

UNDERSTANDING THE ILLINOIS CONSTITUTION

2001 EDITION

By Frank Kopecky
and
Mary Sherman Harris

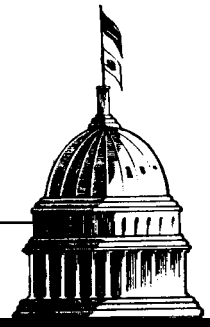
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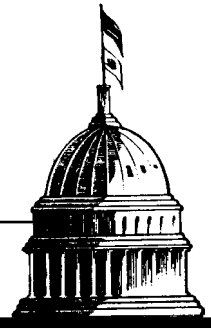
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PREFACE

The Illinois Constitution of 1970 is the basic governing law of Illinois and provides the framework for state and local government. All students in the state are required to have knowledge of the Illinois Constitution. This book, **Understanding the Illinois Constitution**, has been written to provide a concise resource for study of the governing structure and the constitutional history of Illinois. Major funding for publication and distribution of the book has been provided by The Illinois Bar Foundation and the Illinois LEARN Program; both are charitable branches of the Illinois State Bar Association.

The book describes the provisions of the constitution, as well as its history and political theory. A short bibliography and glossary are included. The actual language of the constitution appears at various points throughout the text but has not been reproduced in complete form. The entire text of the constitution is found in the Illinois Compiled Statutes or in the Handbook of Illinois Government (available from the Illinois Secretary of State).

Understanding the Illinois Constitution is designed for use as a supplemental text in history or government courses. It was written with the assumption the reader would have some familiarity with the United States Constitution. Throughout the text, references and comparisons are made to the United States Constitution; therefore, though not essential, the United States Constitution should be studied prior to reading the book.

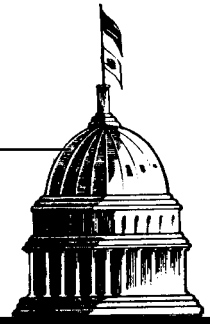
The book provides several weeks' worth of teaching material, more than can be used in the typical course. If there is insufficient time to read all nine chapters in the first section, several may be omitted. Chapters VII and VIII, dealing with local government and revenue, may be deleted without dramatically diminishing the book's purpose of teaching the structure of Illinois government. Chapter II on political theory and chapter VI on the Bill of Rights may also be deleted. Chapters I, III, IV, V, and IX will give the reader an understanding of the constitutional history of Illinois and the basic framework of Illinois government.

The goal of the authors, the Illinois Bar Foundation, and the Illinois LEARN Program, was to provide a lasting contribution to the citizens of the state. It is hoped this book will be used to develop and educate the citizens on constitutional principles. The key principle of government contained in our federal and state constitutions is that of a government by the consent of the governed. To make this principle work, the governed must actively participate in the affairs of the government.

To paraphrase Abraham Lincoln's Gettysburg Address: "...government of the people, by the people, for the people, shall soon perish from the earth if the people do not undertake their civic duty to participate." Our Illinois Constitution reminds us of this fact in the Bill of Rights article (article 1, section 23) by stating that the blessing of liberty "cannot endure unless the people recognize their corresponding individual obligations and responsibilities."

The Illinois Bar Foundation and the Illinois LEARN Program provided major funding to the authors and the Center for Legal Studies at the University of Illinois-Springfield to write and revise this book. The support, interest and assistance of the Illinois Bar Foundation and the Illinois LEARN Program, their officers and board of directors, is gratefully acknowledged.

Thanks are also extended to: The Illinois State Board of Education and Ann Pictor. Sherrie Good, Denise Baer, Eileen Karam and Murray Seltzer supplied editorial and research assistance. Dennis Rendleman, Isolde Davidson, Donna Schechter of the Illinois State Bar Association, provided administrative and technical assistance and Dru Fernandes provided graphics and design. Beverly Dixon and Carol Spence, secretaries for the Center for Legal Studies at the University of Illinois at Springfield, revised drafts of the book. Thank you.



I. The Illinois Constitution: Its Purpose and History

The people of the state of Illinois, through the Illinois Constitution of 1970, created a governmental structure to manage the public activities of the state. The primary purpose of the constitution is to transfer governing power from the people to the government. The constitution tells the government how much power it has, how it may exercise that power, and finally, what limits are placed on that power. The people retain the power to change the constitution through the amendment process.

The constitution creates the framework of state and local government. To study the constitution is to study government. A constitution is the basic document, sometimes called an organic document, from which other laws derive their authority.

The influence of the constitution may be seen around us daily. If you are in a public school, the school district you are in traces its right to exist to the constitution. The constitution may influence non-public schools by prohibiting the direct use of public funds for religious purposes. Every day our lives are influenced by laws regulating traffic, our family, the house or apartment we live in, and even the air we breathe. Governments that derive their governing power from

the people, through a constitution enact all these laws.

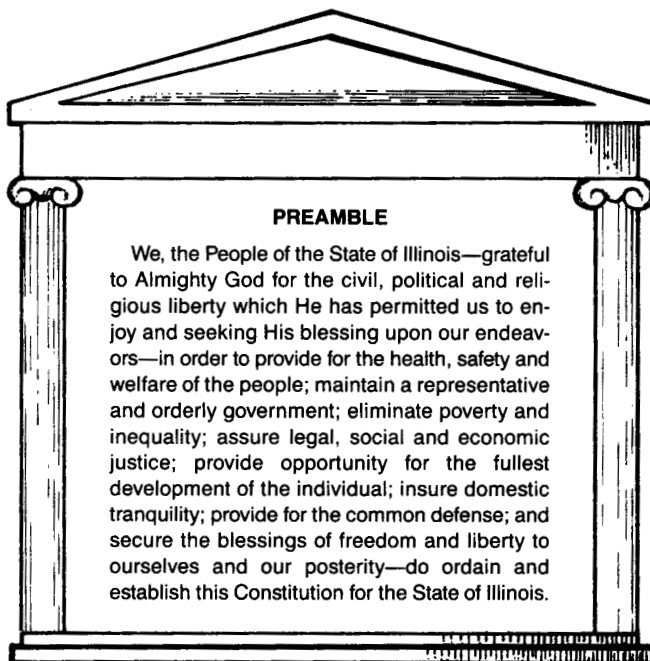
This book will examine the 1970 Illinois Constitution, the history of constitutions in Illinois, the governmental theories found in the constitution, and the meaning of the language of the constitution. The purpose of this book is to help students understand the constitution and the governmental process outlined therein so they may better participate in the democratic processes.

In article 1, section 23, our constitution reminds us that citizens have a duty to participate in government by stating that "The blessing of liberty cannot endure unless the people recognize their corresponding individual obligations and responsibilities." Each of us has an obligation to understand governmental processes and to exercise our votes responsibly.

In addition to creating a framework of government as it exists today, the constitution identifies several goals that we as a society would like to achieve. The preamble, which resembles the Preamble of the United States Constitution, contains many of these goals. We are committed to "provide for the health, safety and welfare of the people . . . eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual...insure domestic tranquility."

The Illinois Bill of Rights, in the first section, declares in language similar to the Declaration of Independence that all citizens have the right to "life, liberty and the pursuit of happiness" and that government by consent of the governed in this state is created to secure these rights. Reference to goals may be found throughout the rest of the constitution. For example, we as a state are committed to educational development, a healthful environment, and public transportation. We may never achieve all the goals listed in the constitution but we are committed to try.

Most of us are familiar with the U.S. Constitution. At one time or another we probably memorized the Preamble, "We the People of the United States in Order to form...." We have studied the lives of the Founding Fathers of our nation, Washington, Madison, Hamilton, Franklin, and the others who gathered in Philadelphia to write the Constitution. We have all seen pictures of these patriotic men in history books or in art museums.



Unfortunately most of us know less about our state's constitution than the federal one. Little has been written about the Illinois citizens who gathered at the Old State Capitol in Springfield in 1969 to write the Illinois Constitution. These citizens debated many of the same issues that were debated in Philadelphia in 1787. What is the best form of government? What checks and balances between the legislature, executive and judicial branches of government should be built into the system? How much power should rest at the state level and how much at the local level? What rights should be left to the people? These and many other questions had to be answered during the writing of the constitution. After reading the book you will have a better understanding of the constitution and will be in a better position to answer these questions.

History of Illinois Constitutions

Illinois has had four constitutions: one from 1818 to 1848, another from 1848 to 1870, a third from 1870 to 1970, and finally our current constitution. Although the constitution has been revised, the basic structure of state government has not changed drastically. The state has always had three branches of government: the legislative, the executive and the judicial. It has always had local and state government. What has changed has been the power relationship among the three branches of government and between local and state government. The trend has been away from a government in which almost all power was held by the legislature. Under the current constitution, the local units of government and the executive and judicial branches have increased their power.

Why has Illinois had four constitutions while the U.S. government has had just one? The simple answer is that state constitutions are much more detailed than the United States Constitution. The detailed nature of state constitutions requires changes as times change. A quick comparison of the length of the Illinois Constitution to the United States Constitution illustrates the differences in the content of the two. The Illinois Constitution is twice as long as the U.S. Constitution. Illinois, with four constitutions, is in the minor leagues as far as states that frequently change constitutions. For example, Georgia has changed its constitution nine times; Louisiana, eleven times.

Our four constitutions reflect the changing pattern of Illinois from a frontier state, to an agricultural and railroad center, to a manufacturing and urban center. As the population of the state has grown and as the people of the state have sought employment in metropolitan rather than rural areas the governmental needs

of the state have changed. The result has been four constitutions that roughly parallel the development of the state.

1818 Constitution

The first Illinois Constitution was written during the summer of 1818 at a convention in Kaskaskia on the banks of the Mississippi River. Kaskaskia had been the territorial capital and was the state capital of Illinois from 1818 through 1820. The constitution was adopted as part of the process Illinois had to follow to be admitted into the Union. The convention members who drafted the constitution met for only twenty-one days and produced a constitution that was relatively short. It was modeled after the U.S. Constitution and the state constitutions of Kentucky, Ohio, and Indiana.

One of the main issues when the 1818 Constitution was drafted was that of slavery. Several early settlers migrated from the south and favored slavery. Also, the salt mines located near Shawneetown were the largest industrial operation in the territory. They were worked by slave labor. It was feared that if slavery were not allowed in the state, the salt mines would go out of business. A compromise was reached which prohibited slavery but allowed the practice of using slaves in the salt mines to continue until 1825. An attempt in 1824 to amend the constitution to allow slavery failed.

In the first constitution, most of the governing power was placed in the legislative branch of government. A two-house legislature with a House of Representatives and a Senate was established. The executive and judicial branches were not fully developed. There were an elected governor and lieutenant governor, but the governor appointed all other executive branch officials.

The governor was elected for a four-year term but could not stand for reelection. The governor had no effective veto of legislative actions. The governor and the justices of the Supreme Court would meet as a council of revision to review laws passed by the legislature, but the changes they suggested could be overruled by a simple majority of each legislative house. The legislature had considerable power over the term of the courts and the types of cases that judges could hear. Because of the small population in the state, local government was barely mentioned in the constitution.

The 1818 Constitution governed Illinois for a thirty-year period from admission as a state until 1848 when the second constitution was adopted. This was a period of rapid growth and development when the state was changing from a sparsely populated pioneer state to one of the most populated states in the Union. For

most of this period, the constitution was adequate because the demands upon state government were small.

Most pioneer families lived a rugged, independent life style, relying on other family members and neighbors rather than government for assistance and services. Government kept the official records of the state, provided courts to resolve disputes and passed laws which regulated private activities. There was little business to regulate, virtually no transportation system to maintain, and even less in the way of education and social services to oversee.

The entire executive branch of state government in 1830 consisted of six people. The secretary of state had so little to do that one of the duties was to gather firewood for the governor and the capitol building.

Prior to 1830 virtually all the people in Illinois lived in the southern half of the state. They lived in small villages like the one restored in New Salem State Park near Springfield. These villages were usually in wooded areas near one of Illinois' many rivers. Quincy and Alton, cities of less than 3,000, were among the largest communities in the state. Most people were engaged in agriculture and farming was done on land cleared from the woods or on land that had once been a river bottom. The vast prairies of the state were virtually unpopulated. Chicago, not chartered as a village until 1833, consisted of a few houses in a marshy area near Fort Dearborn at the point where the Chicago River entered Lake Michigan.

The settlement pattern of Illinois greatly influenced the state's history. Even today, differences in political values exist between northern and southern Illinois. Illinois was settled by two distinct patterns of population entering the state. Primarily people from southern states settled the southern half of the state. They entered the state before 1830 by way of the Mississippi, Ohio, Illinois and Wabash rivers and settled along these rivers or one of their tributaries.

Gradually, the population began to push northward. By the 1830's communities in central Illinois like Decatur, Danville, Springfield and Urbana were developing. In 1842 Nauvoo, a Mormon settlement, had a population of 16,000, making it the largest city in the state. Illinois moved its capital northward to Vandalia in 1820 and to Springfield in 1839 to reflect this northward shift in population.

Illinois grew rapidly during the period from 1830 to 1860. Of the twenty-five states in the Union in 1830, Illinois ranked nineteenth in population. By 1860, Illinois was the fourth largest state. With the defeat of the Indians in the Black Hawk War in 1832, the last Indians were removed from Illinois and the northern

portion of the state was opened for settlement. This fertile prairie land was settled quickly. Advances in agriculture like John Deere's steel plow, invented in Ogle County, and Cyrus McCormick's reaper, manufactured in Chicago, made prairie farming profitable.

Settlers poured into Illinois primarily through the Great Lakes route made possible by the completion of the Erie Canal in 1826. New Englanders and others from the Atlantic coast abandoned their thin-soiled farms for the rich prairie land of Illinois. Immigrants from Ireland, Germany, Sweden, and other northern European countries joined them. These new settlers brought to Illinois a different set of political values than those held by the settlers in the southern part of the state. The stage was set for the political struggles between the northern and the southern parts of the state that are a part of Illinois history from the pre-Civil War period to the present.

The growth of Chicago was dramatic. Chicago, in 1833, had a population of a few hundred, by 1850 its population was nearly 30,000, and by 1860, it had a population of 112,000 and was the ninth largest city in the country. Chicago's location at the southern end of Lake Michigan virtually assured it of success as a manufacturing, commercial and transportation center. The completion of the Illinois and Michigan Canal in 1848 provided an all water route through Chicago from New York to New Orleans. In 1856 the Illinois Central Railroad was completed linking Chicago with Cairo.

The future of Chicago was not always this bright, though. In the early 1830's a group of Chicagoans asked the Shawneetown Bank in southern Illinois for a loan. The loan was refused because the bankers felt that the location of the Chicago was poor, in that it was too far away from everywhere else to have much of a future. Perhaps the southern Illinois bankers were reacting to the north-south division that is so much a part of our history and political tradition. At any rate the bankers were wrong. Chicago grew and the bank that refused the loan is now a historic site in the state park system.

1848 Constitution

Given the rate of growth and development in the state it was certain that the 1818 Constitution, which had been drafted to meet the needs of a frontier state, would need to be changed. Local governments were emerging, the state needed a larger court system, public services were being called for and revenue was needed to meet these demands. In response to these pressures, a new constitution was written and put into effect in 1848. This 1848 Constitution was an important

document in the political history of the state because it created the structure of government that we have today. The two constitutions, which have been adopted since 1848, are refinements on this basic document.

The 1848 Constitution was a product of two political attitudes found in Illinois in the 1840's. The first and perhaps most important theory, was Jacksonian democracy. Jacksonian democracy was based on the political belief of President Andrew Jackson and his followers that the common man should have a greater role in government. Jacksonians believed in electing people to office for specific terms. They believed in the "spoils system," meaning that the victors should be able to put their loyal supporters into government jobs. They had a basic mistrust of banks and bankers. Jacksonian democracy was quite popular in Illinois.

On the other hand, many in Illinois were distrustful of government during the 1840's. In the 1830's the Illinois legislature had entered into a massive public improvement program. Plans were made to build railroads, canals and roads throughout Illinois. Much of this internal improvement was financed by borrowed money. When a depression hit in the 1830's, most of these projects were abandoned. The state virtually went bankrupt. Only through a drastic reduction in services and by creating special taxes was the state able to maintain solvency. The legislature that had supported these programs was held responsible and the mood was set to restrict the ability of the state to enter into projects.

The 1848 Constitution was three times longer than the 1818 Constitution. The increased length was due to greater responsibilities being delegated to the executive and judicial branches of government and restrictions placed on the legislative branch. Local government duties were also more thoroughly identified.

Jacksonian democracy was reflected in the 1848 constitution by the fact that all state officers and county officers were elected for fixed terms of office. Officers such as the lawyer general, secretary of state and treasurer were made independent of the governor and elected directly by the people. Judges were also to be elected rather than appointed. The governor was given veto power and the council of revision was abolished. However, this veto power could still be overridden by a simple majority of both houses.

The legislature was prohibited from creating banks unless the voters in a referendum approved the bank. In a further effort to restrict legislative activity, the amount of debt that government units could undertake was limited. Salaries of government officials and legislators were set at low levels and the length of legislative service was limited. The increasing political

power of the settlers in the northern part of the state led to the creation of townships as units of local government. The township, with its town meetings, had been the basic government unit in New England where many of these people had previously lived.

1870 Constitution

The ink barely had time to dry on the 1848 Constitution before Illinois citizens realized they had restricted government far too much. It may be popular to oppose taxes, government spending and banking, but Illinois citizens soon realized that these were necessary if the state was to continue to grow. An effort was made to amend the constitution in 1856, but it failed. The political divisions that eventually led to the Civil War were evident in Illinois politics and the question of amending the constitution was lost in the political turmoil that characterized the decade of the 1850's. Neither the Democrats nor the new Republicans could agree and an effort to rewrite the constitution in 1862 also failed because of the deep political divisions that existed.

