that road or street is made is worth \$10,000, and after the road or street is put in it is worth \$50,000 and the street cost \$10,000. We ask Brown to contribute the \$10,000. Wherein are we asking Brown for any of his private property?

Mr. HARRIS, of Hamilton: I will show you.

Mr. DOTY: You will have a good time doing it, but go ahead.

Mr. HARRIS, of Hamilton: Brown has not asked the community to open the road on his farm. Brown himself may not want a road through his farm, but the community by reason of this law takes Brown by the throat and says, "The road will be put through your farm whether you wish it or not, and we further think you ought to be grateful because we have increased your property \$40,000," but Brown is not grateful and does not want the road open and he answers, "You are not opening the road for my benefit; I don't ask or want you to do it; you are opening it solely for the public's benefit."

Mr. DOTY: But the point is the measure of damages.

Mr. HARRIS, of Hamilton: There is no question of the measure of damages.

Mr. DOTY: But what is the measure of damages?

Mr. HARRIS, of Hamilton: You can not measure it.

Mr. DOTY: You can measure his damages by the amount of the property you have taken away.

Mr. HARRIS, of Hamilton: If you put a road through his farm, from his point of view the beauty of the farm may lie in the fact that it is not divided and if there is a public highway driven through it he may figure it that it is greatly damaged; that his privacy has been invaded and the aesthetic enjoyment and mental pleasure have been lost.

Mr. DOTY: You are enough of a lawyer to answer my question — what is the measure of his damages?

Mr. HARRIS, of Hamilton: Neither you nor any other man can answer that. The legal measure may be one thing, but there may be an entirely different measure.

Mr. HALFHILL: The measure of damages is how much less valuable it is after the improvement than before.

Mr. DOTY: We have assumed we have taken the man's property?

Mr. HALFHILL: The value of the property taken —

## Municipal Home Rule.

Mr. DOTY: But the measure of the damages is less than nothing.

Mr. HARRIS, of Hamilton: The measure of damages would be how much less?

Mr. DOTY: Assuming he was benefited to the extent of \$40,000? Is it fair when you give a man \$40,000 to ask him to give you back \$10,000 of it?

Mr. HARRIS, of Hamilton: No; he is not asking you to do that. I am simply asking you to pay him the damages you are putting him to.

Mr. ANDERSON: A point of order.

Mr. DOTY: I am down.

Mr. HALFHILL: Don't your amendment proceed upon the theory that the opening of the street is of value to the entire public?

Mr. HARRIS, of Hamilton: Absolutely, and therefore the entire public should share the cost of opening it.

Mr. HALFHILL: And that has been the law of the state of Ohio and of every other civilized state in the world that anybody knows anything about, and further there is one class of cases in torts where a city is always held responsible for obstructions to streets because streets are for the general public. That is fundamental and can not be gainsaid.

Mr. HARRIS, of Hamilton: It goes one step further. My amendment will help hold back extravagance. There will not be reckless opening of streets and reckless extension of roads through farms.

Mr. DOTY: Or reckless benefits to the public.

Mr. HARRIS, of Hamilton: Or reckless injuries to the public, perhaps. There will not be any of these. It will not be done carelessly or recklessly when the public knows that at least fifty per cent of the cost of the improvement must be paid by it. So there is a question of morality and a question of sound business sense in the management of your municipal affairs, and it rests with you to determine which you will adopt.

Mr. ROCKEL: I think the amendment of Mr. Harris, of Hamilton, ought to prevail. I have no doubt some of the lawyers at least are perfectly familiar with the provisions of the present constitution and the debate that occurred upon the insertion of those provisions in the constitution of 1851. Previous to that time property was appropriated and the entire cost of the property was assessed back upon the abutting owners. That became such a great abuse that property was practically confiscated prior to 1851, and that convention was so much impressed with that that they safeguarded against it in two separate provisions of the constitution of 1851. One of these provisions has been read by Mr. Harris. The other is in another section and is substantially the same. Now if that was the subject of great abuse prior to 1851 I do not believe that this Convention, in order to protect Cleveland perhaps, or any other city, ought to violate the rules that those people in 1851 saw were absolutely essential to protect people's property in the state of Ohio. I think we are going far enough when we give them the privilege of assessing back one-half of it, so I am very much in favor of the provision of Mr. Harris's amendment. I think it will be an abuse if you give the city the privilege of assessing back the full value. They will do as he suggests. They will put out streets in a number of directions. They will say "it doesn't cost the city

anything; we will assess the cost back on the adjoining property." It seems to me it is a very dangerous provision to put into this constitution, to allow any man's property to be taken for the public use and assess the cost back on him. Remember you can not take it for private use, and when you do take it for public use the public ought to pay something for it. I think we are doing very liberally with the cities of Ohio if we permit them to make excess condemnation or any condemnation and permit them to assess back even fifty per cent.

Mr. KNIGHT: At the request of the chairman of the committee I am glad to speak for a moment on this amendment. It seems to me that the amendment of the gentleman from Cuyahoga [Mr. DOTY] and the amendment of the gentleman from Hamilton [Mr. HARRIS] may readily be combined into a single amendment covering substantially what is wanted by both, with the exception that one proposes that the city shall stand fifty per cent of the cost of improvement contemplated and the other contemplates that the city shall pay nothing, but the entire cost shall be put upon benefited property, and it seems to me that the amendment of the gentleman from Hamilton [Mr. HARRIS] is the one that ought to be incorporated into this proposal in that regard. I agree with the gentleman from Allen [Mr. HALFHILL] and this is seemingly acquiesced in by others, that it is impossible to open any streets where and when they ought to be opened without a benefit to the entire community resulting from that opening. Every street in the city, unless it has been opened purely for speculative purposes, is and can not help being a benefit in a greater or less degree to the people in all parts of the city, and is not a special benefit solely, although it may be in a larger degree, to the mere local district through which the street runs. For example, in Cleveland there is congestion in certain parts. It is for the benefit of the entire city to have the streets opened there so that congestion in that part of the city can be relieved. It is not a benefit solely to that part of the city to have the streets open, to have the congestion relieved. It seems to me, as stated by the gentleman last on the floor, that it is the taking of property for public use, and it is absurd to talk about taking property for public use and not having the public pay for it in part at least. It seems to me that this proposed amendment is wise and liberal and goes as far as it ought to go in providing that fifty per cent of the entire cost of the improvement should be levied on the specially benefited property and the remaining fifty per cent upon the municipality as a whole. If the municipality as a whole must stand fifty per cent it serves as a check upon the municipality itself in the indiscriminate opening of such streets, whereas if it can mulct the property owner for the entire cost of the improvement it is a matter of no concern to the municipality as a whole, for, as stated a moment ago, it costs the municipality nothing. I hope the change will be made from "abutting" to "benefited" and that we make this further change "not to exceed fifty per cent of the cost."

Mr. DOTY: Take the illustration which I used as an illustration and not applicable to the necessities of Cleveland more than any other city, that the improvement will produce \$15,000,000 of value for the mere making of the improvement. What is it that makes that \$15,000,000?

Municipal Home Rule.

Mr. KNIGHT: I will answer that question by asking another.

Mr. DOTY: Any way you choose.

Mr. KNIGHT: If in case it would really make that much value, if it would increase the value of the proverty \$15,000,000, would not you regard the property owner foolish not to make it himself?

Mr. DOTY: They will not do it because they can not do it. There are five thousand of them. Can you get five thousand citizens to spend two million dollars on a thing like this? You might get them to build a Y. M. C. A. or something like that, but you can't get them to make a street. Now I wish you would answer my question.

Mr. KNIGHT: I will if you will keep still a moment.

Mr. DOTY: I have given you a lot of chances, but you don't seem to do it.

Mr. KNIGHT: Have you run down yet?

Mr. DOTY: No, I have just started.

Mr. KNIGHT: I am not going around with the dog-in-the-manger principle that lest somebody may get something for a little less than it costs the rest of us, therefore he must be "soaked" by the rest of us.

Mr. DOTY: Is that an answer to my question?

Mr. KNIGHT: Yes.

Mr. DOTY: I thought that was just about as good an answer as you could give. You are about four miles away.

Mr. FESS: There are two amendments, one by the gentleman from Hamilton [Mr. HARRIS] which is opposed by some, and the other by the gentleman from Cuyahoga [Mr. Doty] which strikes out "abutting" and puts in "benefited," and there is no serious objection to that.

Mr. HARRIS, of Hamilton: I will accept the word "benefited" instead of "abutting".

Mr. DOTY: For the purpose of facilitating the vote, I will withdraw my amendment.

Mr. HARRIS, of Hamilton: I will withdraw my amendment, and then I will offer another amendment. The second amendment offered by the delegate from Hamilton [Mr. HARRIS] was read as follows:

1st Division. In line 96, strike out "the abutting" and insert "benefited."

In line 97, strike out "abutting".

2d Division. In line 98 add: "Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per cent of the cost of such appropriation."

Mr. FESS: I now demand the previous question.

The PRESIDENT: The question is "Shall debate be closed on this amendment?"

The motion was carried.

The PRESIDENT: The question is upon the adoption of the amendment, and a division having been heretofore called, the vote will be on the first part.

Mr. KING: There is something the matter there. You say that you will assess the whole in one place, and now you say you will assess fifty per cent.

Mr. HARRIS, of Hamilton: Would not that mean that they could provide part of the money in bonds, but not more than fifty per cent by assessment?

Mr. KING: They could provide the whole of it. The PRESIDENT: The amendment can be amended later if desired.

The first division was agreed to.

The question being "Shall the second division be agreed to?"

The yeas and nays were regularly demanded.

The yeas and nays were taken, and resulted—yeas 65, nays 37, as follows:

Those who voted in the affirmative are:

Anderson,	Fess,	Norris,
Antrim,	Fluke,	Nye,
Beatty, Morrow,	Fox,	Partington,
Beatty, Wood,	Halfhill,	Peters,
Beyer,	Harbarger,	Pettit,
Bowdle,	Harris, Ashtabula,	Pierce,
Brown, Pike,	Harris, Hamilton,	Redington,
Cody,	Hoffman,	Riley,
Collett,	Holtz,	Rockel,
Colton,	Johnson, Madison,	Roehm,
Cordes,	Johnson, Williams,	Shaw,
Crites,	Keller,	Smith, Geauga,
Cunningham,	Kerr,	Solether,
Donahey,	Knight,	Stalter,
Dunlap,	Kramer,	Stamm,
Dwyer,	Kunkel,	Tallman,
Earnhart,	Lambert,	Tannehill,
Eby,	Leete,	Ulmer,
Elson,	Longstreth,	Wagner,
Evans,	Ludey,	Walker,
Fackler,	McClelland,	Watson.
Farnsworth,	Miller, Crawford,	

Those who voted in the negative are:

Baum,	Kilpatrick,	Smith, Hamilton,
Brattain,	King,	Stevens,
Crosser,	Lampson,	Stewart,
Davio,	Leslie,	Stilwell,
DeFrees,	Malin,	Stokes,
Doty,	Mauck,	Tetlow,
Farrell,	Miller, Fairfield,	Thomas,
FitzSimons,	Miller, Ottawa,	Weybrecht,
Hahn,	Moore,	Winn,
Halenkamp,	Okey,	Wise,
Harter, Stark,	Peck,	Woods,
Hursh,	Rorick,	Mr. President.
Kehoe,		

The second division was agreed to.

Mr. KING: Now I offer the following amendment: The amendment was read as follows:

Strike out all of lines 95, 96, 97 and 98, as now amended.

Mr. DOTY: A point of order. The motion to amend is out of order, in that the Convention has already amended these four lines in two particulars, and therefore the amendment to strike out is out of order.

Mr. KING: That would be a queer rule. It is now a part of the proposal adopted so far, and it is now pending, and I offer an amendment to strike out all that the amendment added, and I make that motion because I do not believe it has any place in this proposal. I do not believe it serves any useful purpose in there, as appears from the argument of those gentlemen who have explained its benefits, because I do not believe it adds anything whatever. All that it pretends to do could be done now by the legislature, and therefore I am opposed to having it in this proposal.

Mr. PECK: That is to strike out all relating to the assessment for benefits?

Mr. KING: Yes.

## Municipal Home Rule.

Mr. PECK: I am opposed to anything of that sort. It has been in the constitution since 1851. Someone has some property, and they think it will be a great benefit to open a street. The thing is rushed and it goes through with a whoop, the man's property is taken — a hundred feet of it — and they say that his property has been greatly benefited, more than to the extent of the property taken, and they simply confiscate his property. It may be a very grave question whether he has gotten any benefit or not. It is estimated that he has gotten or will get some future benefit, but his visible, tangible property is taken, and all that he gets for it is some estimated future benefits. I say that is a right of property that is protected by the constitution of the United States that no man's property shall be taken except by due process of law. I have here a statement about that which was made by some of the lawyers in the constitutional convention of 1851, and I shall read some of the debate. There was an amendment put in there just like this. I have myself probably participated in the trial of as many condemnation cases as any lawyer within the sound of my voice. Over and over again I have tried cases, and the jury has always been instructed:

Gentlemen of the jury, you will appraise this property, and give the man its fair value in money — what it is worth — and you will not deduct anything for any supposed benefit to that property. You give him the amount of it in money. This is the law, and that ought to be the law if you are going to take the property. But this is also the law, and should be, that as to any damages to the remainder of the property, by reason of the appropriation, you may offset those damages with the benefits, if any, to the property. The damages are hypothetical, and so are the benefits, and you can set the one hypothetical side against the other hypothetical side, but as to the ground which is really taken, you must pay him for it at its full, fair, marketable value, and that is the constitutional rule.

Mr. Groesbeck, in the convention of 1851, said on this subject:

If the public necessities demand it, my property may be taken, and I must submit. But there is still a right resulting to me out of the transaction. What is it? I am entitled to payment for the property taken. But, sir, is it right in that case for the state to say, I will take your property, and I will assess — not the damages — but I will take into consideration the damage that is done, and the benefits that are to accrue to you from the use to which I put your property, and I will pay you the balance? No, sir; that is not right. It is not consistent with the rule that private property shall be inviolate.

The first part of this section begins with the proposition that private property shall be inviolate, and the end of it is that the benefits shall not be considered. Mr. Groesbeck says further:

Now, what is the rule? Go through my land — take whatever you want, whether I desire to part with it or not, and pay me exactly what it is

worth. Under that rule I shall get all that I am entitled to; under the other, I may get nothing. My property must be taken, and I have no right to complain. All that I can ask, and all that I have a right to ask, is that at the hands of a jury of my countrymen, I may receive for compensation the full value of that which has been taken from me. If in going through my land, with a public work, damage is done to other land beside that which is taken, doubtless the benefit which I receive may be set off against this injury, but where the land itself is taken, there is no basis for such a commutation.

There is a longer and more powerful argument by Rufus P. Ranney right alongside of it. And it is the judgment of every lawyer familiar with the subject that it is not proper to try to pay a man for his ground in the supposed benefits assessed by a jury that may or may not accrue. They speculate on what he gets, but the public gets his concrete property. I submit that it is not a just rule, and that it is the last thing that should be put in the constitution.

Mr. DWYER: I can corroborate very fully what Judge Peck has said. I remember further back probably than any gentleman in this hall. I remember prior to the constitution of 1851, in the early days of railroad building in this state, when they would go to a man's farm, and they had a commission to fix the valuation. They didn't have a jury trial then, but they had a commission. They would go to your farm, and they would say, "We will take so much of your land for this railroad," and then they would say the benefit to the rest of the land is equal to the value of the land taken, and they would not pay anything. That was the rule prior to the constitution of 1851. I know one person in the city of Dayton from whom they took seven acres, and they never gave him a penny. They said the benefits to the rest of his land were equal to the value of the seven acres and that was why in the constitution of 1851 the Convention was so careful to guard against anything of that kind. They put in the provision that in all cases of condemnation the party should get the full value of the land taken irrespective of any benefits. They cut out the clause that before that time allowed them to take benefits into consideration and pay the man for his land with those benefits, and in the constitution of 1851 said that the party must be given the value of the land, irrespective of any benefit from the improvement. I have been in a number of those cases, and the law provides that when you take the land you must give full cash value, irrespective of any benefits, but if you come to incidental benefits that are not shared by the community, if there is any damage, offset the damage by the incidental benefits. But first they must give the cash value of the land, irrespective of any benefits to the remainder of the land, and then they may consider the damages to the rest of the land, and if there are damages, they can offset incidental benefits against those damages. I think that is a fair way to have it. Every man whose land is taken should get the full value of the land taken.

Mr. FACKLER: It seems to me that the community should have a right to levy upon benefited property a part of the cost of making an improvement. As a mem-

## Municipal Home Rule.

ber of the council several years ago in an outlying section of what is now the city of Cleveland I recall that the council was confronted with this proposition: Two streets had been opened some years before by real estate dealers. The people from one part, in order to get to the business section of the city, had to go several blocks around a truck farm. We desired to put a street through the truck farm. It was getting to a time when it would have to be lotted, but the owner of the property, knowing there was a demand for the opening of the street, would not do anything to assist the village in the matter. It had to open the street, and it paid full cost to the owner of the truck farm. He immediately laid out his lots on either side of the street. He was benefited by that, and the community had to pay the whole cost.

I think putting the whole cost on the abutting property is going too far, but I think we should go as far as attempted here—we should permit the municipality to levy not exceeding one-half of the improvement on the benefited property.

Mr. PECK: If you own a lot next to a neighbor in the city of Cleveland, and assume that the street is not much improved, and you erect a valuable building on your lot, does it not improve the value of your neighbor's property?

Mr. FACKLER: That is a mere incidental benefit.

Mr. PECK: Exactly. Do you have any right to assess him for any of the cost that you have expended?

Mr. DOTY: If you—

Mr. PECK: I am asking Mr. Fackler—you don't know.

Mr. DOTY: Yes, I do. You don't know what I am going to say.

Mr. PECK: Yes, I do. I am asking Mr. Fackler.

Mr. FACKLER: On the other hand, he has no right to stand in the way of my improving my property, but sometimes men own property that will be greatly benefited, and refuse to open streets and compel municipalities to buy their property when at the same time it is a benefit very largely to them in the enhancement of the property they have remaining.

Mr. PECK: They simply refuse to give away their property.

Mr. DWYER: I want to ask the gentleman from Cuyahoga [Mr. FACKLER] if he is in favor of the rule in the Cameron case?

Mr. FACKLER: No; I am not. Now I move to table the amendment.

The motion was carried.

Mr. DOTY: I would like to offer an amendment to cure an error.

The amendment was read as follows:

At the beginning of line 95 insert "Section 10a."

Mr. DOTY: That divides the section that we have been talking about, and it would be better to have it done.

The amendment was agreed to.

Mr. KNIGHT: I offer an amendment.

The amendment was read as follows:

In line 96, strike out the words "or in whole".

Mr. KNIGHT: The object of that is to reconcile that with what we have done. It would then read "Any

municipality appropriating private property for a public improvement may provide money therefor in part by assessment," etc.

The amendment was agreed to.

Mr. KING: I offer an amendment.

The amendment was read as follows:

Strike out the word "special" in line 11, and insert the word "additional". In line 12 strike out the word "special" and insert the word "other".

Mr. KING: There has been considerable miscellaneous discussion of these words "special laws," and all I have heard upon that subject has treated them as general laws. A special law would apply to but one place in Ohio. That has been determined over and over again. Now, if you pass a law that can be adopted or accepted by more than one municipality, or by all if they want to, it is a general law, and has uniform operation throughout the state, and I do not think the word "special" ought to be put into a constitutional provision when you mean something else than special. It was explained by the chairman of the committee that upon application, as he illustrated it, by the city of Cleveland for a certain law or laws that law or those laws would be submitted to the people and would be adopted. Then he afterwards said that other municipalities, if they saw that they worked, could pass under the provisions of these laws by simply submitting them to a vote of their people. If a law is so broad that that can be done, it is not a special law at all, but it is a general law, because if you can use it more than once it is not a special law. It is merely optional.

Mr. KNIGHT: Do you think that the insertion of the word "other" adds anything?

Mr. KING: It seems to emphasize that you mean an additional law to that described in the first clause of the section.

Mr. KNIGHT: Would it not be clearer by striking out the word "special"?

Mr. KING: Probably it would.

Mr. KNIGHT: Would it not be better if you would insert the word "additional"?

Mr. KING [reading]: "No such law shall become operative in any municipality until it shall have been submitted." Are you distinguishing that from "The general assembly shall by general law provide for the incorporation and government of cities and villages; and it may also enact"—

Mr. DOTY: Additional laws—

Mr. KING: Well, "additional laws" would do. But I don't like the word "special". You make it necessary to pass a special law for each city, whether they want something or not.

Mr. DWYER: A special law applies to one.

Mr. KING: Yes.

Mr. DWYER: And the general law applies to the class.

Mr. KING: Yes.

Mr. DWYER: But as to a special law, you will have to go to the legislature every time you want to get one passed?

Mr. KING: Yes.

## Municipal Home Rule.

Mr. DWYER: I believe you are right, and that we don't want any meaning of that kind to apply to it.

Mr. HARRIS, of Hamilton: Is there any objection to changing that amendment by inserting the word "additional" instead of that word "other"?

Unanimous consent was given and the amendment thus changed was agreed to.

Mr. KING: Another amendment.

Mr. DOTY: Do you make them over there?

The amendment was read as follows:

Strike out the period at the end of line 30 in section 4, and insert a comma and these words: "but any such public utility shall be subject to any regulations provided by law for a public utility of the same class owned or operated by any person, firm or corporation."

Mr. KING: I submit that amendment because in my judgment if the municipal corporation enters into the operation of public utilities, either in competition or as the owner of the whole of the utilities in that particular corporation engaged in furnishing for toll, or for a price agreed upon by itself, the particular thing manufactured and furnished or given by the utilities, it should be amenable to such laws as the state has passed or may pass regulating the administration or operation of that particular utility, and that, being so amenable, it should be required to make such reports of administration as by our laws the state demands of all others operating similar utilities.

Mr. FACKLER: That would place the issuance of bonds with which to purchase utilities under the public utilities commission.

Mr. KING: I think it would, and I make it for that reason, that every utility in the state would be brought under its domination and control, and that it is a protection not only to the public who use the utilities, but to those who own them.

Mr. MAUCK: With or without your amendment, if a public utility sells its service to a private property owner will that utility be the subject of taxation?

Mr. KING: Not in the state; that is my understanding.

Mr. MAUCK: I would call attention to the fact that it has been held that where a municipal corporation owns a city hall and rents out part of it for a cash rent, that so far as it is rented, it becomes subject to taxation. Why not a municipal plant of any other kind?

Mr. KING: If that is so, I am wrong in my abrupt answer. That is only an additional reason why a public utility that can sell one-half of its output shall be under the control of the most important board we have in the state.

Mr. DOTY: Is not the object of your amendment to prevent the public utility from cutting under the price of other service?

Mr. KING: No; I didn't have that provision that you refer to in my book, but —

Mr. DOTY: Is not that the primary purpose of your amendment?

Mr. KING: No; this makes them report like any other corporation.

Mr. DOTY: I call your attention to section 12: "The general assembly shall have authority to limit the power

of municipalities to levy taxes and incur debts for local purposes, and may require reports from the municipalities as to their financial condition and transactions," — that takes in public utilities — "in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

For all you are after you don't need your amendment, because it is in there, but if you want to head off any rate matter, all right.

Mr. KING: I want the provisions as they exist now, or as the law may be hereafter.

Mr. DOTY: As to rates?

Mr. KING: Anything that the law covers.

Mr. DOTY: We have taken care of everything but rates in this section 12.

Mr. KING: I don't think so. We have passed upon the amount of the mortgage, and we have talked recently about privately owned public utilities —

Mr. DOTY: Your amendment doesn't touch that.