Government reformers after the Civil War pushed for another constitutional convention. This time the political climate was more favorable and the 1870 Constitution, Illinois' third, was adopted. This constitution governed Illinois for the next 100 years. The constitution reflected the continuing growth and changing nature of Illinois. During that 100 years the population of the state continued to increase. Chicago tripled in size during the 1860's and became a city of 300,000. Railroads became the principal means of transportation and Chicago was the railroad hub of the Midwest. Illinois was rapidly developing as an agricultural, industrial and commercial state and commerce and industry were on their way to replacing farming as the dominant activity of the state. These changes were reflected in the delegates to the convention that wrote the 1870 Constitution. The majority of the members, fifty three out of eighty-five, were lawyers, four times more lawyers than farmers. Farming had been the principal occupation represented in prior conventions.

The 1870 Constitution made no substantive changes in the structure of government. The trend of expanded powers of the executive and judicial branches at the expense of the legislative branch continued. Salary limitations for legislators and other government officials were removed. The ability of the legislature to pass private bills, a legislative enactment that affected only one individual or corporation, was sharply curtailed. For example, a person seeking a divorce or a corporation charter could no longer go to the legislature and have

a private bill passed granting the divorce or the charter. The 1870 Constitution required that all legislation be general.

Cumulative voting for legislators in the House of Representatives first appeared in the 1870 Constitution. This allowed a voter to give one individual up to three votes. Illinois was the only state utilizing this system. The concept of cumulative voting was designed to respond to the sharp political differences that existed between the northern and southern parts of the state. This system virtually guaranteed that Democrats would elect some representatives in Republican areas and the Republicans would elect some representatives in Democratic areas. The north and east central parts of the state were heavily Republican while the south and west-central part of the state were heavily Democratic. The cumulative voting system was a part of the state's political tradition until it was eliminated in the 1980's.

The powers of the executive and the judicial branches were defined in greater detail. The governor was given a veto that required a two-thirds vote in each house of the legislature to override. The governor was also allowed to succeed himself. An elected superintendent of public instruction position was created. This was the first Illinois Constitution to have a section devoted to education. Much of the language on education from the 1870 Constitution was reenacted in the 1970 Constitution. The Supreme Court was expanded to its current number of seven justices. Judges continued to be elected, and special courts were created for Chicago.

The 1870 Constitution was longer than the 1848 Constitution. Much of the added length was the result of demands by various special interest groups. For example, farmers wanted to insure that warehouses for grain would be regulated and coal miners were concerned about mine safety. Special provisions requiring the legislature to act in both of these areas were found in the constitution. There was even a section dealing with the Illinois Central Railroad.

A provision in the 1870 Constitution led to a landmark U.S. Supreme Court case, *Munn v. Illinois*, 94 U.S. 113 (1876). The constitutional language authorized the state to regulate railroad rates. The U.S. Supreme Court ruled in 1877 that such regulation was constitutional. The Court reasoned that corporations engaged in public activities could be regulated. This case eventually led to the creation of the Interstate Commerce Commission and the growth of governmental regulatory agencies.

The 1870 Illinois Constitution failed to deal adequately with the subjects of government financing and local government. In the 1860's the state was in the

midst of an economic boom. Revenues were high and the demands on government remained small. Illinois was well on its way to becoming a powerful commercial and manufacturing state, but even those delegates at the convention with the most optimistic view of the future could not have predicted how fast the state would grow. By the 1960's, had Illinois been a nation, it would have had the nineteenth largest economy in the world. The state of Illinois was financed primarily by a property tax. This tax base was adequate for most of the century when this constitution was in effect. However, as demands for education, highways, mental health and other government services grew, it became apparent that additional sources of revenue were needed. Illinois had enacted a sales tax, but there was pressure to follow the lead of other states and have a state income tax as well.

Chicago reached a population of one million by 1890 and three million by 1930. Cities such as Rockford, Decatur, East St. Louis, Rock Island, and Moline continued to grow.

The 1870 Constitution did not give local governments much power to govern. As suburbs sprang up around Chicago and St. Louis, the need to address the problems of local government grew. Local government units had to seek legislation, known as enabling legislation, from the state legislature in order to address many of their problems. Often legislators from rural areas were not responsive to the needs of the cities. The north-south political division that existed in Illinois was in many ways becoming an urban-rural division. Added to the difficulties experienced by local government units was debt limitation that prevented local governments from borrowing the money. To avoid debt limitations, new governmental units were created which could bypass debt limits. For example, instead of a city running a park system and a sewer system, separate park districts and sewer districts were created. Each could incur debts up to its own limitation. The result was a tremendous increase of small local government units. Illinois still has more than 8,000 local government units.

The final difficulty of the 1870 Constitution was its restrictive amendment procedure. Repeated attempts to change the constitution failed to achieve the requirement of a two-thirds vote. As a result of this requirement, voters who participated in the election, but who failed to vote on the constitutional question, were counted against the constitutional amendment. In 1922 a new constitution was drafted, but was rejected by the voters. The constitutional convention that drafted this constitution failed to address the political differences that existed in the state. But the pressure for change

continued to mount and increased demands on government and a series of state financial crises finally led to a constitution call in 1968. The Constitution of 1970 was the product of this constitutional convention.

1970 Convention

The Illinois delegates who gathered in Springfield in December 1969, were a much more diverse group than the Founding Fathers who gathered in Philadelphia in 1787. There were mothers as well as fathers at this Illinois Constitutional Convention. Fifteen women had been elected, the first ever to be members of a constitutional convention. Women had been given the vote in Illinois in 1913, six years before the amendment to the U.S. Constitution that gave women the right to vote on the federal level. Prior to these changes, women were not given the opportunity to directly participate in the political process.

The delegates to the convention came from a broad range of ethnic, racial, and occupational backgrounds. Fifty-nine lawyers were delegates, continuing the tradition of the involvement of the legal profession in the drafting of Illinois constitutions, sixteen delegates were educators, and eleven listed their occupations as government employees. There were five farmers, which reflected the continuing urbanization of the population of Illinois.

The leaders of the 1787 Constitutional Convention are quite well known to the public—Washington, Hamilton, and Madison are familiar figures in American history. Each of these played an important role in drafting the U.S. Constitution. Illinois had comparable people who played similar roles in the enactment of our state constitution. While such analogies are not perfect, they point out the roles the leaders of the state played in the convention.

George Washington played a significant role at the 1787 Convention. He chaired the convention and assumed a position of compromise, kept things moving and attempted to eliminate the development of factions. Samuel Witwer, a Chicago lawyer, clearly played a similar role in the Illinois convention. He actively campaigned for the convention call. He chaired the convention and worked for compromise. After the convention, he worked for adoption of the new constitution.

His colleagues recognized Witwer's leadership qualities in one of the lighter moments of the convention. When delegates assembled one morning they found a photograph of Witwer's face superimposed on the head of George Washington in a portrait hung in the Old State Capitol. The Washington portrait is one

of the state's artistic treasures. Later when it was time to remove the photograph, great care was taken so that the tape did not remove George Washington's face as well.

James Madison, the fourth president, was the secretary of the 1787 Convention. He worked for compromise and wrote the Bill of Rights, which subsequently amended the Constitution. After the convention he, along with John Jay and Alexander Hamilton, co-authored *The Federalist Papers* which were published as part of the campaign for the adoption of the Constitution. The James Madison of the Illinois convention was Elmer Gertz, a well-known Chicago lawyer. He was an ardent crusader for the cause of civil liberties. At the convention he was chair of the Bill of Rights Committee. He kept notes of the meeting and has subsequently published several books on the Illinois Constitution. He actively pursued its ratification by frequently speaking and writing on its behalf.

Alexander Hamilton represented the faction of the federal convention that was interested in a stronger central government with a sound base of revenue. He advocated that the government actively promote commerce. Hamilton's view subsequently became the dominant one of the Federalist Party. There were many people at the convention who might have held a Hamiltonian view, but Maurice Scott comes closest to being the modern day Hamilton. A former school-teacher turned lawyer; he was vice-president of the Taxpayer's Federation of Illinois. Like Hamilton, Scott was a fiscal conservative. He is credited with saving Illinois taxpayers millions of dollars through his work on tax laws.

Thomas Jefferson was not at the United States Constitutional Convention as he was ambassador to France at the time, yet his views played a dominant role. He was a Virginian neighbor and close friend to Madison. He recognized the need for a strong central government but was a believer in a decentralized system in which as much power as possible rested with the local government. He subsequently led the anti-Federalist movement. He became a reluctant supporter for the adoption of the United States Constitution. His outright hostility could have killed the effort to ratify the Constitution. Mayor Richard Daley played a corresponding role in Illinois. He was not at the convention but his son and many other Chicago Democrats were. He strongly supported home rule for local government. In fact, Chicago was willing to compromise on other issues to insure that this overriding concern be met. His support for the constitution, although given late in the campaign for ratification, probably was crucial in the campaign for its adoption.

1970 was not a good year for constitutional revision. Attempts in Arkansas, Idaho and Oregon were defeated. Recognizing the difficulty of achieving ratification, the Illinois convention went out of its way to provide an open hearing for all viewpoints, to seek compromises, and to avoid being partisan. Much of the credit for the tone of the convention must be given to President Samuel Witwer and the chairs of the various committees.

The effectiveness of the individual committees minimized controversy at the convention. Compromise had been reached at committee level so that by the time the issue was voted on the floor of the convention, the committee's report was accepted. Additionally, the convention members decided to allow Illinois citizens to vote separately on four politically sensitive topics: Cumulative voting for the legislature, appointment or election of judges, capital punishment, and the vote for eighteen-year-olds. This decision increased the harmony of the convention and the likelihood of a successful vote on the convention's product.

Interestingly, the Illinois Constitutional Convention grappled with many of the same topics that caused the Founding Fathers to meet for the Constitutional Convention in 1787. The federal convention of 1787 was called because of the widely held belief that the central government was inadequate to raise sufficient revenue or regulate commerce, and that there was a need to adjust the relationship between the state and national levels of government.

In Illinois, the 1970 convention debated taxes and revenue, the role of government in a modern society, and the relationship between the state government and local governmental units. On the latter point, the conventions differed in that the 1787 Convention was called to give more power to the central U.S. government, but in 1970 the Illinois convention's purpose was to give more power to local government units.

This convention made several changes in state government from the 1870 Illinois Constitution. The major accomplishments of the convention include:

1. The right to privacy was added.
2. Women's rights were strengthened.
3. Sweeping nondiscrimination provisions were made regarding employment and the sale or rental of property in both the private and public sectors.
4. A state Board of Elections was created with general supervision over the administration of voter registration and election laws throughout the state.¹
5. A method of reapportionment after each federal census was provided. [Apportionment is the

drawing of boundaries to divide the state into representative districts. The purpose of apportionment is to provide for equal numbers of people in each district so all can be equally represented in the legislature. As population changes, the legislature has the periodic responsibility of redrawing these dividing lines. This is reapportionment, or as it is used in the Illinois Constitution, redistricting.

6. The power of the governor to veto bills was expanded and reformed—the veto of entire bills and line items of appropriation bills was continued, the power to reduce appropriations by the reduction veto was given, and the amendatory veto power was given.
7. The governor and the lieutenant governor were required to run as a team in the general election, so that they would both belong to the same political party.
8. A Judicial Inquiry Board consisting of lawyers, judges, and citizen members, was created to receive, investigate, or initiate complaints against judges.
9. Home rule for counties and municipalities was clearly defined.
10. A state Board of Education was created and given the power to appoint a chief state educational officer.

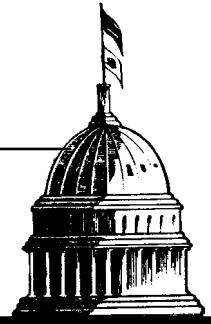
The constitution was placed before the Illinois voters on December 15, 1970. Although there was opposition by labor and anti-taxation groups, there was no massive campaign to kill the constitution. It was endorsed by both Republican and Democratic parties. The constitution was ratified by a vote of 1,122,425 to 838,168, with only 37 percent of Illinois voters casting ballots on the constitution. The fact that this was a special election probably accounted for the low turnout.

Of the special issues on the ballot, the voters decided to retain from the 1870 Constitution the cumulative voting process for the legislature and the system of electing judges. In 1980 the voters amended the constitution, substituting single member districts for cumulative voting. A discussion of this amendment is found in Chapter III. Voters refused to abolish capital punishment or give eighteen-year-olds the right to vote. In 1971, however, the Twenty-sixth Amendment to the

¹ Illinois is fully implementing the National Voter Registration Act (NVRA) of 1993 throughout the state. Since October of 1996, when all litigation ceased, Illinois began operating under a unitary system of registration. This simply means that any registered voter is eligible to vote the full ballot. Voter registration opportunities are available by all methods mandated by the NVRA: state drivers license facilities, social service agency registration and mail registration.

United States Constitution went into effect that gave eighteen year-olds the right to vote throughout the nation.

The Illinois Constitution went into effect July 1, 1971. The legislature had to pass several laws to implement the constitution. The process still continues today. Governors, legislators and courts are continually interpreting the constitution. The remainder of the book will look at specific details of the constitution.



II. Political Theory and the Constitution

The 1970 Illinois Constitution creates the basic structure of government that we know today. It gives us the fundamental laws of the state. Since all government activities and laws “grow” out of powers given by the constitution, they are referred to as “organic” law.

In addition to providing the state’s fundamental law, the constitution also provides the basic pattern of government. Often in studying the constitution we concentrate on details like how old one has to be to be a senator, or what happens if the governor dies—without looking at the broader picture of the values and theories that provide the basis for the government the citizens are creating. In other words, we concentrate on looking at the individual trees, rather than seeing the entire forest.

This chapter will look at the forest. We will examine the constitution as a whole, including its basic theories of government. The remainder of the book will concentrate on the individual trees.

There are four basic concepts that must be grasped in order to understand the constitution. They are: (1) government by the consent of the governed, (2) separation of powers, (3) federalism, and (4) the difference between a government of general powers and a government of limited powers.

Government by Consent

A constitution affirms the principle that the power to govern lies with the people. In other words, sovereignty, the controlling influence, or a supreme power to govern, lies with the people. In theory, the people have the final word on all issues. However, in a large democracy like that found in Illinois, the people, as a practical matter, cannot vote every day on every issue. They have instead created a representative government.

Through the constitution the people give government the authority and power to govern. The constitution is a contract between the people and the government. This contract, sometimes referred to as a social compact, delegates the people’s power to the government.

The constitution also creates a process for governing. The constitution divides power among various

branches and levels of government while reserving certain powers for the people. The Bill of Rights and other clauses of the constitution limit governmental power. The people always retain the right to control government through the process of amending the constitution.

Our constitution clearly gives ultimate power to the people. Article 1, section 1, using words similar to those in the Declaration of Independence, states, “All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.” The use of language from the Declaration of Independence is important because the Declaration speaks in terms of the natural or inalienable rights of the people to govern. Thomas Jefferson, author of the Declaration of Independence, was a strong believer in government by the consent of the governed.

The use of a written constitution to delegate power from the people to the government is part of the American political tradition. The U.S. Constitution, written in 1787, is the oldest written constitution in the world in continuous use today. Illinois has had four written constitutions. The British, on the other hand, have an unwritten constitution.

A written constitution can be used to hold those who govern accountable. The intent of the writers can be more easily determined because the words are written. The framework of government and the outline of governmental procedures are found in the constitution. If there is a conflict between the actions of government and the written words of the people contained in the constitution, the constitution, which is the higher law, controls, and the act of government is set aside as unconstitutional. The courts usually have the final word on whether an activity conflicts with the constitution. The important point is that governmental activities are continually evaluated against a standard contained in a constitution written by the people.

Constitutions are not self-executing; that is, they do not magically become a vital, living force just by being written. They are, after all, just words. It takes the will

of the people to turn passive words into active laws. The people create government to carry out their will. The constitution either authorizes or requires government to carry out certain activities.

Throughout the Illinois Constitution phrases appear, such as, the legislature shall or may “by law” take certain action, or the Supreme Court “by rule” shall or may take certain action. By using this language the people are authorizing government to pass a law or create a rule to carry out the purpose of the constitution.

The constitution requires free schools through the secondary level. It also grants the legislature the power to provide “by law” for other free education as it determines appropriate. The legislature has, in fact, passed legislation that provides for education beyond secondary education. The funding of colleges and universities is not required by the constitution, but it does authorize the state government to provide for higher education if it is determined to be appropriate.

The people have more power to control government under the Illinois Constitution than they have under the U.S. Constitution. For example, Illinois citizens are given the right every twenty years to decide whether to call a constitutional convention. Additionally, the people have the right to amend the legislative article through an initiative. An amendment to the legislative article may be placed before the voters if a significant number of voters sign a petition requesting that a proposed amendment be placed on the ballot. This procedure was followed in 1980 and resulted in the amendment to the constitution known as the Legislative Cutback Amendment.

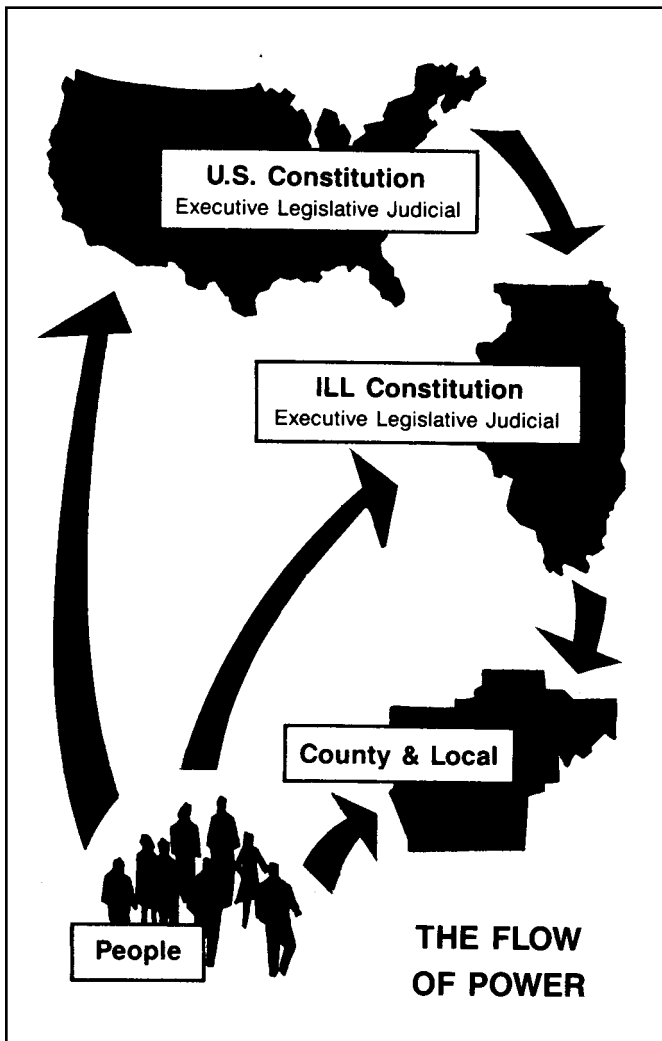
Separation of Powers

In delegating power from the people to the government, a constitution divides power in three ways. It first divides power among branches or units of government at the same level, such as between the Congress and the president or between the legislature and the courts. Second, power may be divided geographically among national, state, and local levels of government. Finally, the people can specifically retain power by limiting the areas in which government may become involved. The Bill of Rights is an example of the people limiting the power of government. The concept of separation of powers deals with the division of power within a level of government. Federalism, which we will look at next, addresses division of power among the levels of government.