Mr. KING: The public utility law does.

Mr. DOTY: But your amendment doesn't cover it.

Mr. KING: Certainly it does.

Mr. DOTY: I will read it —

Mr. KING [reading]: "All regulatory laws that apply to privately owned public utilities shall apply to municipally owned public utilities."

Mr. HARRIS, of Hamilton: This amendment should not be considered for one moment if the Convention favors home rule for municipalities, because with the amendment of Judge King there is no such thing as home rule or public ownership of public utilities. It says to the municipality, you may build, you may operate, you may purchase, all subject to the public utilities commission of the state of Ohio, and the public utilities commission may determine that you cannot issue the bonds, you cannot put such a mortgage, or that you cannot do one of forty different things. This is as diametrically opposed to home rule as it is possible to be. There is only one thing to do, and I move now to lay this amendment on the table. It is not worthy of discussion.

Mr. KING: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted — yeas 85, nays 18, as follows:

Those who voted in the affirmative are:

Anderson,	Farnsworth,	Lampson,
Antrim,	Farrell,	Leslie,
Baum,	Fess,	Longstreth,
Beatty, Morrow,	FitzSimons,	Ludey,
Beatty, Wood,	Fluke,	Malin,
Beyer,	Fox,	Mauck,
Brown, Lucas,	Hahn,	McClelland,
Brown, Pike,	Harbarger,	Miller, Crawford,
Cassidy,	Harris, Ashtabula,	Miller, Fairfield,
Cody,	Harris, Hamilton,	Miller, Ottawa,
Collett,	Henderson,	Moore,
Colton,	Hoffman,	Okey,
Cordes,	Holtz,	Partington,
Crites,	Hursh,	Pettit,
Crosser,	Johnson, Madison,	Pierce,
Davio,	Johnson, Williams,	Read,
DeFrees,	Kehoe,	Redington,
Donahay,	Keller,	Riley,
Doty,	Kerr,	Rockel,
Dunlap,	Kilpatrick,	Roehm,
Earnhart,	Knight,	Rorick,
Fackler,	Lambert,	Shaffer,



Municipal Home Rule.

Stilwell,	Smith, Geauga,	Watson,
Tallman,	Smith, Hamilton,	Winn,
Tannehill,	Solether,	Wise,
Tetlow,	Stamm,	Woods,
Thomas,	Stevens,	Mr. President.
Ulmer,	Wagner,	
Shaw,	Walker,	

Those who voted in the negative are:

Bowdle,	Evans,	Leete,
Brattain,	Halfhill,	Norris,
Campbell,	Hoskins,	Nye,
Cunningham,	King,	Peck,
Dwyer,	Kramer,	Stewart,
Eby,	Kunkel,	Weybrecht.

So the amendment was disagreed to.

Mr. CROSSER: As I have not thus far inflicted myself upon the Convention with any long statement, I feel that now is a pretty good time, when we are all in good humor. By way of commiseration of the member from Hamilton [Mr. HARRIS], who feels that a discourtesy was done him in entering upon the discussion of this matter in his absence yesterday afternoon, he should remember that it is not those who drive along difficult highways who are heard, but rather those who are on the tallyho as passengers and blow the silver bugle. So, if it will do him any good to have sympathy, I can give him some, having been there myself.

Every amendment that has been offered here to this proposal is clearly intended to destroy the principle of home rule as involved in this measure. The struggle for municipal home rule which has gone on in this country for so many years is actuated by the same motive as that which has advanced the cause of direct legislation, direct primary, and every other democratic measure which has agitated this country for some time, namely, the desire to control the machinery of government by those who are subject to that government.

Direct legislation is an attempt to restore to the people control of their political destinies and welfare further than that of merely changing their rulers every year or two, as is the case at present, for after all that is the only democracy which they have had so far in this country.

The advocates of home rule merely insist that municipalities be allowed to solve their own problems and control their own affairs, independent of outside authority, whether that authority be a monarchy, an oligarchy or the people of a whole state. In short, the cities merely ask that the principle of self-government be extended to them. At the present time they find themselves in the predicament of the women, the only other beings in the state denied the right to self-government.

In order to have real self-government all those, and only those, who are appreciably affected by governmental activities should have a voice as to what that government should be. In other words, if there be a problem which affects the city of Cincinnati or Columbus or Toledo particularly, it is not home rule in any sense of the word if the people of the whole state of Ohio undertake to decide that question, merely because those outside of the cities have more people to vote upon it than the particular municipality.

It is difficult to understand by what reasoning the framers of our constitution and some other constitutions justified the taking away from municipalities the right

of self-government, since this has been the principle of which the United States was supposed to be the best example. Such constitutions have reversed the natural order of things.

I contend that the natural and correct method proceeds upon the theory that municipalities exist first and provide for a government suited to themselves, and that for their own mutual welfare, and also for the welfare of the intervening territory, general governments should be established, but which should exercise authority only in regard to matters of a general nature. As the federal government in its relation to the states has only such powers as are specifically granted to it by the people of the states, so it should be with the state in relation to municipalities. The state should have only such powers as the people specifically grant to it.

This is the view taken by Judge Cooley, and it has been held in many cases outside of Ohio that this is the only authority which the state has: *People vs. Hurbut*, 24 Mich. 44; *People vs. Albertson*, 55 N. Y. 50; *People vs. Detroit*, 28 Mich. 228; *Commrs. vs. The Mayor*, 29 Mich. 343; *People vs. Lynch*, 51 Cal. 15; *Allor vs. Wayne*, 43 Mich. 76; *State vs. Denny*, 118 Ind. 382; *Evansville vs. State*, 118 Ind. 426.

Judge Cooley used this language: "A written constitution is, in every instance, a limitation upon the power of government in the hands of agents".

Of course, I have not quoted enough here to show what he really meant, but his theory is that a state legislature should only have such authority as the people of the state grant to it, not the converse, the situation as we have it in this state, that they have absolute authority, and that the subdivisions have only such authority as the legislature doles out to them. If you stop to consider a moment, you will realize that the municipalities, the village communities, as they are sometimes called, were the first forms of government in the history of any civilization. There was no need for a general or central government until there were a great many municipalities and cities. The villages and cities are simply aggregations of people who have congregated in some particular part of the earth. They found it necessary to have governmental machinery of some kind to regulate their affairs, and it was only natural that all powers of government should remain in them when they established a general government, except such as was necessary to discharge the government functions arising from the interrelations of the municipalities.

But some gentlemen have said that that is neither the natural order nor historically true. I have investigated the question, and I find that even in this country, in the state of Rhode Island, that is exactly what happened.

In an article in *Harvard Law Review*, vol. 13, I find this language by A. M. Eaton:

The original towns of Rhode Island existed before there was any colony or state, with well defined self-instituted powers, legislative, judicial and executive, that were not surrendered when they agreed to unite. \* \* \* They derived no powers from any charter, and no title nor any authority to any land from the crown, except from the Indians by purchase.

In 1640 a union was brought about between Portsmouth and Newport, but the two towns were

## Municipal Home Rule.

not fused together, and each continued its separate existence, "forming a union only for their common object, but leaving to each one the management of its own local affairs."

So not only in theory but in fact that has been the natural growth of all governments. They grow from the smallest unit up to the community or village, and from that on to what is known as the state, and from the state to the nation, and at the present time it might be well to call attention to the fact that in our analogy we must remember that the United States government, the federal government, has not all the power of government over the states of the Union, which it may dole out to the states as it may see fit, but the converse is true, the theory which I am advocating here for municipalities in relation to the states is true, namely, that the United States only has such power as the people have specifically granted to it, and wherever problems can be handled by the people of any locality, where they affect the people of that locality more than some other locality, that locality should be allowed to do as it sees fit, not because of any sentimental feeling, but for the most practical reason imaginable, namely, that the people being on the ground and having the problem facing them every day, the people knowing their resources, wants, and the exigencies of the situation, are better able to control by governmental process the difficulty involved in that particular case. It is a practical proposition. It is real self-government, that those actually affected by any law shall have the right to enact and enforce that law. The state should have control over certain functions of government. For example, not even I would insist that cities and municipalities should regulate intrastate railroads or canals, for the very simple reason that the railroads enter a number of different municipalities and the canals pass through a great part of the state. Therefore, if one municipality were allowed to regulate or manage a canal or railroad some other municipality would suffer an injustice. So there is a clear dividing line between the case where the matter affects more than one municipality, and therefore requires control by a general government, and the case where it is properly a local problem and can be regulated by the municipality. In the latter instance in order to have real self-government the people of the municipality should control. Now, what are some of the difficulties that have resulted from an infraction of that principle?

I read the other day of a case where, down in Boston, it was necessary to go to the state legislature of Massachusetts to get authority from the legislature to enable the city of Boston to run an electric wire from the city hall to the old court house so that they could use their dynamo in the city hall to supply the old court house with electric light and power. What was the amusing result of the effort to get that through? The electric light company got busy with the state legislature and prevented the passage of that bill, so the city of Boston was compelled to install another plant for the court house, do without light or buy electricity from a private company.

Why, in the state of Ohio I find that a few years ago the city of Cincinnati made application to the legislature, through a member of the legislature, for the passage of a bill giving cities of the first grade of the first class a

grant of power to open a street called Gilbert avenue, and the bill provided that the street should be of a certain width. Think of it, going to the legislature to get authority to open a street in Cincinnati or Cleveland!

I was talking the other day to a gentleman who was once a senator from Cuyahoga county. He told me that when he was in the legislature a few years ago all he did, when he wanted any legislation for Cleveland was to go to the Cincinnati crowd and say, "We have a bill that doesn't affect Cincinnati; I want you to help it through." And it would go through. They would each have bills providing for bonds for park purposes and all sorts of things, and they each helped the other through. This gentleman said that one day an old gentleman came to him and said, "Senator, don't you think you had better stop for a little while? I hear a good deal of growling that these bills are vicious and rotten in every particular." And he said, "Old man, do I bother you when you want something for Cincinnati? Don't I come to you with my delegation? Don't you think we had better handle this matter just as we have handled the rest of them?" And the old man went on and voted the rest of the session in the same way, and had all of his friends in Cincinnati do the same thing. What naturally results, therefore, is not only a great detriment to the cities, but also to the country, because it results in the system of trading votes. You vote for this bill which affects my city, and I will vote for something that you want. The result is you get a lot of confused laws on the statute books, obnoxious to the whole state, and probably most of them wrong in principle.

Mr. PRICE: I rise to a point of order. The time of the gentleman has expired.

Mr. KING: I move that the time of the gentleman be extended.

Mr. CROSSER: I don't care to have it extended if any gentleman is tired of hearing what I have to say. The motion to extend was carried.

Mr. CROSSER: But I think the worst result of this centralized form of government which regulates cities from Columbus is that the people of the cities are left in a position where they have absolutely no control over their own destinies, and they are blamed for not taking an interest in the city government and for lacking in civic patriotism and righteousness. I tell you that the members of the legislature and of past constitutional conventions have been entirely responsible for that condition. Does it lie in our mouths to say that the people of Cincinnati or Cleveland or Columbus have been derelict in their duties when really they have had no control over their affairs at all? In order to stir up civic pride and political activity must there not be placed some feeling of responsibility upon the people of the municipalities? At present all they do practically is to vote for a mayor and councilmen occasionally, and then the mayor and councilmen are hemmed in by a lot of legal restrictions which say what they shall do or shall not do. Put the power in the hands of the municipalities so that they can govern themselves, and they will have no such excuse. They will know then that whatever ills they suffer are due to their own neglect, but at the present time they can conscientiously say that it is not their fault, that they have no control over their own destinies, and that is the reason I was so much opposed to the amendment

## Municipal Home Rule.

offered by my friend, Mr. Anderson, this morning, which struck out really what seems to me to be the very thing we have been striving for. If this proposal is passed in its present condition, all we can get is a right to own a few more public utilities than we now own. I think I can prove that this is true. What is there to stop the state of Ohio, as the proposal now stands, from passing a general law saying that every policeman employed by any municipality in the state shall get \$50 a month, no more and no less? Would not that be a general law? Certainly it would be so construed. Suppose the state should go farther and say, there is a civil service regulation which shall affect every public officer in the state of Ohio and the employment of every public officer in the state of Ohio, would not that be a general law? Couldn't they pass such a law? I cannot see it otherwise.