The idea of separation of powers and the supporting theory of checks and balances comes from early political philosophers, most notably John Locke of England and Baron Charles de Montesquieu of France. The ideas of these men were popular at the time of the American Revolution and influenced the Founding Fathers.

The basic ideal is that governmental power should be divided among the three branches of government: executive, legislative, and judicial. Consequently, each branch would have only those powers delegated to it. In theory, at least, the legislative branch would make the laws, the judicial branch would interpret the laws, and the executive branch would enforce the laws. In order for the government to function the three branches would have to cooperate with each other. This cooperation would be obtained only if there was a clear agreement on the correct policy.

The basic reason for separation of powers is to keep power from being concentrated as it is in a dictatorship. The concept is based on the saying of Lord Acton, a British nobleman, that, “Power corrupts and absolute



power corrupts absolutely." By dividing power, no one branch of government can dominate the other.

Power may also be divided within a branch. For example, there are two houses of the legislature, and the major officers in each branch consist of independently elected individuals. Each elected officer is answerable directly to the people, and each has an independent source of power; consequently, each is less subject to control by persons in the other branches of government.

The system of checks and balances reinforces the separation of powers concept. Not only is power divided, but one branch checks the other branches. For example, the courts have the power to declare laws and executive actions unconstitutional. The governor can veto bills from the legislature. The legislature must appropriate the budget of the government and approve many of the governor's appointments. These are all examples of attempts by the constitution and ultimately of the people to avoid concentrating too much power in one place.

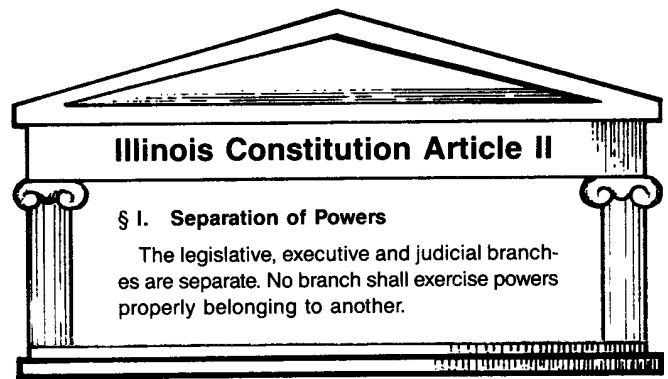
Federalism

Federalism is another means by which the people divide power. Power in a federal system is divided among different levels of government. Federalism traces its origins from the ancient Greeks. Laws of each unit of government may cover the same area and people; i.e., federal, state and local laws may govern the people simultaneously.

The United States Constitution divides power between the federal government and the states. The state constitution divides power between the state government and the various local governmental units. These local units are cities, counties, villages, townships and even school and park districts.

Federal law, state law, and the law of the local government unit in which you are reading govern the reader. If the school you attend receives federal funds, there are federal regulations with which schools must comply in order to be eligible for those funds. There are U.S. Supreme Court decisions that affect schools. The state also has laws that affect the schools. The curriculum is, in part, mandated by the state and many state health regulations have impact on the schools. Local school boards determine public school boundaries, what courses will be offered, and the length of the school day. What keeps these laws from conflicting? Ultimately, the answer is constitutional theory, or the concept of federalism. Federalism defines which is supreme in areas of conflict.

Over the years the United States Constitution has been interpreted to give the federal government su-



premacY in those areas specifically enumerated in the Constitution. In other areas the states retain power.

The relationship between local and state governments has also evolved over the years. As we saw in Chapter 1, the need to give local governments more power was one of the primary motivators for constitutional change throughout Illinois' history.

The 1970 Constitution made a major change in the distribution of power between local and state units. Under the 1870 Constitution, virtually all power to govern was retained at the state level. Local governmental units had to go to the state legislature for power. The legislature would pass laws known as enabling acts or charters which would allow the local government to take specific action. Power was delegated to local units from the state.

Home rule provisions of the 1970 Constitution changed the relationship between state and local government units by giving home rule cities and counties the power to operate directly from the constitution. The requirement that the legislature must give consent to decisions by local governments was eliminated. The legislature may in certain instances limit this home rule power; for instance, home rule units cannot pass income taxes and cannot license for revenue.

Home rule is the Illinois constitutional version of federalism on a national level. When we talk about the relationship of the states to Washington, we use the term federalism. When we talk about the relationship of cities and counties to the state, we use the term home rule. How much independence local government units will eventually have depends on how home rule provisions are implemented and interpreted over the years, but the basis for a "federal" system within the state is clearly established by the 1970 Constitution.

The first Congress put together twelve amendments protecting the rights of individuals and states. Ten of those twelve were ratified as the Bill of Rights in 1791. The Tenth Amendment reaffirmed the system outlined

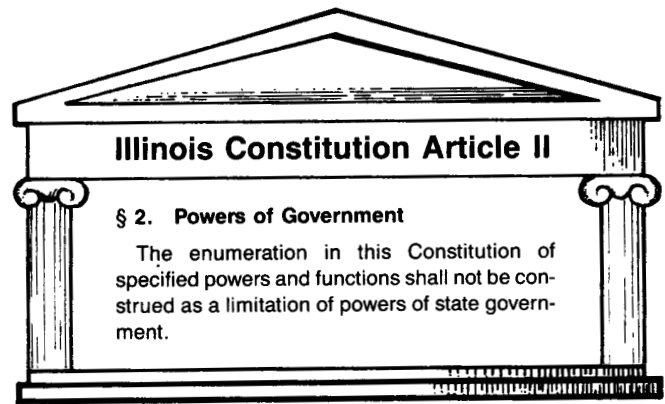
in the U.S. Constitution by stating that the federal government had power delegated by the Constitution or derived specifically from enumerated powers. All other powers, except those specifically denied the states, were reserved for the states or the people. Nearly three-quarters of a century passed before another amendment was added to the Constitution affecting the nature of the federal system of government. In the interim, the Supreme Court tipped the balance of power to the federal government by handing down decisions that strengthened the power of the national government over state governments. Four of the Court's early decisions were particularly significant: *Marbury v. Madison* (1803); *McCulloch v. Maryland* (1816); *Martin v. Hunter's Lessee* (1816); and *Gibbons v. Ogden* (1924). American government or civics books routinely review these landmark cases.

Limited or Central Government

The final means to control governmental power is by not delegating the power in the first place. The Bill of Rights specifically prohibits government from engaging in certain activities. For example, government may not infringe on religion or speech and may not limit jury trials in criminal cases.

The U.S. Constitution is an example of a constitution in which the people have delegated only specific or enumerated powers to government. The United States government can address only those subjects listed in the Constitution. All other governmental powers are specifically reserved to the people or the states. The Tenth Amendment in the Bill of Rights reaffirms this point. Although the theory remains the same, over the years the power of the U.S. government has expanded because the meanings given to such phrases as the power to regulate commerce, or to tax and spend for general welfare, have expanded. The U.S. government is clearly undertaking activities that are beyond the vision of the Founding Fathers. Nevertheless, the U.S. government must be able to point to specific language in the Constitution to justify the power it is using.

The power delegated to the state government is different. Article II, section 2, gives the state government

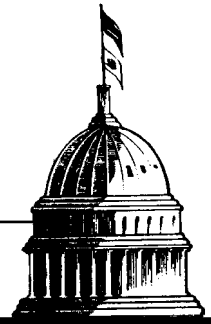


general governmental power. The government can use its power to address any and all problems it perceives, subject only to the specific limitations found in the constitution. This power of general government is often referred to as a "police power," and is a much broader grant of power than given the U.S. government.

Police power should not be thought of solely in terms of police and squad cars. A government with general police powers is said to have the authority to respond to social problems such as divorce, child custody, and truancy as well as criminal law.

Although the power of the federal government has expanded over the last 200 years in relation to the states, the state government still regulates, along with the local units, most of these so-called police power activities. State and local government units without interference from the federal government regulate many of our day-to-day activities. The police power is divided between local and state government units by the Illinois Constitution.

Thus, governmental power is delegated from the people to government through a constitution. Concepts such as (1) consent of the governed, (2) separation of powers, (3) federalism, and (4) the difference between a government of general powers, as opposed to one of limited powers, provide the theoretical basis for the delegation and division of the powers. The people specifically retain some powers; other powers are divided among levels of government or among branches of government at the same level.



III. Legislative Powers

The Illinois Constitution gives legislative power to the Illinois General Assembly. The General Assembly is made up of two houses; the House of Representatives has 118 members and the Senate has fifty-nine members. Both houses of the legislature hold their sessions in the Capitol in Springfield. The power to legislate is the power to make laws.

Under the separation of powers theory established in the constitution, Illinois government is divided into three branches. The legislative branch has lawmaking power; the executive branch has the authority to enforce the laws passed by the legislature; and the judicial branch has the authority to interpret law.

The legislature, as the lawmaking branch, has the power to overrule or change a decision of the other branches. For example, a court decision interpreting a law in a certain manner may be changed during the next legislative session. Courts in future cases will be required to follow this new law. The legislature is prohibited from overruling another branch only when the other two branches of government are undertaking activities that are given exclusively to these branches by the constitution. For example, the legislature may not interfere with the governor's authority to pardon criminals and it is bound by a court's decision interpreting the constitution and declaring a law unconstitutional.

The legislative power to change laws and thereby control other branches of government makes the legislature the most important branch of government. This primary importance of the legislature among the supposed co-equal branches of government is explained by the expression that the legislature is the first among equals.

Legislative bodies exist at all levels of government. At the federal level, the legislature is known as Congress. At the state level, the Illinois General Assembly, with its two houses, is modeled after Congress. At the local level, a city council, village board, county board and school board are examples of legislative bodies. All legislative bodies are given the authority to pass laws for the unit of government of which they are a part.

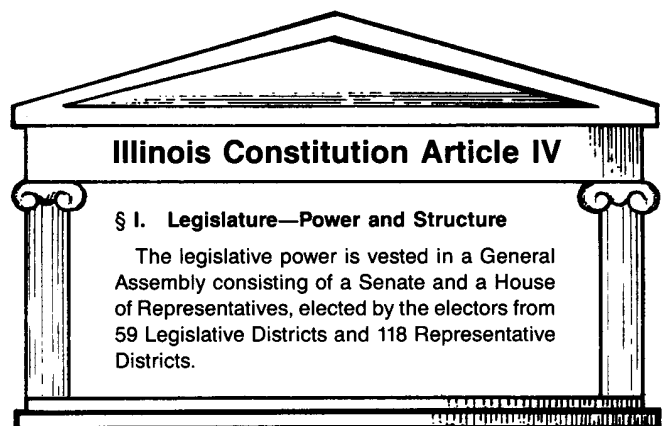
As discussed in Chapter II, the Illinois Constitution gives the Illinois legislature general lawmaking or

police powers. The Illinois General Assembly has the power to legislate on all matters it deems of public importance, unless the constitution specifically limits the authority of the legislature.

Unlike the state legislative bodies, the U.S. Congress has not been given this broad grant of power. Congress is said to have limited or enumerated power. This means the Congress may only pass laws or legislate in those specific areas that are listed or enumerated in the federal Constitution. Over the years, Congress and the courts have interpreted these enumerated powers broadly; nevertheless, the theory remains—the U.S. government is one of limited power and the state government is a general police power. In 1787 the Founding Fathers reasoned that the federal government should address only issues of national importance and the general lawmaking authority should remain with the states.

The fact that the General Assembly has general lawmaking power does not mean its power to legislate is absolute. The constitutional structure in this state and country has been designed to divide and limit power among governmental branches and levels of government. There are four types of limitations on the state's lawmaking authority. They are designed to limit abuses of power.

(1) The Illinois Constitution specifically limits the legislature's power to pass laws on some subjects. Most of these limitations are found in the Bill of Rights or the legislative article, but there are legislative limita-



tions found throughout the constitution. For example, in article X, section 3, the General Assembly is prohibited from using public funds for church purposes.

(2) The U.S. Constitution contains limitations on the powers of the states to pass laws. Most of these limitations are found in the Bill of Rights and other amendments to the Constitution and in article 1, section 10.

(3) Concepts of federalism and home rule divide law-making power among levels of government.

(4) Separation of powers and the system of checks and balances limit the power of the legislative branch and require cooperation among the branches of government.

Legislative power in Illinois is checked and balanced by the powers of the judicial and executive branches. As the constitutional history of the state (found in Chapter 1) illustrates, the legislature has lost power and the executive and judicial branches have gained relative power since statehood. A constitutional history of the United States would show a similar trend. The 1818 Illinois Constitution gave almost all governing power to the legislative branch; the courts were subject to legislative control. The governor could not seek reelection, had no real veto power, and could not effectively remove other executive branch officials. The 1848 and 1870 constitutions gave the judicial and executive branches more independence from legislative control. The governor was given a stronger veto power and could be elected to succeeding terms. There were restrictions placed on the types of legislation that could be enacted and on the legislative process. The 1970 Constitution removed many of the restrictions placed on the legislature, but continued the trend of strengthening the independence of the executive and judicial branches.

While the legislature is weaker now, in relation to the executive or judicial branches, than it was in the early years of statehood, it would be wrong to conclude that it is weaker in absolute terms. Government over the years has grown to meet changing conditions. All three branches of government are more powerful today than they were in the last century, but the executive and judicial branches have expanded their powers more rapidly than the legislature has expanded its power. Therefore, the legislature is less powerful today in relation to the other branches than it was in the past.

Duties of the Legislature

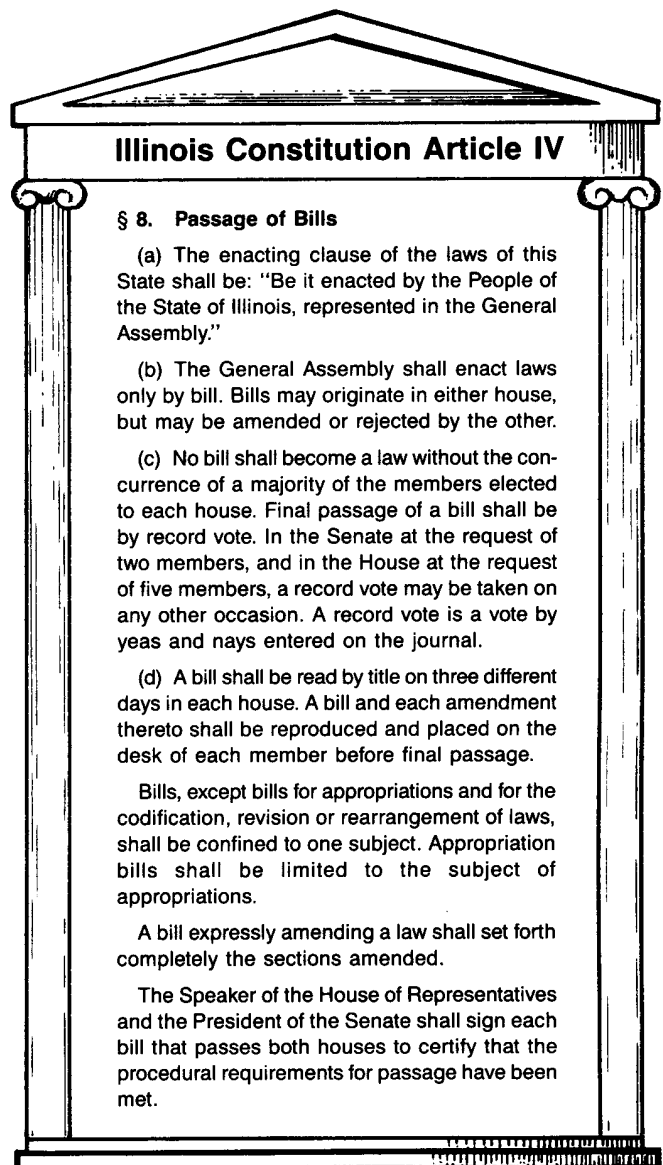
(a) General Legislation

The primary purpose of the legislature is to pass state laws. Laws being considered in the legislature are known as bills. The constitution requires each bill to

begin with an enacting clause that states, "Be it enacted by the people of Illinois represented in the General Assembly." The enacting clause illustrates the delegation of power from the people to the legislature. Consequently, the theory that government acts with the consent of the governed is reemphasized every time the legislature considers a bill.

A bill becomes a law when it passes both houses of the General Assembly with a majority vote in each house and is signed by the governor. However, a bill that is not signed by the governor within 60 days of being presented to him or her becomes law without signature.