So I feel about cutting out the words "affecting the welfare of the state as a whole." If you have that language in the proposal you are certain that a regulation passed by the city of Cleveland in regard to a local condition would not be one that affected the general welfare of the state of Ohio, but as it now stands you can pass such a regulation and the legislature can nullify it so that home rule is destroyed. I propose therefore to offer an amendment a little different in language, but which is the original language of Professor Hatton, contained in the proposal of Mr. FitzSimons, and I hope the amendment will be adopted.

The amendment was read as follows:

After the word "laws" in line 18 strike out the period and insert a comma and add the following: "but such regulations shall be subject to the general laws of the state, except in municipal affairs". In line 49 after the word "laws" strike out the period, insert a comma and "except in municipal affairs."

Mr. CROSSER: It seems to me that if we are to have any home rule whatever we should have some language of that kind in the proposal. Personally I have no objection to striking out the matter relating to liquor. I have no patience with either side of that controversy. I have a contempt for those who can see nothing else in all the deliberations of this body but the wet and dry question. It seems to me the principle of self-government is ten times more important than this wet and dry question, which is eternally being flaunted here every time any kind of question is brought up. Let us be broader. Let us give citizens by the initiative and referendum real self-government, and let us also give the municipalities real self-government. We have already given the women the right of self-government. Now, let us go a little further. Let us strike the shackles of political serfdom from municipalities.

Mr. KNIGHT: I offer a substitute for the amendment just offered.

The substitute was read as follows:

Amend the amendment to Proposal No. 272 by substituting the following: In line 16 strike out the word "power" and in lieu thereof insert the word "authority to exercise all powers of local self-government, and".

Mr. KNIGHT: That substitute just read undertakes, and I think succeeds, to cover the same thing intended by

the amendment of the gentleman from Cuyahoga and avoids the phrase "in municipal affairs". These words were given a very careful research by Judge Worthington, and they constitute a phrase which has been given varied interpretation by the courts of California, where the very same words are used in a provision with reference to municipal home rule. I regret that the report which Judge Worthington made of his examination, and which he brought before the committee, is not available at the moment, but it became entirely obvious to the committee at that time that the words "in municipal affairs" were not susceptible of a single definite and unvarying interpretation, and that at least in one case the court in California, composed of seven judges, differed very widely on it. Three of them held that the term "municipal affairs" meant one thing, three others held that it meant something else and the seventh judge differed from the other six, which seems to be fairly good evidence that the phrase was not a definite and certain one.

The substitute I offer places in section 3 the same phrase that occurs in section 7. It is already in section 7. Section 7 deals with those cities which choose to frame charters for themselves, while section 3 deals with the municipalities which choose to remain under general laws, and this puts both kinds of municipalities upon the same footing, so that those who shall operate under general laws shall have authority to exercise all powers of local self-government, and enact and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws. The same provision is in section 7, with reference to charters of cities framing their own charters, that any city or village may frame, adopt or amend a charter for its government, and exercise thereunder all powers of local self-government, but all such charters and power shall be subject to general laws. We have here identically the same provision. The language may vary a word or two, but it does not vary at all in sense or substance. It is my belief that the insertion of these words restores to section 3 a vital feature which was by the last action of this Convention before recess today stricken out; that is, in our effort to get away from the question which I am certain we all want to get away from, a good deal more was stricken out that was helpful to municipal home rule, and more than was intended, and it is with a view of restoring to the proposal that which ought to be there in our judgment, without breaking into anything which anybody can by any possibility term a sleeper.

Personally I feel that this goes far enough to give us in the cities of this state an adequate measure of municipal home rule, and that it does not in any way raise any controverted question such as we had the flurry over this morning. I am not attempting to insert anything except what is attempted to be accomplished by the amendment of the gentleman from Cuyahoga [Mr. CROSSER], but his amendment does contain language which the courts of California have held to be language of uncertain meaning.

Mr. DOTY: The gentleman's amendment has the first part of the Crosser amendment, but I want to ask the gentleman if that part of the Crosser amendment ought not to prevail in which he says that all such regula-

## Municipal Home Rule.

tions shall be subject to the general laws of the state, except in municipal affairs?

Mr. KNIGHT: You have the wrong proposal. You must have the original proposal.

Mr. DOTY: No; I have not. I will read his amendment to get it straightened out. It would then read "But all such charters and powers shall be subject to general laws except in municipal affairs." Do you not think, while your amendment ought to prevail in place of Mr. Crosser's first amendment, that his second amendment ought to prevail, and if not, what is your view on that?

Mr. KNIGHT: I see no reason why it should go into section 7, unless there is a reason why it should go into section 3. The object of my amendment is to place all classes of municipalities, whether those which shall operate under general laws, or those which shall operate under additional laws, under section 2, or those which operate under charters, that they shall all be under the same provisions. Personally I feel that the provision now does accomplish all that it is necessary, or, in my judgment, that it is desirable to insert in the constitution on the subject of municipal home rule. I think it goes far enough to satisfy the most ardent homeruler, whose zeal for home rule does not run away with his judgment and discretion. I do not think, therefore, it is wise to insert language which the courts have held to be indefinite and uncertain and which is not capable of interpretation.

Mr. SMITH, of Hamilton: I understand that sometime yesterday I was called a radical homeruler. I am justified in saying, unless one of these amendments or some similar one is adopted, that this Convention is radically opposed to home rule. I hope the Convention will adopt the Crosser or the Knight amendment. I prefer Mr. Crosser's, although Mr. Knight's will give local power of self-government.

In section 7 it is provided that "Any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government," etc. The action of the Convention therefore makes even the adoption of a city charter subject to general state laws. This is all wrong. Suppose, for example, that the legislature by undue and evil influence might say that there shall be no commission form of government in Ohio for cities. Even if some of the cities might want a commission form of government, the state could forbid them under this proposal as it now stands. The real fact, I think, is, and if you will study it you will agree with me, that you have gone too far in changing this proposal. There is nothing under the proposal now to give a city any home rule. There is no matter upon which the legislature might not pass a law, and prevent the city from legislating along the same line. The city would be blocked by the general act of the legislature. So I hope you will do something to relieve the situation, because some relief should be given.

Mr. ANDERSON: Personally I am in favor of the fullest home rule for the cities of Ohio, but I do not want so much home rule for the cities of Ohio that they may nullify a work that we have already done in reference to the licensing of intoxicating beverages. The court of California may have differed as to the interpretation of the words that were offered here in the proposal as sent down from the committee at Cleveland,

but be that as it may, the supreme court of California has agreed in reference to the fact that if the proposed amendment of Mr. Crosser, or that for which Mr. Smith is contending, is put into Proposal No. 272, it will give to each municipality absolute authority to do absolutely as it pleases with reference to all the things concerning the regulation of the traffic in intoxicating liquors. They can abolish it, they can give it a degree of prohibition or they can regulate it in any way that they please, and I have the authority here in my hand. I found it by an examination of Mr. Harris' brief. It is 155 California, page 304.

Mr. FACKLER: What is the provision of the constitution of California with reference to the liquor traffic?

Mr. ANDERSON: I waited and allowed the discussion to proceed. I really tried to inform myself on the situation, so that I might be understood. The home rule proposition is in the constitution of California, and it is in there in practically the same language as suggested by Mr. Smith and by Mr. Crosser, and by the language employed before we struck out part of Proposal No. 272.

Mr. FACKLER: Was there any general law in the state of California that conflicted with the authority attempted to be exercised under the home rule provision?

Mr. ANDERSON: I do not know; nor do you.

Mr. FACKLER: Is it not a fact that your case would not be in point unless there were such a law?

Mr. ANDERSON: Absolutely in point, because the court in this volume holds that by reason of the constitution of California giving municipalities home rule such as you want to give, no matter what law they have passed, each municipality may do as it pleases in reference to the liquor traffic.

Mr. FACKLER: That could only be done in case there was not a general law, and that would not be a case in point unless you can say that there was an absence of a liquor provision in the state of California.

Mr. ANDERSON: I am stating it awkwardly. I mean this, largely following the logic and the words of the supreme court report: The constitution of California gave to each city certain rights. Therefore, that municipality could do as it pleased, in introducing an ordinance to throw out or to allow the uncontrolled sale of liquor within the bounds of the municipality. It could license any saloon at any place. An attempt there was made to license a business club to sell intoxicating liquors. I believe the Knight amendment preserves home rule in its purity, and therefore — and in this I believe Professor Knight will agree with me — there is no need of going any further, except to obey the demands of the "wet" lobby. I want to say that the liquor proposal, Proposal No. 151, has met with praise all over the state of Ohio, with the exception of two classes — first, the third party, the prohibitionists, and second, the foreign brewery representatives. The report from the home counties to the delegates is that there has been nothing but praise for that proposal, and what is the use of allowing it to be nullified? What is the use of trying to permit, as I am beginning to believe Mr. Smith, of Hamilton, is attempting, the wet lobby of the foreign brewery representatives to have what they want? I am afraid that the

## Municipal Home Rule.

gentleman from Hamilton [Mr. SMITH] is more in favor of the brewery than he is in favor of home rule. I am only influenced by the evidence. I may be mistaken, but it does seem strange that when the brewers have anything they want done here, any kind of amendment to Proposal No. 151, it comes in from the same delegate and the same city, and we have it from the mouth of the chairman of the committee that all amendments that were made in the committee to amend this home rule proposition to let the brewery have its sway came from Cincinnati. Because I am in favor of home rule in its purity, I am in favor of the Knight amendment, and because I am opposed to having a collateral attack made upon Proposal No. 151, I am opposed to the Crosser amendment.

Mr. PETTIT: It seems there are certain gentlemen, who in the discussion of this question are very fearful that the whisky question will be lugged in. Who has lugged it in, I would like to know? The same slimy serpent that has been here all the time, wriggling around among the members of the Convention. A gentleman from Cuyahoga came to me this morning, because he knew I was a dry, and asked me to see that this provision, limiting section 3 was stricken out. He was willing that that matter should be stricken out.

Mr. DOTY: What part was that?

Mr. PETTIT: About the welfare of the state as a whole.

Mr. DOTY: What gentleman was that?

Mr. PETTIT: Mr. Fackler. I will name him. He didn't want the whisky question brought in here. He said he was satisfied if those words were stricken out.

Mr. FACKLER: Yes.

Mr. PETTIT: Well, why have you changed?

Mr. FACKLER: Mr. Knight has pointed out the reason. If section 3 is changed as we have changed it, and section 7 is left alone, under section 3 municipal corporations which do not adopt charters are left in the same position as now.

Mr. PETTIT: That is not the reason. I tell you you were not in good faith when you voted for the amendment. I came to you and cautioned you—

Mr. KNIGHT: A point of order. I think this unseemly discussion is out of order.

Mr. PETTIT: Now you are satisfied with the amendment offered by Mr. Knight.

Mr. FACKLER: I am.

Mr. PETTIT: Mr. Crosser is not.

Mr. CROSSER: Mine was in first.

Mr. PETTIT: You are trying to lug in what we struck out this morning. I see through it all. This is very much favored by the gentleman from Hamilton [Mr. SMITH]. He is one who gave notice of an amendment to Proposal No. 151. He tried to cram that down the throats of the Convention, and he saw he couldn't do it and withdrew it, and now he is trying to lug this thing in here, and as long as you let this thing bob up we will be ready to hit it. Why do you not enforce your law against the saloons? You can shut them up, but you won't do it. If you would shut them up you wouldn't have to have so many police regulations, and wouldn't have to have half as many evils as you have now, and you wouldn't have to have half as many workhouses.

Mr. SMITH, of Hamilton: I rise to a point of personal privilege.