The governor has the power to veto a bill. If the governor vetoes a bill, the legislature may override the



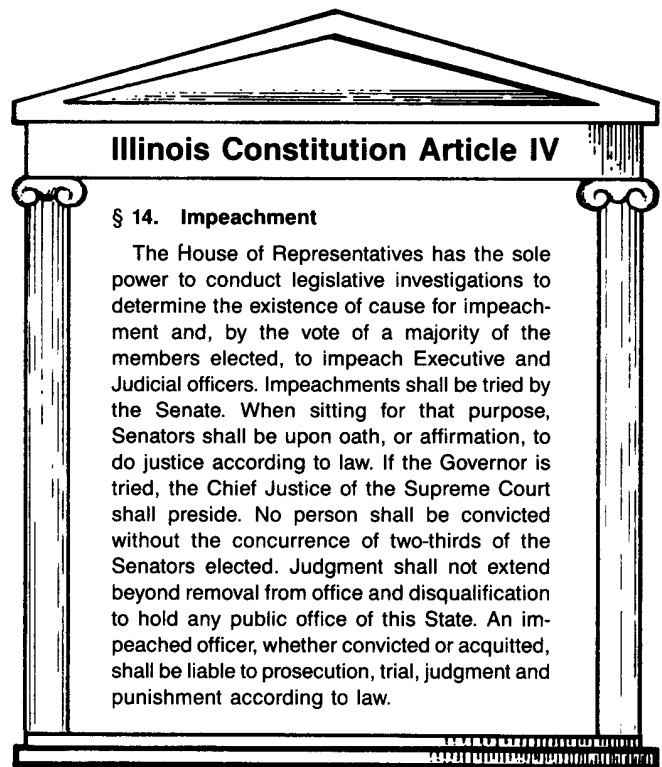
veto by a three-fifths majority vote in each house.

Laws that have passed the legislature are referred to as public laws or statutes. A series of laws on the same topic are known as acts or codes. There are various types of bills that the legislature considers. Most bills are amendments changing laws that were passed in previous legislative sessions. The legislature often undertakes a major revision of the laws and enacts an entire code or act such as the Juvenile Court Act, passed in 1966; the Environmental Protection Act passed in 1970; and the Code of Corrections, passed in 1973. Amendments to these laws have been introduced in virtually every legislative session since they were enacted. Occasionally, the legislature passes a bill known as a codification bill that places laws that are found throughout the statutes in one particular code.

The constitution places special restrictions on revenue and appropriation bills. A revenue bill raises taxes and an appropriation bill authorizes the spending of money. Each year the various government offices in the executive branch and the courts have to seek an appropriation from the legislature to obtain funds to operate.

Bills, including revenue bills, may be introduced in either house of the General Assembly. The Illinois Constitution differs in this regard from the U.S. Constitution, which requires that revenue bills be introduced in the House of Representatives. Under the Illinois Constitution an appropriation bill may not include matters other than appropriations. This constitutional provision prohibits the practice that has been developed in Congress in which general legislation is included as a part of an appropriation bill. The President is thereby forced to veto the entire bill if he does not agree with the general legislation. The President may be unwilling to use his veto upon such legislation if it means losing the funds to maintain a unit of the government in the process. The Illinois constitutional provision limiting appropriation bills only to appropriation subjects strengthens the governor's veto powers.

Article IV, section 8, of the constitution contains several requirements which, theoretically, guarantee that legislators will understand bills before they are passed. A bill, for example, must be printed and available prior to passage, it must address only one subject, and the section of the law that is being amended must be identified. The bill must be read on three separate days and the final vote must be recorded. Reading a bill does not mean that the entire bill is read. Usually, only the title is read but the process of "reading" announces to the legislature that the bill is being considered, allows legislators to debate the bill and suggest amendments, and prohibits passage of a bill without at least a three day delay.



The legislative process is a most interesting aspect of government. During a legislative session the Capitol is the scene of intense political activity as legislators, lobbyists, government officials and citizens attempt to influence and obtain the passage or defeat of legislation.

(b) Legislative Oversight

The legislature, under the system of checks and balances, serves as a check on the powers of the other branches. It does this by monitoring the activities of the other branches and by changing the laws if the legislature disagrees with a court interpretation or the manner in which an executive agency or official is enforcing the law. The legislature can also control other branches of government through the appropriation process. This so-called "power of the purse" is an effective means of controlling the power of the executive branch.

In addition, the constitution gives the legislature the final authority over executive branch organization. The legislature can determine how departments such as the Department of Public Aid or the Department of Transportation are organized and which officials in these departments are subject to senate confirmation. The senate's power to confirm or reject appointments to many executive branch positions is another example of a legislative check on executive power. Finally, the leg-

islatre has the power to impeach executive and judicial officers.

(c) Investigation

In carrying out its legislative responsibility the legislature holds hearings and frequently conducts investigations on the pros and cons of proposed laws. The legislature has established a system of committees to study bills pending in the legislature. Committee sessions are recorded. All hearings must be conducted after public notice, including a statement of the hearing's purpose. Committees have the authority to order witnesses to appear through the use of a subpoena, a written document that orders a person to appear before a public body. Failure to appear could lead to punishment for contempt.

(d) Constitutional Change

The legislature is given the authority to prepare amendments to the constitution. A proposed amendment must pass both houses of the General Assembly prior to being submitted to the people for a vote. There is one exception to the requirement that the legislature propose amendments—the people, through a petition drive known as an initiative, may propose amendments to the legislative article. This provision was put in the constitution because it was feared the legislature would be reluctant to propose an amendment that might weaken its power. In 1980 this initiative power was used to place the so-called Legislative Cutback Amendment on the ballot. This Amendment, which was approved by the voters reduced the size of the House of Representatives and created the single member districts that we have today. Chapter IX explains the amendment process in greater detail.

(e) Redistricting

The final legislative responsibility is to redistrict every ten years following the United States census reports at the beginning of each new decade. The purpose of redistricting is to assure that every legislative district be essentially equal in the number of people living therein. In 1962, the United States Supreme Court in the famous "one-man, one-vote" case of *Baker v. Carr*, 369 U.S. 186, ruled that legislative bodies must be structured so that each voter's representation is equal. Illinois history contains numerous examples in which rural voters controlled the legislature because of the failure to redistrict regularly. The constitution now establishes a process for redistricting every ten years which has helped areas of the state that are growing in population such as the Chicago suburbs gain political power.

During the process of redistricting, there are many legislative battles and often court challenges to the proposals for changing district boundaries. Students may wish to research or watch for news items concerning redistricting. Legislators are interested in redistricting or reapportionment because a change can "ripple across the map and affect dozens of incumbents." Because they may find it impossible to be reelected in a redrawn district, legislators have gone to great lengths to insure their reelection or that of members of their own party. The most famous example in American history of changing district boundaries involved Elbridge Gerry of Massachusetts. His newly created district, rather than being compact and contiguous, stretched into a strange shape in order to include sections that would support him. A local newspaper added only a few touches on a pictured map to produce what resembled salamander (lizard). Since that time, any attempt by legislators to manipulate district lines in their favor has been known as "gerrymandering." It seems unlikely that the politicians will ever agree to a map that favors the opposition.

Structure of the Legislature

The Illinois Constitution divides the legislative branch into two houses, a senate of 59 members and a House of Representatives of 118 members. In order to become a law, a bill must pass both houses of the General Assembly. A two house legislature is referred to as a bicameral legislature; a term derived from two Latin words, "bi-" meaning two and "cameral" meaning house. This two-house structure, modeled after Congress, is the typical pattern of most legislatures. Only Nebraska has a one house, or unicameral legislature.

The decision to create a bicameral legislature was one of the most significant decisions of the 1787 Constitutional Convention. Not only did this decision establish the pattern for Congress, but also it created a structure followed by virtually all state legislatures.

The bicameral pattern was developed for two major reasons. First, the two house legislature in Congress divides power geographically between the states and the central government, thereby supporting the doctrine of federalism, and second, it reinforces the concept of separation of powers by dispersing power into two legislative chambers. The Founding Fathers wanted a strong federal government but were fearful of concentrating too much power in a central government. The smaller states were particularly concerned about losing political strength to the larger, more populous states. The plan for a bicameral legislature was the

result of an agreement now known as the "Great Compromise" between the larger and smaller states. The House of Representatives was constructed so members would be elected on the basis of population, a system pleasing to the larger states. In the Senate the states would each have two senators and be equally represented, a system pleasing to the smaller states.

Allowing the legislatures of the various states to select their senators further strengthened the concept of federalism. This system of state election of senators continued until 1913 when the Seventeenth Amendment enacted the current system of direct election of senators by vote of the people.

The election of senators by the legislature was an important factor in what may be the most significant senatorial election campaign in Illinois history. In 1858 Abraham Lincoln campaigned against Stephen Douglas for election to the Senate and it was during this campaign that the famous Lincoln-Douglas debates were held. By all accounts, Lincoln did well in the debates; however, the people of Illinois were not given the opportunity of choosing between the two candidates. Stephen Douglas, whose party controlled the legislature, was elected to the Senate. The campaign served Lincoln well, making him a national political figure, and was influential in his election as president two years later.

Initial acceptance of the bicameral legislature was not unanimous. Thomas Jefferson, who was minister to France and, therefore, not at the convention, protested to George Washington upon his return against the establishment of two houses in the legislature. The incident occurred at breakfast. Washington asked, "Why did you pour that coffee into your saucer?" "To cool it," replied Jefferson. "Even so," said Washington, "We pour legislation into the senatorial saucer to cool it." This story illustrates the second reason for adopting a two-house legislature. Power is divided, thus preventing legislation from being passed without adequate thought and providing greater assurance that there is long term political support for the changes in the law.

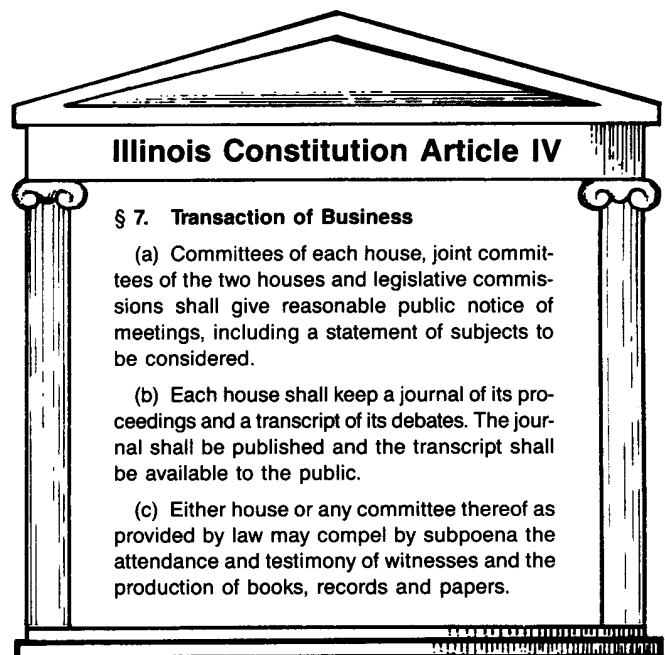
A two-house legislature has been the pattern used in Illinois since 1818. There was no serious consideration given to change the pattern in the 1970 Constitution. However, of the two reasons given for creating a two-house legislature, separating power and geographic representation, the framers of the 1970 Constitution relied primarily on the former for their decision to continue the two-house pattern. The idea of "putting legislation in a saucer to cool" made sense on a state as well as national level. However, the U.S. Supreme Court, under the concept of equal protection, has held dividing a state legislature on the basis of geographic

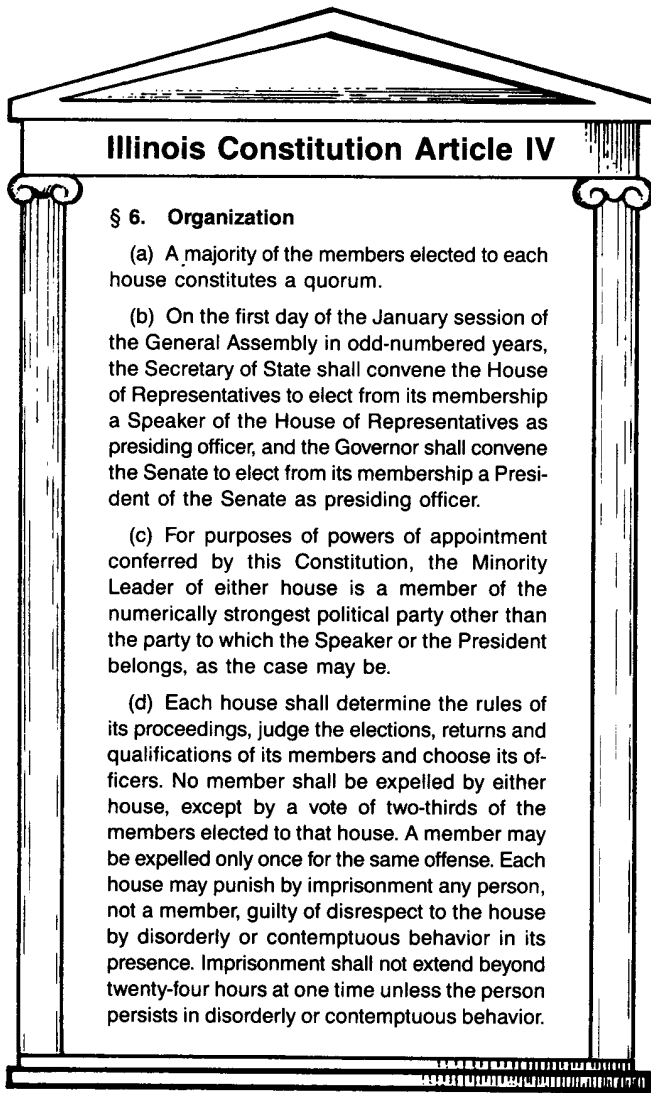
representation rather than population invalid.

There was a time in Illinois history when, following the model of the U.S. Senate, senatorial districts were created on the basis of geographic areas being represented, rather than on the basis of equal population in each district. The Supreme Court ruled in the case of *Baker v. Carr*, 369 U.S. 186 (1962), that such a districting pattern lessened the importance of the vote of people living in more populous districts and that the concept of one-man, one-vote required districts of equal population. The Illinois Constitution reflects this one-man, one-vote policy.

Each house of the legislature is given constitutional authority to create its own rules for conducting business. Committees may be established to hold hearings on bills and to conduct investigations on the need for legislation. Witnesses may be required to attend legislative hearings and investigations. Each house has the power to determine whether the election of members to that house is valid and to set qualifications for its members. However, no member of the legislature may be expelled except by a majority vote of two-thirds of the members of the appropriate house.

At the beginning of the legislative session in odd numbered years, following an election in the even-numbered years, the governor temporarily serves as chair of the senate and the secretary of state temporarily serves as chair of the House of Representatives. The first order of business in each legislative session is usually the election of a president of the senate and speaker of the house. The president of the senate and speak-





er of the house preside over each house, respectively. Usually, they are elected from the party with the most votes, but there have been exceptions. The minority leader is elected by the party with the second highest number of votes.

The Illinois Constitution does not give the lieutenant governor the power to preside over the senate and vote in the case of ties as the vice-president is empowered to do under the United States Constitution. The lieutenant governor was given this power in earlier Illinois constitutions but it was eliminated in the 1970 Constitution.

The constitution requires an annual legislative session and an annual budget. The legislative session begins each January on the second Wednesday of the month. The session usually ends on June 30th but this is no longer required by the constitution.

The constitution does, in fact, encourage the June

30th closing date by requiring a three fifths majority on any bill passed after June 30th if the bill is to become effective prior to July 1st of the next calendar year. The framers of the constitution felt that this requirement would encourage the legislature to end on June 30th, but they eliminated the requirement found in the 1870 Constitution that the legislature must end on that date. The mandatory date for ending a session had been frequently circumvented by literally stopping the clock in the legislature shortly before midnight. In some years, June 30th lasted for days and even weeks in the Illinois legislature.

Neither house may adjourn the legislature without the agreement of the other house. However, if agreement cannot be reached concerning adjournment, the governor has the authority to adjourn the legislature.

The governor is given the authority to call special sessions of the legislature. These special sessions may address only those purposes set forth by the governor in calling the session. The governor has used these sessions to address controversial issues such as taxes and to propose alternative bills for those the governor has vetoed. The speaker of the house and the president of the senate may also call a special session.

Legislators

Legislators are elected at general elections in even numbered years. To run for legislative office in Illinois, a person must be a resident of the legislative district for two years, a citizen of the United States, and be at least twenty-one years old.

Illinois is divided by population into fifty-nine senatorial districts of approximately equal size. One senator is elected from each district. Each senatorial district is divided in half by population, making 118 house of representative districts; each having one representative. Every ten years, following the federal census in 1970, 1980, 1990, 2000, 2010 and so forth, the legislature is redistricted to reflect changing population patterns.

Representatives are elected for a two-year term. Unfortunately, explaining the term of a senator is not as easy. Senators are elected for a four-year term; however, one term in every ten-year period is a two-year term. In the first legislative election following redistricting, which would be 1972, 1982, 1992, 2002 and every ten years thereafter, all senate seats are up for election. Following this election, the secretary of state holds a drawing to determine which seats will have a 4-4-2-year sequence, which will have a 4-2-4-year sequence, and which will be 2-4-4. Approximately one-third of the senate seats will be up for election during the fourth year of the decade, two-thirds in the sixth

	ILL House	ILL Senate	U.S. House	U.S. Senate
Age requirement	21	21	25	30
Residency requirement	2 years	2 years	State they represent	State they represent
Citizenship	At time of election	At time of election	7 years	9 years
Term of office	2 years	Staggered, 4-2-4	2 years	6 years
Leader	Speaker elected by house vote	President elected by senate vote	Speaker elected by house vote	Vice-pres. empowered by U.S. Const.

year and eighth year and one-third in the tenth year of each decade.

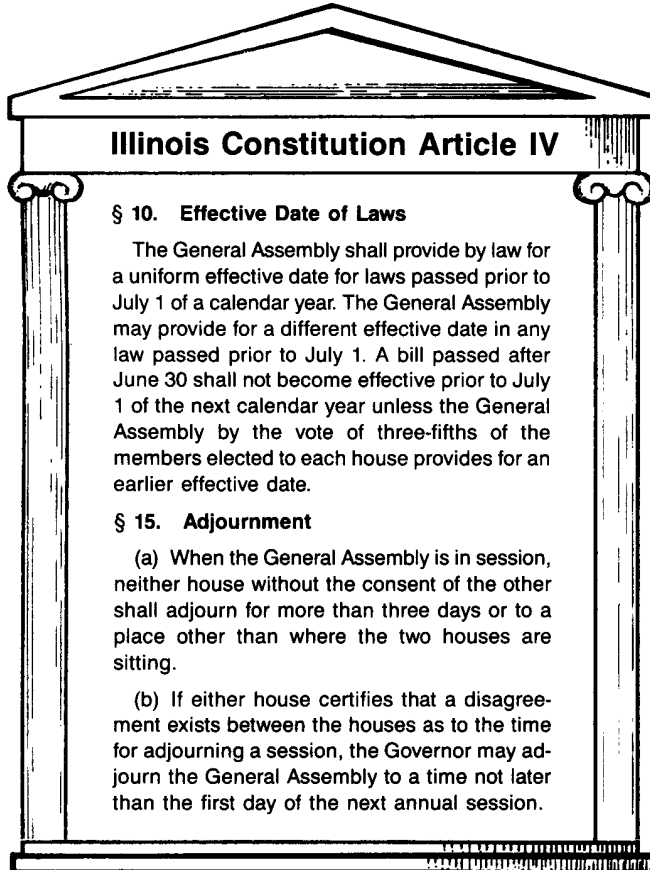
If a vacancy in a legislative seat occurs as a result of death or resignation, the political party leaders of these deceased or retired legislators are authorized to pick

someone to fill the remainder of the term. However, if more than twenty-eight months remain in a senatorial term when the vacancy occurs the appointed individual must run for election in the next general election. This elected senator shall serve for the remainder of the term.

Legislative salaries are set by law and may not increase or decrease during the two-year legislative session in which the legislator is serving. This provision prevents legislators from passing a pay raise for themselves after being elected. Legislative pay raises do not become effective until the next legislative session following a general election.

In 1984 the legislature created a Compensation Review Board which is authorized to recommend salaries of legislators, judges, and certain executive branch officials. The salaries recommended by the commission will become law unless rejected by both houses of the legislature. The creation of the Compensation Review Board attracted a great deal of attention, and a lawsuit challenging the legality of the board was filed. The Illinois Supreme Court ruled that the law establishing the review board was constitutional.

The constitution contains several sections that regulate the conduct of legislators. Legislators may not receive pay from another governmental unit while they serve in the legislature. This constitutional prohibition does not prevent a legislator from holding another governmental job, a practice known in political jargon as "double dipping" but does prevent legislators from receiving pay from both legislature and the other governmental unit for those days in which they



Illinois Constitution Article IV

§ 2. Legislative Composition

(a) One Senator shall be elected from each Legislative District. Immediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The Legislative Districts in each group shall be distributed substantially equally over the State.

(b) Each Legislative District shall be divided into two Representative Districts. In 1982 and every two years thereafter one Representative shall be elected from each Representative District for a term of two years.

(c) To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent. In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to reelection.

(d) Within thirty days after a vacancy occurs, it shall be filled by appointment as provided by law. If the vacancy is in a Senatorial office with more than twenty-eight months remaining in the term, the appointed Senator shall serve until the next general election, at which time a Senator shall be elected to serve for the remainder of the term. If the vacancy is in a Representative office or in any other Senatorial office, the appointment shall be for the remainder of the term. An appointee to fill a vacancy shall be a member of the same political party as the person he succeeds.

(e) No member of the General Assembly shall receive compensation as a public officer or employee from any other governmental entity for time during which he is in attendance as a member of the General Assembly.

No member of the General Assembly during the term for which he was elected or appointed shall be appointed to a public office which shall have been created or the compensation for which shall have been increased by the General Assembly during that term.

are working on legislative business. Legislators must take a temporary leave during the time they are serving in the legislature. The constitution requires that the legislature enact a conflict of interest law for all state offices including the legislature. No legislator may resign from the legislature to accept a public position created during the legislative term or in which the salary has been increased during such term.

Legislators do not have to explain or apologize for remarks they make in either house. Although they may not have to explain, most legislators recognize the wisdom of justifying remarks made in the heat of debate. Legislators may not, however, be sued in court for these statements because the constitution gives them immunity for statements made in debate. Also, legislators may not be arrested for minor charges going to, during, or returning from a session of the General Assembly. Cases of treason, felonies, and breach of the peace are not covered under legislative immunity.

Historically, legislators have had more than a passing interest in constitutional drafting. In the drafting of the United States Constitution, forty-two of the fifty-five delegates had already served in a first congress and thirty were serving as congressmen at the time of the convention. Twenty helped write the constitutions of their states. Nor was the drafting of the Constitution the end of their endeavors. A total of thirty-four of the fifty-five held public office under the Constitution. After working so diligently on the Constitution, it seemed that they wanted to be the ones to set it in motion.

There is a similar pattern in the lives of the people who drafted the 1970 Illinois Constitution. There were twelve former and two current legislators elected to that constitutional convention. Several delegates were then elected to the General Assembly.

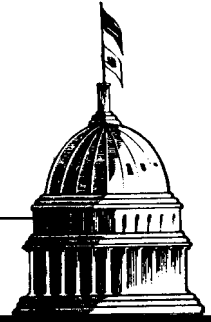
Illinois Constitution Article IV

§ 12. Legislative Immunity

Except in cases of treason, felony or breach of peace, a member shall be privileged from arrest going to, during, and returning from sessions of the General Assembly. A member shall not be held to answer before any other tribunal for any speech or debate, written or oral, in either house. These immunities shall apply to committee and legislative commission proceedings.

Many famous Illinois citizens have served in the Illinois General Assembly. Abraham Lincoln; the famous lawyer, Clarence Darrow; Chicago mayors Richard Daley and Harold Washington; former senators, Paul Simon and Adlai Stevenson; current senator Peter Fitzgerald; Governor George Ryan and former governor, Jim Edgar, and Speaker of the U.S. House of Representatives, Dennis Hastert have all served in the legislature. The legislature is often the starting point of a political career.

Legislative politics are exciting and interesting. During the legislative session the halls of the capitol are active with lobbyists, legislators, and legislative staff engaging in the process of enacting or defeating bills. Media coverage of the sessions is quite thorough, keeping the public aware of legislative activities. The lawmaking function continues to make the legislature an extremely powerful political institution in the organization of government and the focal point of public attention.



IV. Executive Powers

The executive branch of the government enforces laws and manages programs established by the legislative branch. As government activities have increased, the executive branch has expanded. The size of Illinois government has more than doubled since the writing of the Illinois Constitution in 1970. Most of the increase in size has been in the executive branch.

The executive branch has grown from the three or four officials who comprised the entire branch in 1818 to today's complex organization of thousands of elected and appointed officials. The current executive branch consists of several elected executive officers, each independent of the other. The governor has little authority over them and they have no authority over the governor. The secretary of state, attorney general, treasurer and comptroller each have their own departments with hundreds of employees.

The most powerful office within the executive branch is that of governor. The governor has extensive power over several departments, agencies and boards, broad veto powers, strong budget making powers, wide appointive powers and much influence in getting legislation passed.

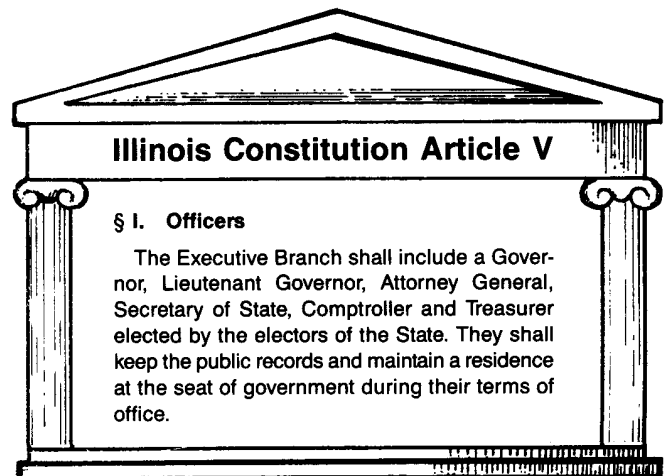
The United States Constitution did not give the executive branch much power. Article II of the United States Constitution uses general terms, leaving to future generations the responsibility of defining the exact powers of the executive branch.

The Founding Fathers in 1787 approached the subject of the presidency and executive powers with mixed feelings. On one hand, they had fought a revolution caused in part by the abuses of the King, the chief executive of England. There was fear that a strong executive branch would lead to tyranny and creation of a monarchy. On the other hand, the Founding Fathers recognized that there was a need for an executive branch. The Articles of Confederation had provided only for an executive committee appointed by the Congress, and this plan was not working. The individual states did pretty much as they pleased. George Washington, in writing to James Madison, reflected that "thirteen sovereignties pulling against each other all tugging at the federal head, will soon bring ruin on the whole.... We are fast verging on anarchy and confusion."

The Founding Fathers were faced with the difficult question of how to structure the executive branch. They created the office of president, gave the president general duties and, consistent with the theory of separation of powers, established legislative and judicial checks on the powers of the executive branch. It is fortunate that George Washington, the first president, was a man of such outstanding character that he did not abuse his presidential power. He established the pattern for the presidency and the executive branch.

When the first Illinois Constitution was drafted in 1818 there was still distrust of the executive branch so it was the weakest branch of the government. The governor served a four-year term and could not succeed himself. The governor and the lieutenant governor were elected, but the other offices were appointed by the legislature. The drafters saw the legislature as the real expression of the people and, therefore, the power of the executive was restricted.

But with each succeeding constitution, the power of the governor has grown, partly because of restrictions on legislative power and partly because of a different view of the executive branch. The 1848 Constitution gave the governor limited veto power, an act that would never have been considered thirty years earlier. The 1870 Constitution increased the governor's veto power and removed the one four-year term restriction on the governorship. The 1970 Constitution gives the governor even more authority by expanding the veto



power to include an amendatory veto to correct technical defects in legislation and a reduction veto to reduce the amount appropriated for an item. In comparison with other states' highest executive, the governor in Illinois is regarded as being one of the most powerful.

Despite the growth in executive branch power, this power is not total. Under the theory of separation of powers the executive branch is limited by checks from the legislative and judicial branches. The function of the executive branch is to carry out laws made by the legislative branch. If the executive branch does not carry out a law in the manner intended, the legislature can pass another law to clarify its intent. Additionally, the legislature controls the executive through the appropriation process of making money available for executive branch activities, sometimes referred to as "power of the purse." The courts also check executive power by hearing lawsuits against the government challenging the policies and activities of the executive branch.

The constitution established six constitutional officers in the executive branch of state government. These officers are the governor, the lieutenant governor, the attorney general, the secretary of state, the comptroller and the treasurer. These officers are known as constitutional officers because their positions and duties are defined by the constitution. Their duties may be expanded by the legislature but they cannot be limited to less than those contained in the constitution.

The legislature has created more than eighty departments, boards, commissions, and agencies. Most of these are in the executive branch that theoretically is controlled by the governor. In reality, many of these agencies work relatively independent of the governor's control. The executive branch is designed after the model originally established by Governor Frank Lowden in 1917. The major departments of govern-

Illinois Constitution Article V

§ 2. Terms

These elected officers of the Executive Branch shall hold office for four years beginning on the second Monday of January after their election and, except in the case of the Lieutenant Governor, until their successors are qualified. They shall be elected at the general election in 1978 and every four years thereafter.

§ 3. Eligibility

To be eligible to hold the office of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller or Treasurer, a person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.

Illinois Constitution Article V

§ 6. Gubernatorial Succession

(a) In the event of a vacancy, the order of succession to the office of Governor or to the position of Acting Governor shall be the Lieutenant Governor, the elected Attorney General, the elected Secretary of State, and then as provided by law.

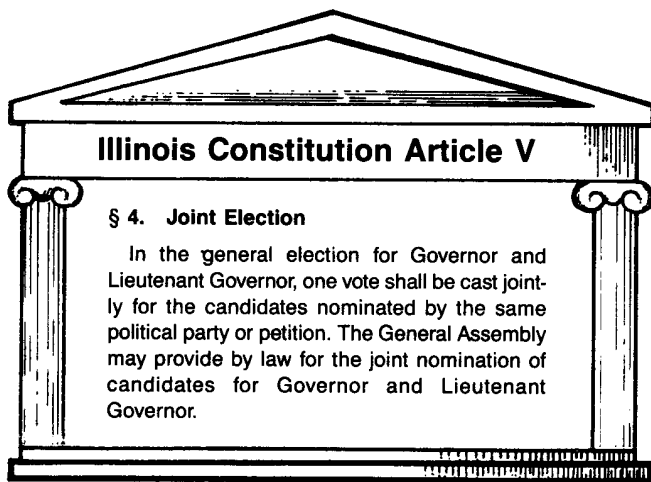
(b) If the Governor is unable to serve because of death, conviction on impeachment, failure to qualify, resignation or other disability, the office of Governor shall be filled by the officer next in line of succession for the remainder of the term or until the disability is removed.

(c) Whenever the Governor determines that he may be seriously impeded in the exercise of his powers, he shall so notify the Secretary of State and the officer next in line of succession. The latter shall thereafter become Acting Governor with the duties and powers of Governor. When the Governor is prepared to resume office, he shall do so by notifying the Secretary of State and the Acting Governor.

(d) The General Assembly by law shall specify by whom and by what procedures the ability of the Governor to serve or to resume office may be questioned and determined. The Supreme Court shall have original and exclusive jurisdiction to review such a law and any such determination and, in the absence of such a law, shall make the determination under such rules as it may adopt.

§ 7. Vacancies in Other Elective Offices

If the Attorney General, Secretary of State, Comptroller or Treasurer fails to qualify or if his office becomes vacant, the Governor shall fill the office by appointment. The appointee shall hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law and shall not be subject to removal by the Governor. If the Lieutenant Governor fails to qualify or if his office becomes vacant, it shall remain vacant until the end of the term.



ment, such as transportation, public aid and corrections, are established by the legislature. The laws creating these departments are found in the Administrative Code, thus these departments are referred to as code departments. The directors of the code departments are appointed by the governor and make up the governor's cabinet. The governor's control over the administrative code departments is greater than the control exercised over the other agencies and commissions of government.

By creating an executive branch with multiple officers, the Illinois Constitution differs from the United States Constitution, which creates only the offices of the president and the vice-president. The president appoints the major governmental officers such as the attorney general, the secretary of state, and the treasurer. They are, therefore, subject to the president's control. The other constitutional officers in Illinois, with the exception of the lieutenant governor, are elected independently of the governor. As elected officials they are not accountable to the governor. This independence may be considered a weakness in the sense that these elected officials may be in competition with the governor. In recent Illinois history, two attorneys general have had differences with the governor over issues of state policy. These difficulties are increased when the governor and the attorney general are of different political parties.

Illinois constitutions since 1848 have provided for independent state officers. Those who favor this system argue that the independence of state officers is a strength rather than a weakness. By electing each officer separately, the voters have more control and the concept of separation of power is strengthened. Power is divided within the executive branch in much the same way that the two-house legislature divides power in the legislative branch.

There was an effort to reduce the number of elected officers when the 1970 Constitution was being drafted. Those favoring reducing the number of elected officials argued that the short ballot would actually increase, rather than decrease, voter power. They contended that having a smaller number of elected officers allows the voters to concentrate on elections in which there are policy issues to debate. The governor would be directly responsible for the individuals appointed. The voters, by exercising their voting rights, could better control policy. The constitutional convention did eliminate the elected superintendent of public instruction. However, efforts to shorten the ballot beyond the elimination of that office were not successful.

The proper method of filling executive branch offices arises from time to time. In the mid-1980's, there were proposals in the legislature to amend the constitution by abolishing the appointed board of education and returning to an elected superintendent of schools. None of these proposals were enacted, and a school board appointed by the governor that in turn selects a superintendent of school has become accepted.

The executive branch officers are all elected during the same election year. They are elected every four years beginning in 1978. This year was chosen so the governor and other state officers would not run in the same year as the president. Consequently, presidential landslides should have no effect on the election of state officers. An elected state official must be at least twenty-five years old, a citizen of the United States and a resident of Illinois for three years. All the executive officers are elected by popular vote for four-year terms and may succeed themselves indefinitely.

If a vacancy develops in the office of governor, the constitution provides an order of succession: lieutenant governor, elected attorney general, and elected secretary of state, in that order. The legislature has lengthened this list to include the elected comptroller, the elected treasurer, the president of the senate, and the speaker of the house, in that order. If the governor is temporarily disabled, the constitution provides a mechanism for a substitute. If a vacancy develops in other elected offices, except the lieutenant governor, the governor appoints a substitute who serves until the next election. The lieutenant governor's office remains vacant if a vacancy occurs.

Salaries of the governor and other executive officers are established by the legislature. The Compensation Review Board, established by the legislature, recommends salaries to the legislature.

The governor and lieutenant governor run for office as a team. This practice is similar to the one that has developed on the national level concerning the presi-

dent and vice-president. However, the governor and lieutenant governor do not have to be nominated as a team. It is possible that the governor and lieutenant governor will represent different factions of the same political party, but not different parties.

In 1968, Governor Richard Ogilvie, a Republican, was elected. Paul Simon, a Democrat, was elected lieutenant governor. The 1870 Constitution allowed the voters to vote for these offices separately. The delegates to the 1970 Constitutional Convention thought that the potential for conflict of this situation continued could be potentially harmful to the state; thus the constitution was redrafted in 1970 to eliminate the possibility.

However, by requiring that the governor and lieutenant governor run as a team while allowing them to be nominated separately, the possibility exists that the candidate for governor and lieutenant governor will be from different factions within the same political party.

This possibility became a reality in 1986 when Adlai Stevenson III and a supporter of extremist beliefs, presidential candidate Lyndon LaRouche, were nominated to run together as Democratic candidates for governor and lieutenant governor. Stevenson refused to run with this individual and withdrew from the official Democratic ticket and ran as a candidate for a new party, losing by a large margin. The chaotic electoral situation in 1986 points out how a relatively obscure section of the constitution can have an important effect on the political affairs of the state.