Mr. DOTY: I rise to a point of order. I think this matter should be confined to the question before us.

Mr. SMITH, of Hamilton. I was out of my seat and I heard my name mentioned on the floor of the Convention, and I want the privilege of making a statement. When a man finds that he has no argument—

Mr. DOTY: I rise to a point of order. The gentleman has not stated any question of privilege yet. He has to state that first.

Mr. SMITH, of Hamilton: Don't you know it?

Mr. DOTY: No; I do not.

Mr. SMITH, of Hamilton: I was going to say when I was interrupted by the gentleman from Cuyahoga [Mr. Doty] that when a man fails to find any sound arguments for his cause he descends to insinuation and innuendo. Now, the gentleman from Mahoning [Mr. Anderson] virtually accuses me of representing specifically the liquor lobby in this Convention. That insinuation is absolutely false. It is only due to the Convention and to myself to say this. I am strongly in favor of a proper license provision, but am not fighting for home rule because of any profit the liquor interests may get out of it, but for the reasons that I have tried to state to the Convention. I believe the Convention understands my strong convictions. I want the cities of our state to be free to work out their destinies. I am president of an organization composed of thirty-five local welfare and civic organizations, organized to discuss and handle for the people of the city the big problems of government that come up in Cincinnati. This organization, called The Federated Improvement Association of Hamilton county, has gone on record in favor of home rule. So I am here striving to secure for them and for all the people of Ohio a reasonable provision for the self-government of cities.

Mr. WINN: I would like to ask the member from Hamilton [Mr. SMITH] a question: If you could have your way about it, you would prefer to have this proposition so written that each municipality could have absolute power to determine for itself all questions respecting the sale of intoxicating liquors, would you not?

Mr. SMITH, of Hamilton: No; I am not prepared to say that. What I do believe and have already said is that the cities themselves are best able to solve the great problems arising in the city. Only one of these problems is the abuse of the liquor traffic and its remedy. You must admit that our present methods have not been so successful that it might not be a wise plan to give to cities some measure of control over the situation themselves.

Mr. PETTIT: You think they cannot have home rule unless they are entitled to control the whisky question?

Mr. SMITH, of Hamilton: No, sir; that is a mere incident in my mind. I believe the city should have some measure of control over that business in the city, but I have many bigger questions than that in my mind. When I speak of home rule the liquor question is never a part of it. For one thing, I think of public ownership of public utilities. For another, I think of the advantage of letting a city decide its own form of charter.

Mr. PETTIT: But you only pander to that element whenever they get scared and demand something of you?

## Municipal Home Rule.

Mr. SMITH, of Hamilton: You may think so; I do not. As I said before cities have many problems. The liquor question is only one of many. I trust the Convention will not be fooled and allow this kind of talk to cloud the important issue under discussion.

Mr. FESS: On the fourth day of our session I introduced a proposal designed to give home rule to cities. It is one of the questions that is of interest to me, and has been for a great many months, if not years. I do not want to speak to the amendment that is pending, but I would like to speak briefly in regard to the principle of home rule. Here is a proposal that has come in after a long and elaborate study, both by men who are experts along the line of local self-government and men in the committee. I have understood that committee held many, many meetings and the matter was threshed out very thoroughly, and I have wondered whether when the proposal has come, consisting of twelve articles, if we are not likely in our enthusiasm upon the police power in the proposal to lose sight of the thing we are trying to get here. I am wondering whether the most important thing we have is this section 3 and part of section 7. I believe that we should keep in mind the eighty-two cities which will fall under this proposal, and which may utilize it to get what this Convention wants to give them.

I think every man here would like to have the city have the power to organize itself with the power of determining its functions. We would like to have the administrative functions not disturbed in this state house or interfered with by exterior power from the cities. It seems to me that what we are concerned about is that each city may determine its own powers of government and powers of administration. In trying to reach that we have a long proposal that is somewhat legislative, and on that score there will be some objection, but at the same time it will appear that this is the best thing that can be done. This has been a work of collaboration that represents no political party, that represents no city, that represents no industry or interest, that represents no locality, but represents our state; and being a representative proposal, with no particular or local interest in it, it merely gives to every city in this state what other cities in other states have profited by. That being the case, I appeal to you not to lose the main thing we are trying to get here. I do not want to minimize the importance of this amendment. I do not want to say that any amendment is offered to defeat the proposal. I believe the amendments are being offered to clarify the proposal, and thus far we have profited by the discussion of the amendments, but I would hate, in our efforts to get what the cities of the state ought to have, to do something that would be a detriment to the proposal. This is the police power you are discussing. It is an important part of it, but the most important part is the right of the city to govern itself. The police power exercised by the city is of less importance. It is true that the greatest problem our state has ever had has been its federal relations, its relations with the power of the government at Washington. Now the same thing is true in Ohio, there is a conflict between the cities and the state and between the cities and the counties.

Therefore, in this proposal, while we recognize the authority of the state in matters pertaining to the general

welfare, in school legislation, in sanitation, in the police power that you are now discussing, while we recognize that, we do not want to give the state the power to nullify the power of the cities, nor to allow the city to nullify the power of the state. That is our problem. It is the biggest one we shall have, and I appeal to the men here, let us not jeopardize the larger interests of the government of the city by our fears that something we are constructing will ultimately defeat the regulations that we insert, and it seems to me that the amendment of Professor Knight will cover it all, and without any conflict. As I recall that amendment it provides authority in the city to exercise local self-government, subject, however, to general laws. It seems to me that that covers the whole thing.

Mr. DOTY: How about section 7?

Mr. FESS: That is one of the important sections which gives a right to the city to frame its own charter.

Mr. DOTY: How about the Crosser amendment?

Mr. FESS: The only thing I fear about that is the phrase "except in municipal affairs." Does not that open the door too wide? I would vote for that as a last thing, but I prefer Professor Knight's amendment. We have suffered so very much from being controlled by power in the state house here that it seems to me we ought not to allow those other matters to jeopardize this larger purpose. Therefore, I am going to vote for the amendment of Professor Knight in the hope that it will carry, and it seems to me there will be no suffering either on the part of the city or the state. Let us not jeopardize this very important proposal for self-government by some fear of something that nobody understands.

Mr. HARRIS, of Hamilton: I sincerely hope the Convention will adopt Professor Knight's amendment rather than the amendment by Mr. Crosser. I believe the amendment of Mr. Knight will cover, so far as can be covered, that which was unintentionally cut out of section 3 this morning.

I hold in my hand some papers taken from the desk of Judge Worthington. There are forty-five decisions by the supreme court of California in their efforts to interpret the four words "except in municipal affairs" which the committee absolutely refused to insert in its proposal. Every member of the committee knows how thoroughly that was discussed. It is inviting lawsuits and litigation for construction of every function of municipal government, and it is most unwise to incorporate it in our proposal. Section 3, as amended by Professor Knight, has this further advantage, that it will agree with the phraseology in section 7, because he has used the exact words, to-wit, "may exercise thereunder the powers of local self-government."

Now, I maintain that there is nothing in this proposal which means to give, or ever was intended to give, a charter-governed city any greater power or authority than a municipality organized and working under the general or special laws. Consequently, when you limit the phraseology in section 3 and in section 7, and make it exactly the same, you are conferring a distinct public benefit. You are removing a great many possible cases for interpretation by the supreme court. I thoroughly coincide with my distinguished predecessor from Greene, who always speaks well and intelligently. We must not lose sight of the general scope of the proposal for the



## Municipal Home Rule.

mere egotism of words, and I trust that the amendment offered by Professor Knight will be accepted, and that then the proposal as a whole will be adopted by the Convention.

Mr. WINN: I shall not ask very much time. If any amendment is adopted, I favor the amendment of the delegate from Franklin [Mr. KNIGHT], and it seems to me that if section 7 can be amended so as to make it harmonize with section 3, we shall have accomplished all that any of us who are deeply interested in local self-government for municipalities could ask. Of course, this proposal, after having eliminated from its provisions those parts that were taken out this forenoon, is still a long way in advance of the existing constitution and statutes. It does not, of course, go as far as those gentlemen who believe, as some do, in local self-government to its fullest extent, would ask. I would amend section 7, and I take the floor for the purpose of making this suggestion. We can study about it a minute. If we adopt the substitute amendment of the member from Franklin, and then make this amendment to section 7, it seems to me it will make the two harmonize:

Strike out all of section 7 and insert the following:

SECTION 7. Any city or village may frame and adopt a charter for its government and may subject to the provisions of section 3 of this article exercise thereunder all powers of local self-government.

Now cut out everything that is left in that section respecting conflict of laws, "but all such charters and powers shall be subject to general laws affecting the welfare of the state as a whole." That can all be stricken out if we say that section 7 is subject to the provisions of section 3.

Mr. KNIGHT: Are you aware that the last nine words of section 7 are eliminated?

Mr. WINN: Take it all out after the word "government." Leave the municipality under a charter to exercise absolute self-government, subject only to the restrictions under section 3. What objection could there be to that? It looks to me as though that gives all that is asked for.

Mr. CROSSER: You don't mean to cut out the word "amend". Sometimes they want to amend.

Mr. WINN: I did cut that out accidentally, but I can add it. I hope the amendment of Professor Knight may be adopted after which I will offer that.

The amendment offered by the delegate from Franklin [Mr. KNIGHT] was agreed to.

Mr. WINN: Now I offer this amendment:

The amendment was read as follows:

Strike out all of section 7 and insert the following:

SECTION 7. Any city or village may frame and adopt or amend a charter for its government and may subject to the provisions of section 3 of this article exercise thereunder all powers of local self-government.

The amendment was agreed to.

Mr. DOTY: We have not adopted the substitute offered by the delegate from Franklin [Mr. KNIGHT].

Mr. ANDERSON: No, sir.

Mr. DOTY: The question is on that.

The PRESIDENT: The question is on the adoption of the amendment by way of substitute to an amendment of the delegate from Franklin [Mr. KNIGHT].

The substitute was agreed to.

Mr. WINN: Now I offer an amendment to correct the phraseology in another part of the proposal.

The amendment was read as follows:

Strike out all of section 4 to and including the word "service" in line 26 and insert the following:

SECTION 4. Any municipality may, for the purpose of supplying the product or service thereof to the municipality or its inhabitants, acquire, construct, own, lease and operate, within or without its corporate limits, any public utility; and may contract with others for any such product or service.

Mr. WINN: Under the provisions of section 4, as now written, a municipality may contract for the purchase of a public utility provided the product of such public utility is at the time of purchase supplied to the inhabitants of the city or village. If it is a city or village that has no such service, it is not permitted, under section 4, to acquire the public utility of that sort. This is designed to broaden the terms of that to extend it to any municipality, whether the municipality has the public utility or not, and it may proceed to acquire one. It makes it possible to have just what was intended.

A vote being taken, the president announced that it seemed to be carried.

Mr. HARRIS, of Hamilton: I think that is a very important amendment, and I do not think an amendment of that kind ought to be rushed through without the Convention understanding the scope of it.

Mr. DOTY: In order to bring it before the Convention, I move to reconsider the vote by which that amendment was agreed to.

The motion to reconsider was carried.

Mr. WINN: Let me explain a little bit further. If the members will turn to their books and read section 4, you will see the importance of it: "Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to the municipality or its inhabitants." That seems that unless the utility is supplying at that time its product to the municipality the municipality cannot acquire it. I suggested that amendment to Professor Knight last night, and he said, that "is or is to be supplied" would remedy it.

Mr. HARRIS, of Hamilton: Would not the purpose you seek to cover be entirely secured by inserting the words in line 25 "which is or may be supplied"?

Mr. WINN: I thought about that seriously, and if I were not particular about the use of the English language I would have put it in that way, but the more I have studied it the more I have thought it was bad English, and I attempted to say it with the better English.

Mr. FACKLER: Do you think it is possible under the construction of your amendment that a municipality would not have authority to acquire a public utility if it were already a public utility supplying service, inasmuch as you say it "may acquire, construct, own, lease and

## Municipal Home Rule.

operate within or without its corporate limits, any public utility"?