Duties of Governor

The governor is the chief executive of the state of Illinois whose basic duty is to enforce the laws of the state. The governor's power has increased over the years with the governor becoming much more active in creating policy and promoting legislation than was originally considered appropriate. The principal duties of the governor are:

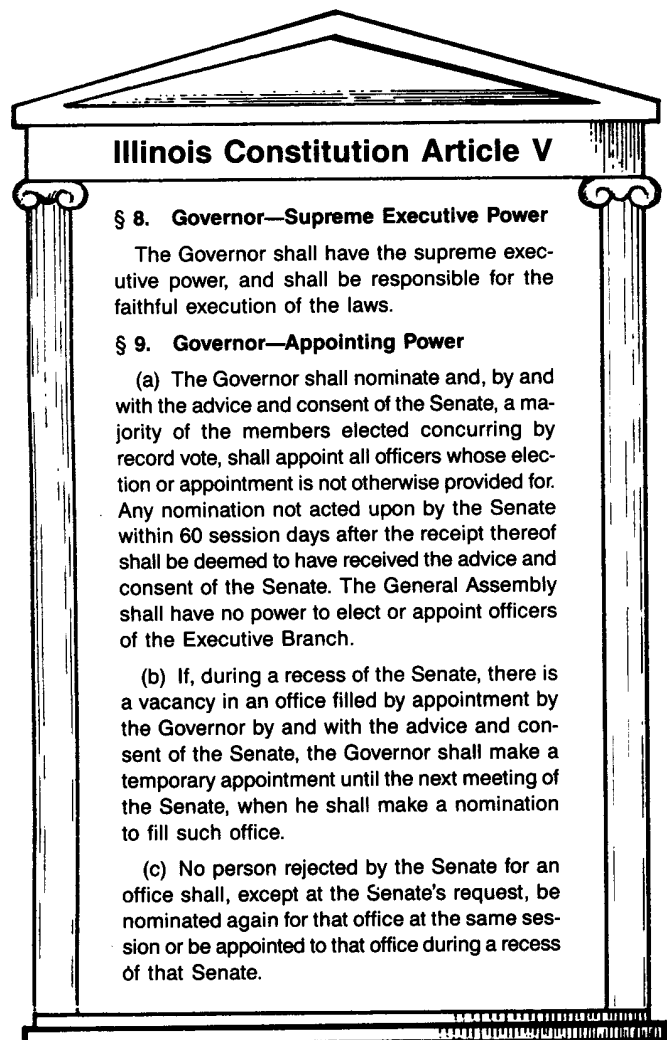
(a) Enforces law - The governor has the duty of "faithful execution of the laws." The laws passed by the legislature have to be implemented. The governor is responsible for the major departments of government and the state police. The number of programs undertaken by government has expanded dramatically over the years. The governor has the responsibility to manage many of these programs.

(b) Appoints state officials - The governor has the power to appoint and to remove several hundred state officials. The heads of the various code departments are subject to hiring and firing by the governor. The Senate has to concur in the appointment of many of these individuals.

(c) Reorganizes the executive branch - The governor may reorganize the executive branch of state government. The reorganization powers have been expanded under the 1970 Constitution. The governor submits a proposed reorganization to the legislature. If the reorganization plan is submitted prior to April 1 it is accepted unless either house of the General Assembly, within sixty days, rejects the proposal for reorganization.

(d) Prepares the budget - The governor, under article VIII of the constitution is given the authority to prepare the budget for every public agency of state government. The budget making authority increases the control of the governor over the various agencies and commissions of state government. The legislature still must approve the budget and appropriate the money, but the governor is given a powerful voice in the planning process.

(e) Prepares legislation - The governor and executive branch personnel are often in the best position to ana-



lyze the needs of government and they often prepare legislation. The governor, at least once a year and at the close of his term, is required to report to the legislature and recommend laws. This requirement for an annual "State of the State" message parallels the presidential practice of an annual "State of the Union" speech.

f) Vetoes legislation - The governor also has the authority to veto legislation. A bill that the governor vetoes needs a three-fifths majority of each house to become law without the governor's approval. In addition to the ability to veto legislation totally, the governor has the authority to amend appropriations by reducing or eliminating line items in the bill and to amend legislation for technical errors.

The line item veto and the amendatory veto have been controversial. Some feel that the amendatory veto has increased the governor's power over the legislature too much. A constitutional amendment was presented to the voters proposing to narrow the governor's authority; this amendment was rejected.

(g) Issue pardons - The governor has the authority to issue pardons, commutations, and reprieves to those convicted of criminal offenses under Illinois law. A pardon releases an individual from being punished for offenses. A commutation shortens the sentence or reduces the severity of a sentence. A reprieve delays the time in which a sentence is carried out. The term "reprieve" is often used in connection with death penalty cases.

(h) Serves, as commander-in-chief - The governor, under article XII of the constitution, is commander of the state militia, which is now part of the National Guard. All able-bodied persons both male and female residing in Illinois are members of the state militia.

At one time it was an important duty of Illinois citizens to participate in the activities of the militia. Abraham Lincoln commanded a militia unit during the Black Hawk Indian Wars. During the Civil War, Governor Richard Yates played an active part in the militia, raising troops to fight the war. In modern times, the role of military defense has fallen more to the national government and the state militia has become less important.

Lieutenant Governor

The lieutenant governor's role is comparable to the role of vice-president of the United States, undertaking those tasks assigned by the governor or by the legislature. The duties assigned by the legislature are not significant and the duties assigned by the governor vary depending upon the governor. Occupants of the lieutenant governor's office serve "a heart beat away from

the governor" and are available to serve if the office of governor becomes open.

Unlike the vice-president, the lieutenant governor does not have legislative duties. The vice-president is president of the Senate and votes in case of a tie. The 1870 Constitution gave the Illinois lieutenant governor similar duties, but this practice was not continued under the 1970 Constitution.

Illinois Constitution Article V

§ 9. Veto Procedure

(a) Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. If the Governor approves the bill, he shall sign it and it shall become law.

(b) If the Governor does not approve the bill, he shall veto it by returning it with his objections to the house in which it originated. Any bill not so returned by the Governor within 60 calendar days after it is presented to him shall become law. If recess or adjournment of the General Assembly prevents the return of a bill, the bill and the Governor's objections shall be filed with the Secretary of State within such 60 calendar days. The Secretary of State shall return the bill and objections to the originating house promptly upon the next meeting of the same General Assembly at which the bill can be considered.

(c) The house to which a bill is returned shall immediately enter the Governor's objections upon its journal. If within 15 calendar days after such entry that house by a record vote of three-fifths of the members elected passes the bill, it shall be delivered immediately to the second house. If within 15 calendar days after such delivery the second house by a record vote of three-fifths of the members elected passes the bill, it shall become law.

(d) The Governor may reduce or veto any item of appropriations in a bill presented to him. Portions of a bill not reduced or vetoed shall become law. An item vetoed shall be returned to the house in which it originated and may become law in the same manner as a vetoed bill. An item reduced in amount shall be returned to the house in which it originated and may be restored to its original amount in the same manner as a vetoed bill except that the required record vote shall be a majority of the members elected to each house. If a reduced item is not so restored, it shall become law in the reduced amount.

Other Elected Officers

The duties of the four remaining elected officers are defined by the constitution and expanded by legislation. The attorney general is the legal officer of the state. The attorney general employs several hundred people, including lawyers, to handle the state's legal matters. If the state is involved in a lawsuit the attorney general represents the state.

The secretary of state keeps the records of the state. Most Illinois citizens come in contact with the secretary of state's office when they apply for their driver's licenses. All corporations that conduct business in Illinois must register with the secretary of state. The state library is operated under the authority of the secretary of state.

The treasurer and comptroller have related responsibilities. The treasurer is responsible for depositing the state's money and making sure it is secure. Payments are made out of the state's treasury only if approved by the comptroller. By having two officers in charge of the state's money, there is less possibility of fraud and theft.

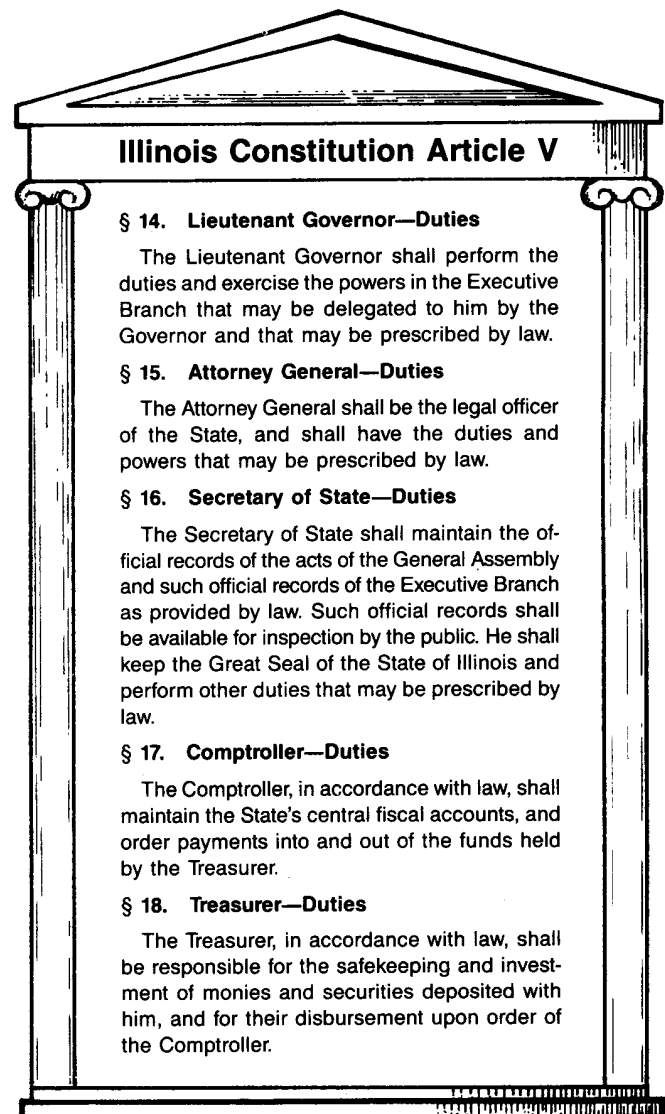
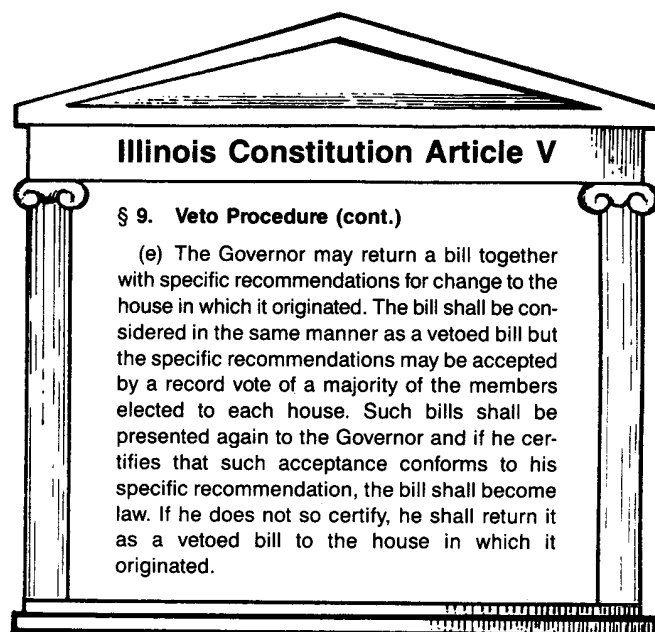
Illinois Governors

Illinois has had many important and interesting governors. Shadrock Bond was the first governor of Illinois. Because early state constitutions prohibited a governor from succeeding himself, the state has had thirty-seven governors in a relatively short period of time. The shortest term was that of William Ewing who served only a few months in 1834. The longest term has

been that of James Thompson who first took office in 1977 and left office in 1991.

One notable early governor was Ninian Edwards. He was the first governor appointed to the Illinois Territory in 1812; in 1826, he served as the third governor of the state of Illinois. The town of Edwardsville is named for him. During his administration, Edwards maintained that the federal government was only entitled to the land on which forts stood. He parceled out the land to settlers at low prices. The result was a dramatic increase in the population of Illinois.

Richard Oglesby was elected governor three times but his terms were not consecutive. He was inaugurated in 1865, and served until 1869. Since the constitution at that time prohibited him from succeeding himself, he resumed a private law practice when he left office. He was elected a second time in 1872, was inaugurat-



ed January 13, 1873, but resigned the governorship on January 23, 1873, when he was appointed to the United States Senate. In 1884 he was elected to a third term as governor and he served until 1889.

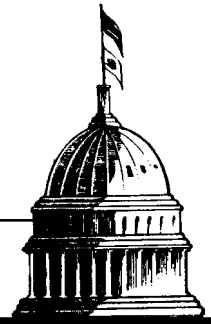
During the Civil War, Governor Richard Yates (1861-1865) was known as the "war governor." When President Lincoln called for troops, Governor Yates sent more than double the state's quota. His son, also named Richard Yates, was governor from 1901-1905. They represent the only father-son gubernatorial team in Illinois history.

John Peter Altgeld (1893-1897) "the eagle of the prairie," was the first foreign-born governor of Illinois. Altgeld was born in Germany and was a friend of lawyer Clarence Darrow and progressive leader Jane Addams. He was the first Illinois governor to appoint women to important boards and he was a strong labor union supporter. He is also the governor who pardoned union activists convicted of bomb throwing at the Haymarket Incident, which cost him considerable political support.

Frank Lowden was governor of the state from 1916-1920. He was a government reformer who reorganized Illinois government by reducing the governmental bureaucracy. He reduced state taxes by \$7 million and the state still had a surplus when he left office. Lowden was instrumental in the passage of anti-discrimination legislation. His success as a government leader almost brought him the Republican nomination for president of the United States in 1920.

One of the more recent governors who made a notable contribution to public service beyond the governorship was Adlai Stevenson. Governor from 1949-1953, Stevenson was the grandson of a former vice-president. In both 1952 and 1956 he was the Democratic presidential nominee, defeated both times by Dwight Eisenhower. In 1961 he became the United States Ambassador to the United Nations, a post he held until his death.

Governor James Thompson was Illinois' longest serving governor. He served from 1976 through 1990, a record of four terms.



V. Judicial Powers

The Illinois court system is established by article VI, the judiciary article of the constitution. The constitution defines the structure and responsibilities of the courts, the qualifications and duties of judges, and the system for administering the courts. The courts make up the third branch of state government.

All Illinois courts are part of a single statewide system. At one point local government units had local courts known as justice of the peace courts, or police magistrate courts, that are still found in some states. Local courts in Illinois were abolished in 1964 as part of an amendment to the judiciary article of the 1870 Constitution. Because of this revision in the 1960's, the 1970 Constitution did not significantly change the structure of the courts. However, a new system of judicial discipline was created and the voters were given a choice between elected and appointed judges. The voters continued the existing practice of electing judges.

Illinois has a three-level court system. The initial level is the trial-level, which consists of 22 circuit courts. The next level consists of five appellate courts. The Supreme Court comprises the final level. Thirty-eight states and the federal courts use this three level system. The remaining states, which have a two-level system consisting only of a trial level and a Supreme Court, are generally states with small populations. At the trial level, trials are conducted in which there are witnesses and testimony. At the end of the trial the judge or the jury makes a decision. In most instances this is the final decision.

In approximately 5 percent of trial cases, there is an appeal requested. The appellate courts hear appeals.

Witnesses rarely appear at an appeal. Lawyers present written arguments to the court known as "briefs" and may be allowed an opportunity to present a short oral argument before the court. When the court decides the case, it issues a written summary of the decision known as an opinion.

Purpose of the Courts

Of the three branches of government, the judicial is the smallest, utilizing less than 1 percent of the state's budget. Yet the courts may be the branch of government with which the average citizen is most likely to come in contact. There is at least one courthouse in every county of the state. Including traffic tickets, there are over 4 million cases filed in the Illinois court system each year.

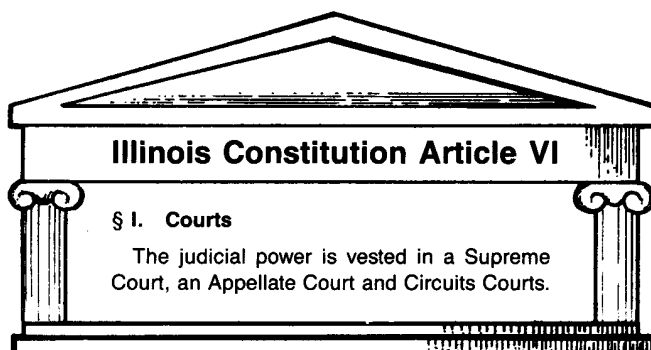
Courts provide the following functions:

1. Courts resolve disputes. A lawsuit or case is a dispute in which the parties cannot reach an agreement and the authority of the court system is used to decide the matter. The case may involve the meaning of words in a contract, the issue of fault in an auto accident, or the authority of a city to pass a law prohibiting handguns.

2. Courts provide a means for citizens to seek a remedy from injuries caused by government activities. If people believe their civil rights are violated, or the government is injuring their property, a case may be filed against the government to correct the situation.

3. Court decisions are usually required prior to the enforcement of laws against individuals. Individuals are entitled to a hearing prior to government action which takes away their life, liberty, or property. This right to a hearing is often referred to by the term the right to due process of law.

4. The courts, through the power of judicial review, serve as a check on the powers of the executive and legislative branches of government. Judicial review is the power to declare action of the other branches of government unconstitutional if they exceed the authority granted under or prohibited by the constitution. When exercising judicial review, courts have the final word on the meaning of the constitution.



Most cases brought into the courts involve disputes between individuals. Divorces, small claims cases, claims for payment on consumer contracts, are examples of suits between individuals. Such cases and routine criminal matters, in which the issue in dispute is the guilt or innocence of the accused individual, make up more than 90 percent of the cases filed in the court. The remaining cases involve questions of the government's authority to act. A small portion of these cases raise issues of judicial review and the constitutionality of the government's actions. When the government's authority is challenged, the courts carry out the function of checks and balances under the theory of separation of powers.

Courts have the power to order the government to stop taking a course of action and to declare the government's action unconstitutional. In most other governmental systems in the world, courts are not given this much power. If not abused, this power is a protection of the liberty of the citizens. The power is usually not abused because the legislative and executive branches can check the power of the judiciary.