Mr. WINN: Certainly not. I offered that to cure what I say is a defect in this.

Mr. KNIGHT: May I say that the gentleman from Defiance [Mr. WINN] misunderstood me if he understood me to say that the language of his amendment would cover the matter. I distinctly said that the words "is or is to be" should be inserted, but he misunderstood me very clearly if he understands me to approve the language of the amendment which he now proposes.

Mr. WINN: With the consent of the Convention I will withdraw the amendment. I do not care a snap about it myself.

Mr. FITZSIMONS: Mr. President and Gentlemen of the Convention: I suppose there is nothing that is good in this world that comes into it without having a price and I take it that Proposal No. 272, which was brought into you here, has paid the price of wanting to come into actual use. For the last thirty years I have been looking forward to the day when the people in our municipalities might have the right to govern themselves in their own way, at their own pleasure, in their own time, at their own cost, with due respect for the rights of everything that belongs to the great commonwealth of Ohio. I am pleased to see the disposition shown here to grant to the municipalities of Ohio the privileges that have been accorded to municipalities of Great Britain for thirty years. It shows that we are marching, probably not up in the front rank, but in motion, and when the American people get into motion on any subject they are not long in the rear.

The municipalities of Ireland, that are only subjects of Great Britain, not sovereigns as we are, not kings twice a year, not exercising sovereign prerogatives individually as we are, have the right to serve themselves municipally in everything that may tend to their own benefit. I speak of the Irish municipalities for this reason: We are apt to look upon them as only subjects of Great Britain, but they have their own electric railroads and they have a multiplicity of services they render themselves.

When John Burns was in this country some days ago he was then representing Battersee in the London council. He told me that the county council had taken up the work of reclaiming the slums of Battersee, and in the place of slums they were erecting modern tenement houses with every convenience and utility attached to them. They were renting these to the people of the locality at a price way below what those unfortunates had been called upon to pay for the slums that they occupied. He said to me the rent they pay for these tenements is capable in every way of meeting all the running expenses of the plant and creating enough in the sinking fund to eventually liquidate the indebtedness. That all sounded well to me. I was glad to hear it, but when John Burns went to the limit of the proposition and when I asked him if he thought it would pay—I was only asking him from the American standpoint at the time—I said, "Burns, will it pay?" He said, "Yes, it will pay, but if it does not pay in pounds, shillings and pence, it will pay in this way: It will not cost as much to police those people under the conditions in which they are

living now as formerly, for, remember, you can not rear men and women in the slums and have them of any account."

That, my friends, was the foundation principle that permeated them. That is the principle that should permeate us. I can take you to municipalities in the state of Ohio and show you divisions between families in their rooms that have no more resistance than a chalk line on the floor, and how do you expect to rear people that we should be proud of on that basis?

In Glasgow they have gone further. There they own their own slaughter houses. They can afford a premium for choice cattle and butcher them at their slaughter houses and put them in cold storage and sell them to the people at the cost of the service. How could the Beef Trust get their hooks into those people under those circumstances? Even in our cities the trusts have got control of the fish product that we tax ourselves to plant in Lake Erie. They got so arbitrary that they told our fishermen what they should pay and what the consumers should pay. The city took things into their own hands and put up a city dock where the fishermen could bring their fish, and the fishermen got more for their fish than they formerly did from the trust, while the people who were buying the fish are paying only about thirty per cent of what they paid formerly. It shows that with our congested population we have to get away from certain policies that we have been pursuing for years up to the present time. Anything that will tend for the betterment or elevation of the human family should have our best efforts. Gentlemen, from this time forth in this country it is to be men, not dollars. It has come to that. We have tried the other god. We have tried the dollar for a god, and while he is a handy first lieutenant, he is an awful unreliable god.

Now there is no use continuing on this proposition. The work is done, but in conclusion let me say, let at every point our efforts be to secure to the mass of the people, those who through stress of circumstances have not the ability, haven't the disposition and haven't the time to be eternally looking out for self—let us take their task in hand, and let us to the extent of our limited ability do everything in our power to uplift and bring up the column, not to get in advance of it and leave them behind, but to bring the column up so that when all are there, there will be no man or woman or child in this country who will have any plausible, reasonable or logical excuse for being helpless. Our natural resources are ample to meet everything. All that is needed is a change of front on our part and the job is done.

Fundamentally the American is right at heart, but in the past he has been looking out for himself. When the army shouts "Save yourselves," they are ready for the enemy's cavalry and when the cavalry gets in among the infantry there is mischief to pay. I have seen it when the officials of private interests have got up and told me in public that it was cheaper to buy officials than to deal fairly with the people. My friends, when we have gotten to that low level it stands us to take an account with ourselves, and the way to do that is to remove temptation, quit eternally fighting among ourselves and keep the other man from preying on our necessity. I do not care how the interests may come in conflict, the people are the ultimate sufferers. It is up to us; let us enlarge our

## Municipal Home Rule.

ability to help ourselves, and the generations that will follow us will call us blessed.

Mr. FESS: I move the previous question.

Mr. HOSKINS: I would like the gentleman to withdraw the motion.

Mr. DOTY: You can vote it down.

Mr. HALFHILL: Some of us would like to be heard on the matter.

The motion for the previous question was lost.

Mr. HOSKINS: I offer an amendment.

The amendment was read as follows:

After the word "municipality" in line 46 insert:  
"A municipality owning or operating a public utility shall not sell its service or product at less than the cost thereof."

Mr. HOSKINS: I am offering that amendment solely upon my own authority and without any suggestion or solicitation. It presents a phase of this question that I am satisfied has not been considered by this Convention. If I read this proposal right, there is absolutely no limit on the cost at which the municipality may furnish its service, and there should be such a limitation. I am heartily in favor of municipal ownership of public utilities in a general way and I desire to vote for this proposal, but there ought to be limitations upon the sale of the product so that the product can not be sold at less than cost. There is a reason for that. For instance, a municipality undertakes to acquire and operate an electric light plant. They will have a right to do it under this proposal. Electricity is a commodity that will be produced by the public utility and it will be used by a certain percentage of the citizens, while a large percentage of the citizens will probably continue to use a cheaper method of illumination than electricity. Now if the municipality is permitted to furnish the current at less than the cost of it, the common taxpayer bears part of the burden of the man who is getting the electricity at less than it costs. That cost can always be determined. In my judgment, you will find that we are not going to have the millennium right away. You will still have politics in the management of your public utilities, and you will still have boards of administration who will want to make a showing to other boards of administration, and they will undertake to reduce the cost of their product or reduce the price of their product to secure a favorable comparison. The municipality ought not by reducing to a price below the cost put a new burden on the common taxpayer. That is my idea of it. There ought to be a limitation upon the sale of the product so that it could not be sold at less than cost.

Mr. FACKLER: That would enable the private lighting company doing business in a city which had a municipal lighting plant to put the municipal plant out of business, would it not, by lowering the price below the cost temporarily for the purpose of driving the municipal plant out of business?

Mr. HOSKINS: Well, reverse the rule—

Mr. FACKLER: Is not that the fact?

Mr. HOSKINS: Not necessarily so, and I do not think it would do that. Now let us reverse the rule and put the other proposition. If the municipality undertook to operate and came in competition with a private company that may be operated they would at the expense

of the taxpayer drive out or destroy the public utility that was thus being operated.

Mr. DOTY: In all your knowledge and experience have you ever heard of a public ever treating a privately owned utility in the fashion you are now describing? Did it ever happen?

Mr. HOSKINS: I do not know. I am not making a plea from that standpoint.

Mr. DOTY: You are making a plea from the standpoint that the public might do it?

Mr. HOSKINS: That has been done ten thousand times.

Mr. DOTY: Name one. It never happened once.

Mr. HOSKINS: That is an all-fired, broad assertion.

Mr. DOTY: If you know ten thousand just name us one.

Mr. HOSKINS: I have in view one instance that you don't know anything about, but I do. A company went into a city and put in a utility after they had been invited by the city council to come there and put it in, because the opposition public utility was not furnishing the service which should be furnished.

Mr. DOTY: A public utility?

Mr. HOSKINS: Yes.

Mr. DOTY: Publicly operated?

Mr. HOSKINS: Sit down—keep your seat. Mr. President, I object; somebody from Cuyahoga county is disturbing the proceedings with his mouth.

Mr. DOTY: I am not disturbing you.

The PRESIDENT: The member from Auglaize [Mr. HOSKINS] has the floor.

Mr. HOSKINS: I want to give you this instance, if you will just shut your trap. This private company, operating what would be a public utility under this proposal, was invited to come there and invest its money for its own private benefit. The investment was made under the ordinance of the city council. Two or three years passed and one night a reform wave came in all at once, and without warning and without notice and without any indication that they were going to make that bid for public approval, they reduced the right of the operating company.

Mr. DOTY: That doesn't answer my question at all. I knew you couldn't.

Mr. HOSKINS: All right; if it doesn't, keep still.

Mr. FACKLER: I would like to know where that was.

Mr. HOSKINS: Come to me privately and I will tell you.

Mr. DOTY: Sure, sure.

Mr. HOSKINS: I want to be understood on this. I am not making this plea, but I believe this proposition is one that the committee has never considered, and without putting this limitation upon the price you are opening up a road by which the ordinary people may be charged greatly by furnishing the commodity at less than the cost of manufacture. You know what may happen in one of these reforms and where one administration wants to make a showing for itself, and you know that in circumstances like that the loss through operating and selling the commodity at less than the cost price would fall on the common people. Now I say this is entirely my own idea of the matter, but I believe a limitation of that matter ought to be incorporated here at the end of line 46.

## Municipal Home Rule.

Mr. HARRIS, of Hamilton: It is sometimes difficult to understand the psychology of things and persons and I know the member from Auglaize [Mr. HOSKINS] is a staunch home rule man. I know his sincerity and his truth, and knowing all those things I can not understand how his mind can frame the features which are embodied in his amendment. This is absolutely denying the right to the municipality to own or operate its utility. Just stop and consider for a moment. How many injunctions would be filed against the public utility from time to time to determine the cost of that utility's service? How many factors do you suppose would be considered by the attorneys for the complainants in determining the cost of that product? It has absolutely no standing in this proposal. While it is new to him, I will say for his benefit that that very proposal was handed to me as chairman of the committee, and I told the gentleman who handed it to me—he was not a member of this Convention—that I had too much respect for the intelligence of the least intelligent of my committee to even submit it to the committee.

Mr. CROSSER: Do you object to telling who handed it to you?

Mr. HARRIS, of Hamilton: Yes; there is no occasion for bringing in personal names. There is one thing the students of history have remarked, and that is the public morality of any community is not immensely higher than the individual morality. When you say a municipality may reduce the price of a product below the cost of production for the purpose of bankrupting some corporation, you are assuming the lowest type of public morality, that public morality which is indulged in by the unscrupulous private corporation, but never by the community as a whole. You are impugning the morality and sense of fairness of the people. I think that this amendment needs no discussion and needs no consideration and the kindest fate I can offer it is to move that it be placed on the table.

The motion to table was carried.

Mr. PIERCE: I wish to offer an amendment.

The amendment was read as follows:

After section 6, insert the following, which shall be known as section 7, and all sections thereafter of Proposal No. 272 shall be renumbered:

SECTION 7. Any municipal corporation is hereby vested with authority to create by its legislative body a city-planning commission with authority to prepare plans for the future development of such city and to change, alter and reestablish any part of the existing plat or plan of such city by laying out streets, avenues, alleys, parks, boulevards and other public ways and places within such city and also within limits not exceeding three miles from the existing corporation lines at the time of the adoption of such plan. Such commission may lay out a city plan in whole or in part and may add to, change or alter the city plan from time to time as desirable, but all plans, additions, alterations and changes shall be subject to adoption as herein provided. Any plan proposed by such commission, if adopted at a general election by a majority of the electors, shall constitute an established city plan, and the city shall thereafter be surveyed, laid out

and developed in strict accordance with such plan, and all owners of land must conform thereto.

In order to fulfill its powers such commission shall have authority to condemn property; to enter upon property for the purpose of making surveys and plans upon payment of any damages it may cause, and any person claiming to have suffered damages by reason of the plan adopted and followed by such city may be awarded damages by the commission to be paid by the municipality; and if damages can not be agreed upon such person shall have a right of action against the municipality and such commission to establish his damages. All expenses of such commission shall be provided for by the legislative body of the city.

Mr. PIERCE: Mr. President and Gentlemen of the Convention: I introduce this amendment at the request of the chamber of commerce of my own town. It has been gone over by attorneys there and other citizens and they asked to have it incorporated in the municipal proposal or adopted as a separate proposal, as I could get it. I find that the time is up for separate proposals, so this is the only time I can possibly get it in. I want to say that my amendment does not change the pending proposal in any way. It takes nothing from it, and, so far as I am able to see, there is no reason why any member of the Convention should oppose the addition.

It gives the legislative body of a city authority to create what is known as a planning commission, which will deal with the future growth and development of the city. At present there is no beauty, symmetry or system attempted in the development of cities. Everything is left to chance and accident. Consequently, as the city grows and develops by patches, instead of a thing of beauty it resembles a crazy-quilt.

One party lays out an addition outside the corporate limits, without any reference whatever to any other part of the municipality and as the city grows it is compelled to take in the addition with all its defects and deformities. No regard perhaps is paid to the width of the streets, the size and depths of the lots, parks, drive-ways, boulevards and other necessary details, all of which add to the beauty and permanent welfare of the city. Under such hodge-podge arrangements the city is finally put to great expense and inconvenience in curing the defects; whereas, if it had had control over the matter when the addition was platted, it could have directed the owner how it had to be done and thereby have saved the taxpayers an enormous amount of money.

I am informed there are a number of planning commissions in some of the German cities and in a few cities of this country. It is important that the legislative authority of a city have control over this, because if additions to cities are left entirely to the owners, they try to coin them into dollars for themselves without regard to the future welfare and development of the city. As cities increase in population, to conserve the health and morals of children there is almost a universal demand, at the present time, for parks and playgrounds, all of which may be provided at a minimum cost to the city when the addition is platted into lots. It enables a city to provide for its future growth along definite lines. It

## Municipal Home Rule.

enables a city to provide for parks, avenues and boulevards by reason of natural conditions, without being compelled later to acquire them after the enhancement of the value of property. It enables the commission to lay out in an orderly and well-defined manner future additions to the city, instead of waiting until its natural beauty and symmetry have been destroyed. It requires both time and money to change the plan after it has been adopted. The time to do it is before it has been adopted by the city.

According to this plan, a city may be developed along intelligent and progressive lines and home-seekers can determine the locality in which to acquire property, as it will give them an idea of its future surroundings. It enables the city to control its own development without being left at the mercy of those trying to get all possible out of their additions without regard to the beauty and future prosperity of the city. The plan proposed is not compulsory. It must first be approved by a majority vote of the people of the city and then it is up to the legislative body whether it shall carry it into effect or not. All will admit that cities should be developed to bring forth the beauty and utility of their natural situation—parks along rivers, boulevards and driveways along natural ridges and avenues to connect important centers of development. This may all be done by fore-ordained plans with little expense, whereas if it is not done at the proper time, it entails an enormous expense upon the city. The changes must be finally made or the public must always suffer for want of a little care and foresight.

Mr. ANDERSON: If we had had this kind of a provision either in the constitution or law of Ohio it would have prevented the high cost of extending many of the streets in the cities.

Mr. PIERCE: Yes.

Mr. ANDERSON: Is it not true that at the present time where properties are platted very little attention is paid to the streets that exist at the time?

Mr. PIERCE: Yes.

Mr. ANDERSON: And this would correct all of that evil?

Mr. PIERCE: Yes.

Mr. ANDERSON: In other words, it would give a system for our streets in advance?

Mr. PIERCE: Yes; it would prevent conditions like that Mr. Doty talked about and all future conditions like that, and instead of a city becoming a crazy-quilt it would have some uniformity.

Mr. DWYER: Under this could any private owner lay out a plat without getting permission from a municipality?

Mr. PIERCE: If anybody contemplated laying a plat out outside of the city limits he would have to go to the city authorities.

Mr. DWYER: Within the three-mile limits?

Mr. PIERCE: Yes.

Mr. KNIGHT: I want to ask a question and my question does not imply that I am opposed to this idea. On the contrary, I think some of it is good. But are you of the opinion there is anything in the way at present of this very thing being provided for—assuming that this proposal is now adopted, have we anything that we

couldn't have now? Is there anything in it that is not purely statutory?

Mr. PIERCE: Really, I do not know that there is anything in it except what is purely statutory. I know those having the matter in charge went over it carefully and they were of the opinion that we ought to have constitutional authority; that the legislature could not deal wholly with the question. That was their opinion. Whether that opinion was well founded or not, I am unable to say.

Mr. CROSSER: I have always had the highest regard for anything that comes from the gentleman from Butler [Mr. PIERCE], but there is no question that the authority he grants is fully granted in other sections, and I therefore move to lay this on the table.

Mr. HALFHILL: I think it is very evident, after listening to the excellent exposition of this proposal by Professor Knight, Mr. Harris, chairman, and some others of the committee, that we all have reached the conclusion that they have thoroughly considered and canvassed the question of municipal government. Also, listening to the earnest speech of the proposer [Mr. FITZSIMONS] we realize he has to an unusual degree knowledge of certain sociological conditions in the great centers of population. I think I am as much in favor of local self-government of cities as any man can possibly be, but I want to confess to you that it was a great surprise to me when this proposal came before the Convention. I always supposed, from the consideration I had given this subject, that we could readily and easily grant a large measure of power to the cities by adding a very few words to the existing constitution; and by adding these that we would follow the well-accepted canons of constitutional law. Now, in order to make myself plain, I want to read for the information of the Convention, and if I have an opportunity I desire to offer it at the proper time as an amendment providing what has always seemed to me to be the correct remedy for these evils we now admit exist so far as governing the municipalities is concerned:

Strike out all after the word "follows" in line 3 and substitute the following:

"Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities, all others shall be villages, and the method of transition from one class to another shall be regulated by law.

The general assembly shall provide for the organization of cities, and incorporated villages by general laws and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

Provided, that subject to general laws affecting the welfare of the state as a whole, any city or village may frame, adopt or amend a charter for its government, and may exercise thereunder all powers of local self-government, which charter or amendment shall become operative when affirmed by a majority of the electors of such municipality voting thereon. Laws shall be passed to make effective the privilege of local self-government for municipalities subject to the foregoing restrictions.

The adoption of the foregoing shall operate to

## Municipal Home Rule.

repeal section six (6) article thirteen (13) of the the constitution."

In order to make myself plain on the limitations expressed in that proposition, I desire to call attention to the three provisions of the constitution which would be virtually amended or supplemented if this substitute were passed — in other words, the three provisions of the constitution which now govern and control us in the organization and government of the municipality, namely, article XIII, section 1:

The general assembly shall pass no special act conferring corporate powers.

## Article XIII, section 6:

The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

## Article II, section 26:

All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed to take effect upon the approval of any other authority than the general assembly, except, as otherwise provided in this constitution.

As has been referred to here in debate, it is a well-known fact that from the time of the adoption of the existing constitution in Ohio and up to the year of 1902, both the legislative branch and the judicial branch of our state government found it necessary, in order to meet and solve a situation that was presented in the government of municipalities, to give effect to special laws, and that condition was supposed to be so imperative that we have a great number of decisions of the supreme court of Ohio which held that the condition that confronted us in the government of cities could only be met by special laws. Now I call attention as a matter of interest on that point to one or two decisions of our court. You will find in a case reported in 44 O. S., page 139, the State ex rel. Attorney General v. Hudson, as a part of the opinion of the learned judge, the following words supported by authority cited:

Each of the large cities seems to need peculiar legislation, which can be provided only by such general classification. The peace and prosperity of these cities, and the best interests of the state, require that this system of classification be regarded as stare decisis and settled. See Rev. Stat., p 1546. Under the power to organize cities and villages (Const, art. XIII, sec. 6) the general assembly is authorized to classify municipal corporations, and an act relating to any such class may be one of a general nature. See State v. Covington, 20 O. S. 102; State v. Mitchell, 31, O. S. 592; State v. Brewster, 39 O. S. 653, 658.

Recently this court, without a dissent, reaffirmed this principle in the case of Alice D. Scheer v. The City of Cincinnati, on error to the superior court of Cincinnati (15 Week. L. Bull. 66), which case was not reported. In that case the court held

to be constitutional the act of April 24, 1885 (82 O. L. 156, sec. 2293a), providing for improving the streets of Cincinnati.

By the same principles and holdings, the act in question here, by the provisions of which Hudson was appointed to his office and now holds and exercises the same, is also constitutional, as not inhibited by section 26 of article II, or section 1 of article XIII, of the constitution.

That was a well-expressed opinion of the existing rule a good many times before that announced by the courts, and a number of times subsequently announced by the court up until the year 1902, when the whole of the former decisions were overturned and we came back to the hard rule of the constitution. That was all well said by the supreme court in the syllabus of the case reported in 66 O. S. 440, where the court held in the case of the City of Cincinnati v. Trustees of the Cincinnati Hospital that the conferring of such power (meaning general power) by a special act is inhibited.

So all of that went out of existence and was overturned by that decision and two others of equal import, which are also reported in the same volume, 66 O. S.

Now we have come to the time where we can get a remedy for an evil that has confronted us, by changing the organic law, and the change that I thought would meet all of the requirements is set forth in this amendment I have read to you. All the rest that is offered here is legislation. I submit if you give full power of local self-government by virtue of a special charter which can be created under act of the very community which is to be governed thereby, you have conferred everything that anybody can ask, in so far as the government of that local community is concerned.

Now I fear and believe that in this proposal as it is before you for consideration, there are vast powers which will eventually lead to a great deal of trouble in the state of Ohio and a great deal of conflict between the cities and the state. I think some of them have been cured by amendments, but I want to call attention to the fact that with the single exception cited of the experiment in the state of California, which has not yet had time to really work out so that we can know what the result will be, there is not another constitution in these United States, or, so far as I know, in any of the English possessions, that has any such theory of municipal or local self-government as is put into this proposal. You have cured it in some respects, but in many it is not cured. Here is the idea that obtains everywhere, so far as municipal corporations are concerned, which I want to state accurately as a legal proposition:

A municipal corporation is a legal institution formed by charter from a sovereign power, erecting a populous community or prescribed area into a body politic and corporate with corporate name and continuous succession, and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state.

The whole theory of the existence of sovereignty in the first instance, to-wit, the state that we are dealing with here, is that it must be greater in all essential particulars, greater in all essential parts than the municipality, and none of you will deny the fact that there are



Municipal Home Rule.

a number of very essential particulars that the state must insist upon and must assert at all times against the municipality.

Mr. HARRIS, of Hamilton: Are not those very propositions which you have enumerated made fundamental in this proposal?

Mr. HALFHILL: I do not consider that they are, and the reason I do not consider that they are is that I understood from the very first, even from the exposition of the chairman of the committee and of the others that have talked representing the committee, that all power except in these very few essential things is conferred in the first instance upon the municipality, and the state can never take that power back except as it goes out and asserts itself and attempts to bring it back by a general law. That is the theory of it, and that is a theory that is absolutely opposed to a logical and well-reasoned idea of a municipal charter, and right upon that point and right at that place I predict there will be conflict between the jurisdiction of the state of Ohio and a jurisdiction that is conferred upon the municipalities which will result in multitudinous litigation in Ohio, because you have changed the theory, absolutely changed the theory of the creation of this power.

Mr. HARRIS, of Hamilton: Will you state for the information of myself as well as the Convention what general power outside of the great powers of taxation and police and health are — what general great fundamental powers are exercised by the state?

Mr. HALFHILL: One of the fundamental powers exercised by the state is police power.