Federal Judicial Review

The power of judicial review is not specifically mentioned in either the United States or Illinois constitutions. The Supreme Courts of the United States and Illinois have interpreted their respective constitutions to include judicial review as an inherent power of the judiciary. The first case to raise the issue of the court's authority to declare a law unconstitutional was the United States Supreme Court case of *Marbury v. Madison*, (1803). In this landmark decision, Chief Justice John Marshall ruled that the U.S. Constitution gave the federal courts the power of judicial review.

Marbury had been appointed a justice of the peace during the closing hours of the presidential term of John Adams. The secretary of state failed to deliver the appointment papers to Marbury. James Madison, the new secretary of state under President Thomas Jefferson, refused to deliver the papers. Marbury filed a lawsuit in the Supreme Court seeking an order commanding Madison to deliver the papers. The Supreme Court ruled that it did not have the authority to issue this order and Congress did not have the power to give the Supreme Court this authority. Several years earlier, Congress had passed a law giving the court the authority to hear this type of case. It was this law that was declared unconstitutional.

Marshall reasoned in the opinion that the Constitu-

tion was the highest law in the land and, as such, was superior to law passed by Congress. Therefore, if a statute conflicts with the Constitution, the statute must be declared unconstitutional. Marshall further reasoned that it was the courts that were given the power to interpret the Constitution and determine if there was, in fact, a conflict.

The *Marbury v. Madison* case was controversial when it was decided. Jefferson and others were highly critical of the Supreme Court, arguing that the Court had assumed the power of judicial review since such power was not mentioned in the Constitution. Whether the Founding Fathers intended the courts to have the power of judicial review is debated to this day; however, the debate is largely of historical interest because judicial review has become an accepted judicial power.

Illinois Judicial Review

Judicial review is also an accepted part of the Illinois court tradition. Interestingly, a controversy over judicial review played a significant part in the development of the courts in Illinois. The 1818 Illinois Constitution created a court system which gave the legislature considerable control over the courts. Judges were appointed by the legislature. The Illinois Supreme Court in the case of *Field v. the People* (1838) declared the courts had the power of judicial review in a case involving an attempt to remove the secretary of state from office.

Alexander Field had been secretary of state for several years. In 1838 Thomas Carlin was elected governor and appointed another individual as secretary of state. Field refused to give up his appointment. The Supreme Court ruled that the Illinois Constitution did not give the governor the authority to remove an individual. In the opinion of the court, only the legislature had the power to fix the term of the secretary of state, and since the legislature had not established a term, Field was entitled to serve for life. The action of Governor Carlin was, therefore, unconstitutional.

A strong debate over the right of the court to exercise judicial review followed the Field decision. Shortly after the decision, the legislature appointed additional judges to the Supreme Court and limited its jurisdiction. One of the judges appointed was Stephen Douglas, who later ran for president and debated Lincoln in the famous Lincoln-Douglas debates.

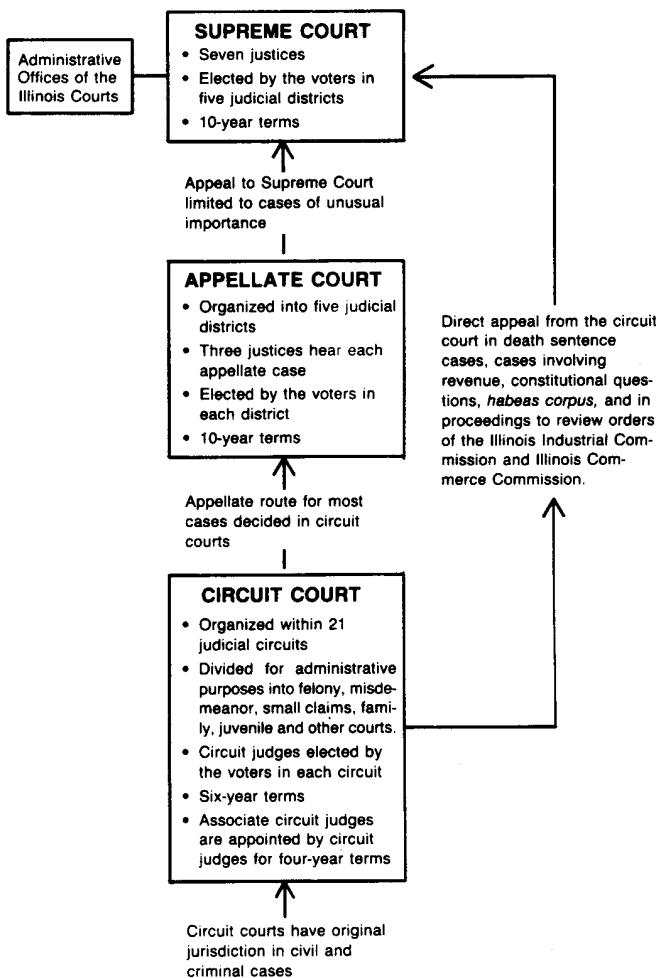
The action of the legislature, changing the structure of the courts, was one of the events that led to a new constitution in 1848. The 1848 Constitution

weakened the power of the legislature to control the courts, gave the courts an independent structure, and, in the spirit of Jacksonian democracy, provided for judges to be elected and reelected by the people. This 1848 Constitution also provided for an elected secretary of state. The election of judges and the secretary of state for fixed terms is still a part of the 1970 Constitution.

Structure of the Courts

In Illinois, the trial courts, the appellate courts, and the Supreme Court make up a three-level court system. The trial courts are known as the circuit courts and the appellate courts and Supreme Court are courts of appeal. The constitution establishes the jurisdiction of each court level. Jurisdiction defines the type of cases, which these courts may hear.

THE ILLINOIS COURT SYSTEM



Trial level

The circuit courts in Illinois are trial level courts of general jurisdiction. They hear all types of cases, from civil traffic tickets to criminal murder charges. In many ways, the circuit court is the most important part of the judicial system because it is in these courts the judicial process begins. In many counties in Illinois the use of arbitration or mediation programs is encouraged before a case can be filed.

The state of Illinois is divided into areas called circuits. Cook County is a circuit by itself. The others consist of one or more entire counties that are "contiguous," meaning they are next to each other.

The constitution provides for two kinds of judges in the circuit court, circuit court judges and associate judges. The associate judges hear the cases that are of less importance, such as traffic violations, disorderly conduct, drunkenness, and vagrancy. They also perform marriage ceremonies and issue search warrants. Circuit judges hear cases involving major crimes and significant amounts of money. Associate circuit judges are appointed for a term of four years by the circuit judges. The number of judges is determined by the legislature. Currently in Illinois there are approximately 800 trial court judges this number is divided about equally between circuit and associate circuit judges.

The circuit judges in each circuit choose one of their members as the chief judge of the circuit. The chief judge, in accordance with policy created by the Supreme Court, manages the business of the courts, assigns cases to the judges, and decides when and where court will be held. The circuit court sometimes is divided for administrative convenience and judges are assigned certain types of cases; for example, one judge may hear all juvenile law cases, another all small claims cases.

Appeals Level

At the appeals level the state is divided into five judicial districts. These districts must consist of compact and contiguous counties and must be relatively equal in size by population. Cook County is a single judicial district. Judges for the appellate courts and the Supreme Court are elected from these districts for ten-year terms.

A party in a lawsuit at the trial level who loses a case has the absolute right to appeal the case. Appeals are costly so most legal disputes are resolved at the trial level without appeal. The only exception to this rule is in a criminal case. The state may not appeal if the accused is found not guilty. An appeal is normally to the appellate court for the judicial district in which the trial was conducted. If a person is sentenced to death,

Illinois Constitution Article VI

§ 7. Judicial Circuits

(a) The State shall be divided into Judicial Circuits consisting of one or more counties. The First Judicial District shall constitute a Judicial Circuit. The Judicial Circuits within the other Judicial Districts shall be as provided by law. Circuits composed of more than one county shall be compact and of contiguous counties. The General Assembly by law may provide for the division of a circuit for the purpose of selection of Circuit Judges and for the selection of Circuit Judges from the circuit at large.

(b) Each Judicial Circuit shall have one Circuit Court with such number of Circuit Judges as provided by law. Unless otherwise provided by law, there shall be at least one Circuit Judge from each county. In the First Judicial District, unless otherwise provided by law, Cook County, Chicago, and the area outside Chicago shall be separate units for the selection of Circuit Judges, with at least twelve chosen at large from the area outside Chicago and at least thirty-six chosen at large from Chicago.

(c) Circuit Judges in each circuit shall select by secret ballot a Chief Judge from their number to serve at their pleasure. Subject to the authority of the Supreme Court, the Chief Judge shall have general administrative authority over his court, including authority to provide for divisions, general or specialized, and for appropriate times and places of holding court.

§ 8. Associate Judges

Each Circuit Court shall have such number of Associate Judges as provided by law. Associate Judges shall be appointed by the Circuit Judges in each circuit as the Supreme Court shall provide by rule. In the First Judicial District, unless otherwise provided by law, at least one-fourth of the Associate Judges shall be appointed from, and reside, outside Chicago. The Supreme Court shall provide by rule for matters to be assigned to Associate Judges.

§ 9. Circuit Courts—Jurisdiction

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

the case is appealed as a matter of right directly to the Supreme Court. The constitution authorizes the Supreme Court to allow other instances of direct appeal. The Supreme Court has authorized other cases to be appealed, such as cases in which a federal or state statute is declared unconstitutional. Normally, appeals must be from final decisions of the court; however, the Supreme Court does allow for appeals, in limited instances, before the case is finished. The rules for appeals are complicated and lawyers practicing before the appellate court and the Supreme Court must carefully satisfy these rules.

The appellate court in each district must have at least one appellate division and each division must have at least three judges. In the first appellate district the court house is located in Chicago; in the second district, in Elgin; in the third district, in Ottawa; in the fourth district, in Springfield; and in the fifth district, in Mount Vernon. The judges in the appellate court sit in panels of three and hear appeals as a group. Two of the three judges must agree before a decision may be made.

The highest court of appeal in Illinois is the Supreme Court. It is required to hear cases from the appellate court when the cases involve constitutional issues that originate in the appellate court, or when the appellate court thinks a case is important enough to be decided by the supreme court. In all other appeals, except those in which a direct appeal is required from the circuit court, the Supreme Court is given the authority to accept or reject cases. Limiting the kinds of cases that may be appealed to the Supreme Court insures the court will hear only the important cases. Consequently, only cases which establish important precedents are heard. Approximately 2,200 cases are appealed to the Supreme Court in a year and the court decides to hear about 225 of these.

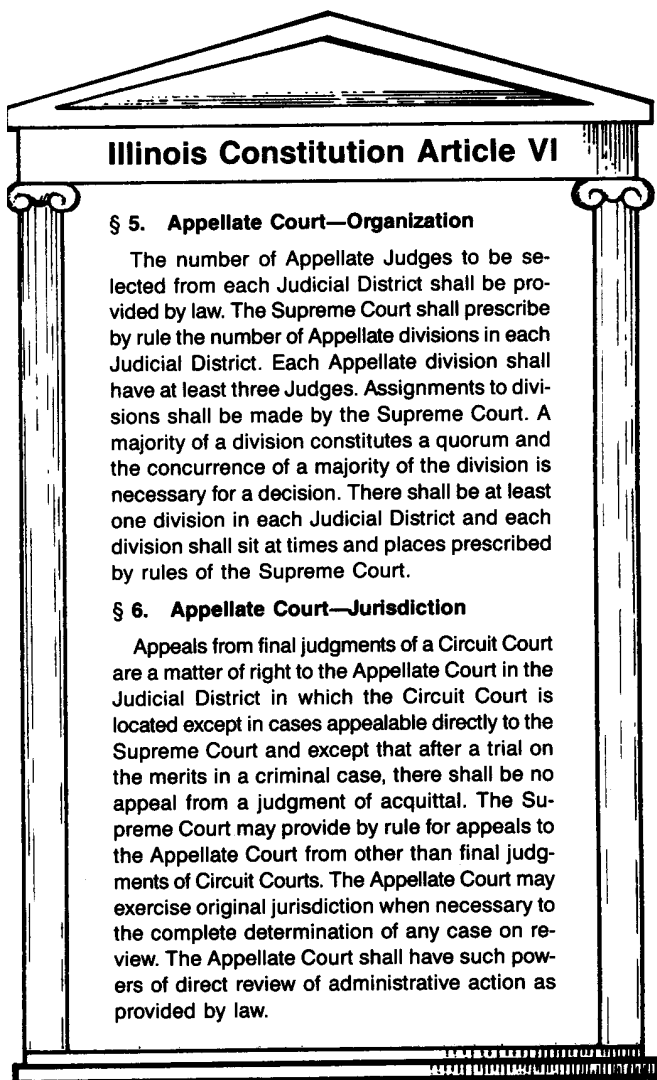
Sometimes the Supreme Court exercises its "original jurisdiction" and hears a case for the first time. The court can use its original jurisdiction in four types of cases:

1. Revenue cases, those involving taxes.
2. Mandamus cases, a person asks the court to order a public official to perform one of his or her official duties as required by law.
3. Prohibition cases, a person asks the court to forbid a lower court from hearing a case that should be tried in another court.
4. Habeas corpus cases, the court requires a person to be brought before a judge to find out why he or she is being held.

The Supreme Court is not required to hear these types of cases; they may be heard at the trial level. The

high court will only agree to hear these cases if they are of public importance. The Supreme Court must exercise its original jurisdiction in cases of redistricting and cases involving the physical and mental ability of the governor to serve.

There are seven Supreme Court justices. Three are elected from Cook County and one from each of the four downstate districts. One of the justices is elected by the members of the court to serve a three-year term as chief justice. In order for the Supreme Court to decide a case, the vote of four of the justices in favor of the decision is necessary. In 1990, Justice Charles E. Freeman (Chicago) was elected as the first black Supreme Court Justice in Illinois and in 1992, Justice Mary Ann G. McMorrow (Chicago) became the first elected woman Supreme Court Justice in Illinois. In 1998 Justice Freeman became the Chief Justice of the Supreme Court.



The Judges

All judges except associate circuit court judges are elected. The voters, when ratifying the 1970 Constitution, were given a choice between the election system we now have and a “merit” selection plan in which the governor appoints judges from a list created by a panel of lawyers and interested citizens. By a narrow margin, the voters selected the election option. Since ratification, there have been several amendments introduced into the legislature to adopt an appointment system.

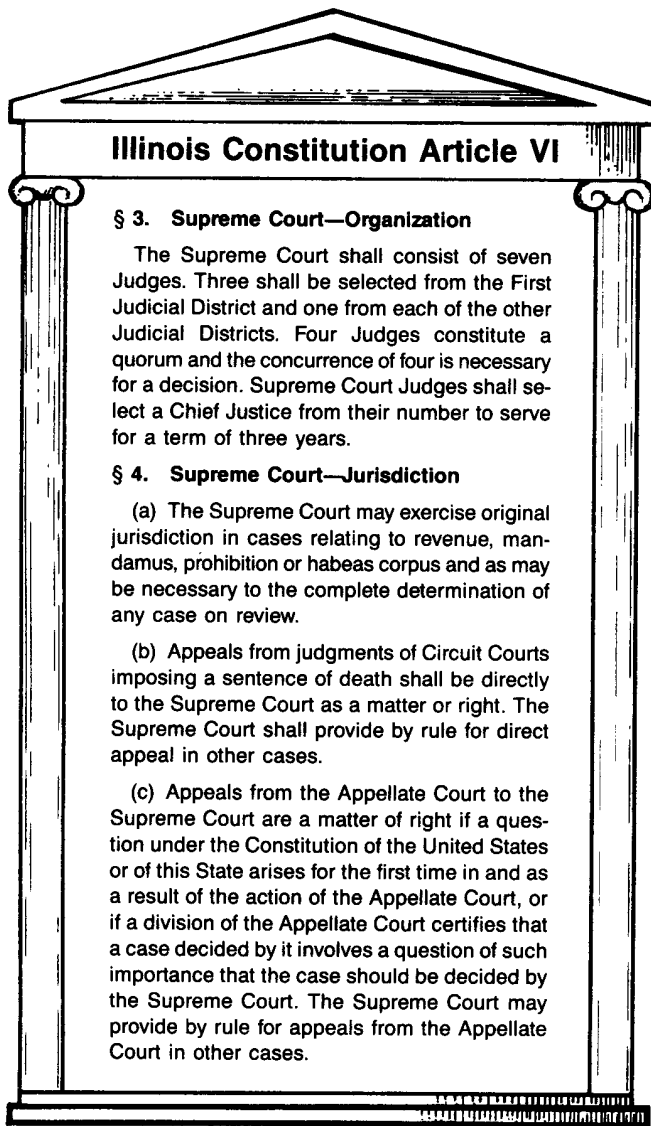
To be eligible to become a judge in Illinois, a person must be a citizen of the United States, a lawyer licensed to practice law in Illinois, and a resident of the district in which he or she serves. Nonlawyer judges are prohibited by the 1970 Constitution. In the past, many trial court judges, such as justices of the peace, were not lawyers. The position of justice of the peace no longer exists.

Supreme Court and appellate court justices are elected for ten-year terms. Circuit court judges are elected for six-year terms, and associate judges are appointed for four-year terms. Associate judges are appointed following a secret ballot cast by the circuit court judges. If associate judges perform their duties satisfactorily, they may be retained over and over.

Salaries of judges are established by the legislature and may not be reduced during a judge’s term of office. In 1984, the legislature established a Compensation Review Board that sets the salaries subject to legislative approval.

Vacancies caused by death, sickness or retirement are filled by Supreme Court appointment. Any judge appointed by this process must stand for election at the next election. If, however, the judicial appointment is less than sixty days prior to the next primary election, the judge does not have to stand for election until the second general election that follows.

The constitution states that a lawyer who wants to be a judge must be nominated either in the primary election or must submit petitions signed by a predetermined number of voters in the district. The person’s name is then placed on the ballot under a party label or as an independent, depending on the nomination for the general election. Once a judge is elected, he or she does not have to run against anyone else if reelection for an additional term is desired. At least six months before his or her term expires a judge must send the secretary of state a letter saying that he or she wants to run again. Then the judge’s name is placed on the ballot without any party labels and no opposition candi-



date. The voters just check YES or NO to keep the judge in office. If 60 percent of the voters check YES then a judge serves an additional term. Since this system of election has been in place few judges have lost such retention elections.