Mr. HARRIS, of Hamilton: I named that. Are not all the great fundamental powers reserved to the state in the proposal?

Mr. HALFHILL: What line?

Mr. HARRIS, of Hamilton: Every line.

Mr. HALFHILL: Where is the line of demarkation that is preserved in this proposal? Wherein is there not abundant opportunity for conflict between the powers conferred upon the municipality and the power that ought to be reserved for the state? I submit that the opportunity for conflict in jurisdiction is there.

Mr. HARRIS, of Hamilton: That is indefinite. Point it out.

Mr. HALFHILL: You have in the police power such a multitude of items to be considered, as applied to our complex state society, that you do not know at what place there will be a conflict. Some of the conflicts have been pointed out here, notably control of the liquor traffic. At one time they almost wrecked the proposal, but happily that was averted.

It is incumbent upon the state at all times to enforce the laws of a state and to stand back of the laws. The state is greater than any county or municipality. The state must enforce the decrees of the courts. That is why the cannons are planted on the court house lawns and state house campus, a silent admonition that all the force of the state stands ready to back the courts and enforce the laws. In this exercise of the police power of the state is interested at all times and there is a broad and plain line of demarkation between its powers and those that should be conferred upon a municipality.

In the great question of education, in the police power and in all the great questions that could be enumerated,

the city can not at any time be greater than the state and it can not be put upon a parity with the state in the exercise of these sovereign powers. Now the power to limit indebtedness is plainly provided for in any proposal, which I shall seek to substitute for the one that is offered here. I have heard it argued here, possibly not in debate, but by the most ardent homerulers, that the state had no interest in limiting the amount of the indebtedness of a city; that that was a problem of the city and for the city and that the city should be permitted to incur any indebtedness it thought necessary or beneficial. Along the same line of argument when you take away the power of the state to control in that respect, if you follow it up you would find that it was no use to have anything like organized society so far as the state is concerned, and if you would follow it to its logical conclusion you would find that men who contend for that, contend that a constitution is not necessary. They contend that the right of each community to govern itself is supreme. Now I contend that a municipality is simply one agency of a state to discharge some of the functions of government, and a municipal charter can emanate only from the sovereign power which alone can delegate faculties and functions of government, and as heretofore considered, with the single exception of the recent experiment in California, the granting of such a charter is solely an act of sovereign legislative powers to be exercised by the general assembly under grant of authority in the organic laws.

Now, for the reason that I believe that this proposal is fraught with a great deal of difficulty in the future, and that it means conflict between the powers that are granted to the cities and the powers that are retained by the state, I am opposed to it if I can get anything better. I favor the very greatest measure of self-government for cities. I feel that the city ought to have power to control the municipal public utilities of the city and that the city ought to have the settlement of the problems that confront the city if it so desires, but at the same time I believe that we ought to have over it the controlling hand of the state to a much greater degree and with the lines much better marked than in this proposal. Therefore, without further taking the time of the Convention, I now want to offer this substitute and secure a vote on it.

The amendment was read.

Mr. HARRIS, of Hamilton: I move that the amendment be laid on the table.

Mr. HALFHILL: On that I demand the yeas and nays.

The yeas and nays were taken, and resulted — yeas 77, nays 27, as follows:

Those who voted in the affirmative are:

- |                 |             |                    |
|-----------------|-------------|--------------------|
| Anderson,       | DeFrees,    | Harbarger,         |
| Baum,           | Donahay,    | Harris, Ashtabula, |
| Beatty, Morrow, | Doty,       | Harris, Hamilton,  |
| Beatty, Wood,   | Dwyer,      | Henderson,         |
| Beyer,          | Earnhart,   | Hoffman,           |
| Bowdle,         | Fackler,    | Hoskins,           |
| Brown, Lucas,   | Farnsworth, | Hursh,             |
| Brown, Pike,    | Farrell,    | Johnson, Madison,  |
| Cody,           | Fess,       | Johnson, Williams, |
| Colton,         | FitzSimons, | Jones,             |
| Cordes,         | Fox,        | Kehoe,             |
| Crosser,        | Hahn,       | Keller,            |
| Davio,          | Halenkamp,  | Kilpatrick,        |

Municipal Home Rule.

Knight,	Miller, Ottawa,	Stokes,
Kunkel,	Moore,	Tallman,
Lambert,	Okey,	Tannehill,
Lampson,	Partington,	Tetlow,
Leete,	Pierce,	Thomas,
Leslie,	Redington,	Ulmer,
Longstreth,	Riley,	Wagner,
Ludey,	Rockel,	Watson,
Malin,	Roehm,	Winn,
Mauck,	Shaffer,	Wise,
McClelland,	Solether,	Woods,
Miller, Crawford,	Stamm,	Mr. President.
Miller, Fairfield,	Stilwell,	

Those who voted in the negative are:

Brattain,	Halfhill,	Peck,
Campbell,	Harter, Stark,	Peters,
Collett,	Holtz,	Pettit,
Cunningham,	Kerr,	Read,
Dunlap,	King,	Shaw,
Eby,	Kramer,	Stevens,
Elson,	Matthews,	Stewart,
Evans,	Norris,	Walker,
Fluke,	Nye,	Weybrecht.

So the amendment was tabled.

Mr. CROSSER: I offer an amendment.

The amendment was read as follows:

Strike out lines 119 and 120.

Mr. CROSSER: The fact that this is passed after the old constitution gives it precedence over anything in the old constitution on the question of municipal corporations, and I think that is absolutely essential.

Mr. LEETE: I move the previous question.

The main question was ordered.

The amendment offered by the delegate from Cuyahoga [Mr. CROSSER] was agreed to

The question being "Shall the proposal pass?"

The yeas and nays were taken, and resulted — yeas 104, nays 6, as follows:

Those who voted in the affirmative are:

Anderson,	Harbarger,	Okey,
Antrim,	Harris, Ashtabula,	Partington,
Baum,	Harris, Hamilton,	Peck,
Beatty, Morrow,	Harter, Stark,	Peters,
Beatty, Wood,	Henderson,	Pettit,
Beyer,	Hoffman,	Pierce,
Bowdle,	Holtz,	Read,
Brown, Lucas,	Hoskins,	Redington,
Brown, Pike,	Hursh,	Riley,
Cassidy,	Johnson, Madison,	Rockel,
Cody,	Johnson, Williams,	Roehm,
Colton,	Jones,	Rorick,
Cordes,	Kehoe,	Shaffer,
Crites,	Keller,	Shaw,
Crosser,	Kerr,	Smith, Geauga,
Davio,	Kilpatrick,	Solether,
DeFrees,	King,	Stalter,
Donahey,	Knight,	Stamm,
Doty,	Kramer,	Stevens,
Dunlap,	Kunkel,	Stilwell,
Dwyer,	Lambert,	Stokes,
Earnhart,	Lampson,	Tallman,
Eby,	Leete,	Tannehill,
Elson,	Leslie,	Tetlow,
Evans,	Longstreth,	Thomas,
Fackler,	Ludey,	Ulmer,
Farnsworth,	Malin,	Wagner,
Farrell,	Matthews,	Walker,
Fess,	Mauck,	Watson,
FitzSimons,	McClelland,	Weybrecht,
Fluke,	Miller, Crawford,	Winn,
Fox,	Miller, Fairfield,	Wise,
Hahn,	Miller, Ottawa,	Woods,
Halenkamp,	Moore,	Mr. President.
Halfhill,	Nye,	

Those who voted in the negative are: Brattain, Campbell, Collett, Cunningham, Norris, Stewart.

So the proposal passed as follows:

Proposal No. 272 — Mr. FitzSimons. To submit an amendment to the constitution. — Relative to the government of municipalities.

*Resolved, by the Constitutional Convention of the state of Ohio,* That a proposal to amend the constitution shall be submitted to the electors to read as follows:

ARTICLE XVIII.

MUNICIPAL CORPORATIONS

SECTION 1. Municipal corporations are hereby classified into cities and villages. All such corporations having a population of 5,000 or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.

SECTION 2. The general assembly shall, by general laws, provide for the incorporation and government of cities and villages; and it may also enact additional laws for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon, under regulations to be established by law.

SECTION 3. Municipalities shall have authority to exercise all powers of local self-government and to enact and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

SECTION 4. Any municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is supplied to the municipality or its inhabitants, and may contract with others for any such product or service. The acquisition of any such public utility may be by condemnation or otherwise, and a municipality may acquire thereby the use of or full title to the property and franchise of any company or person supplying to the municipality or its inhabitants the service or product of any such utility.

SECTION 5. Any municipality proceeding to acquire, construct, own, lease or operate a public utility or to contract with any person or company therefor shall act by ordinance and no such ordinance shall take effect until after thirty days from its passage. If within said thirty days a petition signed by ten per centum of the electors of the municipality shall be filed with the executive authority thereof demanding a referendum on such ordinance it shall not take effect until submitted to the electors and approved by a majority of those voting thereon. The submission of any such question shall be governed by all the provisions of section 8 of this article as to the submission of the question of choosing a charter commission.

SECTION 6. Any municipality, owning or operating a public utility for the purpose of supplying

## Municipal Home Rule.

the service or product thereof to the municipality or its inhabitants, may also sell and deliver to others any transportation service of such utility and the surplus product of any other utility in an amount not exceeding in either case fifty per centum of the total service or product supplied by such utility within the municipality.

SECTION 7. Any city or village may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

SECTION 8. The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors of the question "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation and provisions shall be made thereon for the election from the municipality at large of fifteen electors thereof who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provisions for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

SECTION 9. Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and shall be submitted by such legislative authority when a petition setting forth any such proposed amendment and signed by ten per centum of the electors of the municipality is filed therewith. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any amendment so submitted is approved by a majority of

the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto, within thirty days after adoption by a referendum vote, shall be certified to the secretary of state.

SECTION 10. A municipality appropriating or otherwise acquiring property for public use may in furtherance of such public use appropriate or acquire an excess over that actually to be occupied by the improvement and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made. Bonds may be issued to supply the funds in whole or in part to pay for the excess property so appropriated or otherwise acquired but said bonds shall be a lien only against the property so acquired for the improvement and excess, and they shall not be a liability of the municipality nor be included in any limitation of the bonded indebtedness of such municipality prescribed by law.

SECTION 10-a. Any municipality appropriating private property for a public improvement may provide money therefor in part by assessments upon benefited property not in excess of the special benefits conferred upon such property by the improvements. Said assessments, however, upon all the abutting, adjacent, and other property in the district benefited, shall in no case be levied for more than fifty per centum of the cost of such appropriation.

SECTION 11. Any municipality which acquires, constructs or extends any public utility and desires to raise money for such purposes may issue mortgage bonds therefor beyond the general limit of bonded indebtedness prescribed by law; provided, that such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such municipality but shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

SECTION 12. The general assembly shall have authority to limit the power of municipalities to levy taxes and incur debts for local purposes and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities.

SECTION 13. All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors signing any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

## Municipal Home Rule.

Under the rules the proposal was referred to the committee on Arrangement and Phraseology.

Mr. PECK: I want to explain my vote. I vote for this proposal because as I understand it, after considerable study, it contains what seems to be in an awkward, confused way the main proposition that cities shall have the right of local self-government. I regard it as not a very good piece of constitution building, because it is overloaded with details and it is not clear in its provision. I would very much have preferred Mr. Halfhill's substitute with some amendment. I think that could have been made the basis for a much better law.

Mr. DOTY: I move that two thousand copies of

Proposal No. 272 be printed for use of the members and for general distribution.

Mr. HALFHILL: I desire to say I voted in the affirmative for this proposal because I could not get anything better.

Mr. DOTY: That is the reason I voted for it.

The motion to print was carried.

Leave of absence was granted Mr. Harter, of Huron.

Mr. WATSON: I move that we recess until 7:30 o'clock p. m.

Mr. ROEHM: I move that we adjourn until 10 o'clock tomorrow.

The motion to adjourn was carried and the Convention adjourned until tomorrow morning at 10 o'clock.