The Judicial Inquiry Board in Illinois examines the conduct of judges. The board consists of nine members: two must be circuit court judges, four must be lawyers and three must be nonlawyers. If five of the members agree that a judge is misbehaving or is physically or mentally unable to do his or her work, they file a complaint with the Courts Commission, which can then suspend, remove, or force retirement. In 1998 the constitution was amended expanding the membership of the Courts Commission to include two members of the general public to be appointed by the Governor. The constitution authorizes the legislature

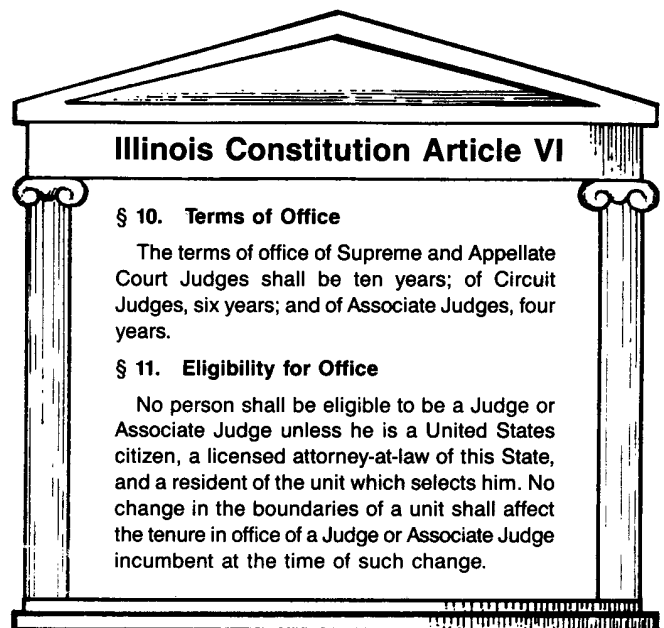
to establish a mandatory retirement for judges. The legislature has established seventy-five as the retirement age. A retired judge may serve by special assignment of the Supreme Court.

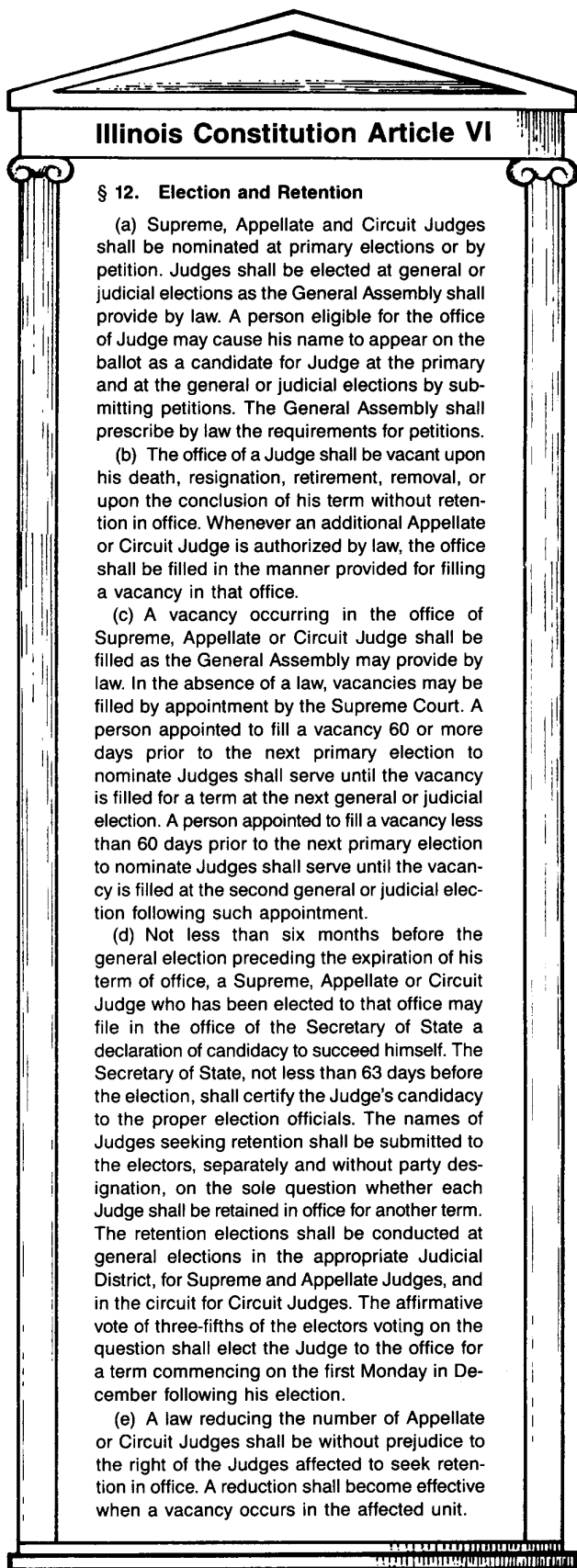
The Supreme Court makes the rules that control the conduct and ethics of judges. All judges are expected to devote full time to their judicial duties and are not allowed to practice law on the side. They are not allowed to hold public office or have any other job, but they may serve in the military or in the Illinois National Guard. These rules make it easier for judges to be concerned only with their official duties and make decisions that are fair.

Judicial Administration

The Supreme Court and the chief justice are authorized to administer the court system. The Supreme Court has created an Administrative Office of the Illinois Courts to provide for the day-to-day administration of the courts. The Supreme Court may assign a judge temporarily to another court to meet work demands. There is an annual judicial conference that considers the work of the courts and suggests changes in the court's system. Changes requiring legislative action are included in a report to the General Assembly each year.

There is a trial court in every county in the state. The county courthouse serves as an office building for county government. Many of the offices in the courthouse are affiliated with the legal system, but some, such as the treasury, recorder of deeds, county clerk,





Illinois Constitution Article VI

§ 12. Election and Retention

(a) Supreme, Appellate and Circuit Judges shall be nominated at primary elections or by petition. Judges shall be elected at general or judicial elections as the General Assembly shall provide by law. A person eligible for the office of Judge may cause his name to appear on the ballot as a candidate for Judge at the primary and at the general or judicial elections by submitting petitions. The General Assembly shall prescribe by law the requirements for petitions.

(b) The office of a Judge shall be vacant upon his death, resignation, retirement, removal, or upon the conclusion of his term without retention in office. Whenever an additional Appellate or Circuit Judge is authorized by law, the office shall be filled in the manner provided for filling a vacancy in that office.

(c) A vacancy occurring in the office of Supreme, Appellate or Circuit Judge shall be filled as the General Assembly may provide by law. In the absence of a law, vacancies may be filled by appointment by the Supreme Court. A person appointed to fill a vacancy 60 or more days prior to the next primary election to nominate Judges shall serve until the vacancy is filled for a term at the next general or judicial election. A person appointed to fill a vacancy less than 60 days prior to the next primary election to nominate Judges shall serve until the vacancy is filled at the second general or judicial election following such appointment.

(d) Not less than six months before the general election preceding the expiration of his term of office, a Supreme, Appellate or Circuit Judge who has been elected to that office may file in the office of the Secretary of State a declaration of candidacy to succeed himself. The Secretary of State, not less than 63 days before the election, shall certify the Judge's candidacy to the proper election officials. The names of Judges seeking retention shall be submitted to the electors, separately and without party designation, on the sole question whether each Judge shall be retained in office for another term. The retention elections shall be conducted at general elections in the appropriate Judicial District, for Supreme and Appellate Judges, and in the circuit for Circuit Judges. The affirmative vote of three-fifths of the electors voting on the question shall elect the Judge to the office for a term commencing on the first Monday in December following his election.

(e) A law reducing the number of Appellate or Circuit Judges shall be without prejudice to the right of the Judges affected to seek retention in office. A reduction shall become effective when a vacancy occurs in the affected unit.

and superintendent of education, are not.

The state's attorney, the clerks of the circuit court and the sheriff are those offices of county government most closely affiliated with the court system. Although the constitution allows one or more counties to join together to provide these services, there have been no consolidations in Illinois.

The state's attorney is an elected official with a four-year term of office. The state's attorney prosecutes all criminal offenses in the county.

There is a circuit court clerk in each county. These clerks are elected officials. The legislature is authorized by the constitution to make them appointed, but has opted to continue the practice of electing circuit court clerks. The clerk maintains the court's records and files. The Supreme Court appoints the clerks of the Supreme Court and the appellate court.

Sheriffs, in addition to their police duties, serve summonses and other court documents on the parties to a lawsuit. They also provide bailiffs for the court. A bailiff's main function is to keep order in a courtroom.

In addition to the county officials mentioned in the constitution, the courts employ secretaries, administrative assistants, judicial administrators and probation officers to carry out the responsibilities of the court.

Federal and State Courts Comparison

There are federal and state court systems in the United States. An Illinois citizen with a legal dispute must decide whether the federal or state courts should be used to resolve the dispute. Rules have been established which guide these decisions. Day-to-day legal disputes will be brought to the state rather than federal courts. Most family matters, wills, real estate, contract claims, and personal injury lawsuits are properly brought to the state courts. The workload of the Illinois courts alone, even with traffic ticket cases excluded, exceeds the number of cases in the entire federal court system.

The federal court system exists primarily to hear disputes involving interstate business and suits that are governed by specific federal laws of the U.S. Constitution. Areas such as bankruptcy, labor law involving unions and private business, and antitrust matters are filed almost exclusively in the federal courts.

Major similarities and differences between state of Illinois and federal court systems are:

SIMILARITIES

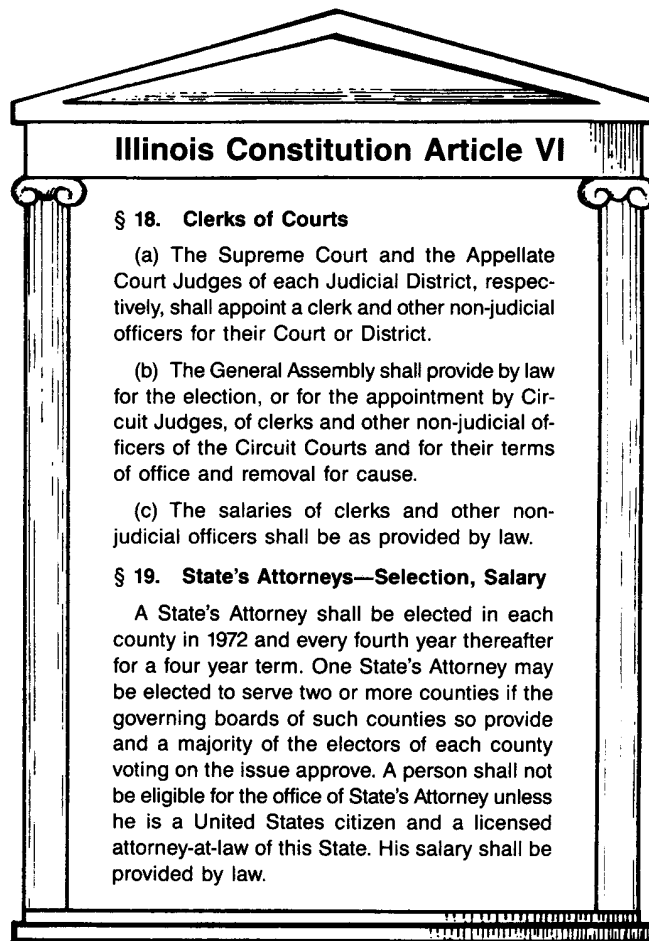
1. Each has a Supreme Court as final appeal court.
2. Each has a three-level court system.
3. Each is designed to serve as a check on other branches of government.

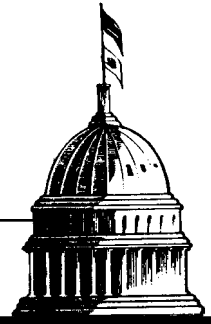
4. Each has developed the doctrine of judicial review.

DIFFERENCES

1. The state court system is defined and structured in much greater detail than the federal court system.
2. The state court system is required by the Illinois Constitution while the federal system is not required by the U.S. Constitution.
3. Congress has much more control over the federal courts than the state legislature has over the state courts.
4. Judges in Illinois are elected or appointed and serve for a fixed term of years; judges in the federal system are appointed and serve for life.
5. The administration of the courts is more clearly defined in the state constitution than in the federal Constitution.

The similarities result from the fact that the Illinois Constitution was modeled after the United States Constitution and that Illinois citizens share a common legal tradition with other citizens in the United States. The differences exist because of the nature of the disputes each court system is asked to resolve.





VI. Bill of Rights

A bill of rights is just what the words indicate—a listing of the rights individuals possess as protection against an over-powerful government. The United States Constitution and all the state constitutions contain a bill of rights, but such an enumeration is the exception rather than the rule throughout the rest of the world. A bill of rights reinforces the concept that government exists through the consent of the governed and that, ultimately, it is the people who are supreme. The Bill of Rights is found in article I of the Illinois Constitution.

History of the U.S. Bill of Rights

The colonists saw a central government as one to be feared. They wanted a cohesive government strong enough to command respect from other countries but one, which rested on the consent of the people. They saw the most important role of the government as protecting the rights of the people.

At the 1787 Convention, a bill of rights was discussed but was not made part of the Constitution because each state already had one. In most of the colonies a bill of rights preceded the main body of the constitution. To include them in the Constitution appeared unnecessary to many of the delegates. However, when it was time for ratification, one of the most common criticisms expressed was that the Constitution contained no bill of rights. Leaders such as John Adams and Patrick Henry spoke out in favor of such an inclusion. Thomas Jefferson questioned why there was no bill of rights and, furthermore, why it was not at the head of the document. He first advocated an entirely new convention to correct this exclusion. Then, realizing this plan was impractical, he proposed that the Constitution be adopted so that the government might get underway and that an amendment to include a bill of rights be the first order of business for the new administration. This promise to include a bill of rights persuaded many undecided states to ratify the document.

The promised bill of rights was not developed immediately. George Washington, in his first inaugural address, mentioned the need for a bill of rights, but the business of establishing and setting in motion a

representative government was time-consuming and slow. Finally, twelve amendments were offered, ten of which were approved. Eight amendments concerned the rights of the individual and the restraints on government, and two defined the actions granted to the new government and those retained by the people and states. The two defeated amendments dealt with issues regarding representation in the House and payment for members of Congress. James Madison is generally credited with the authorship of the Bill of Rights, the first ten amendments. They were not passed until 1791, a full three years after the main body of the Constitution was ratified.

United States Bill of Rights

The First Amendment contains many fundamental rights. It prohibits Congress from establishing a state religion as the official religion of the country. This was a safeguard against this country having a national church. It guarantees that an individual may choose whichever religion they wish to follow. This guarantee was the result of the religious persecution some of the early settlers fled to come to this country. The First Amendment also guarantees the right to free speech and the right to express your ideas. These provisions were reactions to the English practice of imprisoning or killing people for criticizing the royal family. It guarantees the right to meet with others in a peaceable way and the right to request the government to right a wrong.

The landmark United States Supreme Court case on first amendment rights for high school students is *Tinker v. Des Moines*, 393 U.S. 503, decided in 1969. The *Tinker* case contains the often-heard quote that teachers and students do not “shed their constitutional rights at the schoolhouse gate.” The Court held that high school students may not be prohibited from expressing themselves (in this case, by wearing black armbands to protest the Vietnam War) unless the school can show that a disruption or interference with school functions would result. In recent years there have been several cases involving the types of books that are available in school libraries and school newspapers. The courts have attempted to protect the free speech rights of stu-

dents while recognizing that educational guidance is a part of the process.

The Second Amendment provides the right to have weapons while serving in a branch of military service. The drafters of the Bill of Rights wished to provide for a militia, but the newly created states were not able to provide guns. Men were expected to arm themselves when the militia was called together. The Supreme Court has interpreted the Second Amendment in such a manner that this right to form a militia is protected. Reasonable gun control efforts are not prohibited by the Second Amendment.

United States Constitution

Amendment [I.]b

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment [II.]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment [III.]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment [IV.]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment [V.]

No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any persons be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Third Amendment says that in peacetime you do not have to house a soldier in your home. This amendment was included because when the colonists were under English rule they were required to house English soldiers. Many colonists found this practice to be distasteful.

The right to be safe within your home is the guarantee of the Fourth Amendment. The key word in the Fourth Amendment is "unreasonable" searches and seizures. This means the police cannot enter your home on a whim. With some limited exceptions, the police must have a warrant issued by a judge in order to enter private property. The warrant is only to be issued in situations in which there is probable cause. To have probable cause, there must be some evidence a person has violated a law. In recent years there have been many law suits filed defining the terms unreasonable," "search," and "probable cause." It is from this amendment that the implied right to privacy stems. The amendment reflects the popular phrase; "A man's home is his castle.

In movies or on television there are frequently scenes in which the person on the witness stand, "takes the fifth." This refers to the Fifth Amendment. It says no person is required say anything under oath that could harm him or her. In other words, you never have to be a witness against yourself. The Fifth Amendment also says that you may not be tried for the same crime twice. This is called double jeopardy. Also, you are not to be deprived of your life, liberty or property without going through the proper legal process. In the case of property being taken by the government, you are to be paid a fair sum of money for what is taken. For example, if the government wants to build a road through a farmer's cornfield, it has to pay a fair price for the land.

The rights of those accused of crimes are protected by the Sixth Amendment. It ensures a speedy and public trial by a jury in the district where the crime was committed. It guarantees that accused individuals are aware of the charges against them, that they are allowed to have a lawyer, and that they are allowed to hear what people say against them at a trial. This amendment was written to prevent the practice of keeping people in prison for extended periods of time on unfounded charges or being subjected to secret trials. This was because the colonists knew that in some extreme cases, people had been killed or confined to dungeons indefinitely for displeasing the monarchy.

Civil suits of a value of more than \$20 may be heard by a jury as guaranteed by the Seventh Amendment. A party in a civil lawsuit has the right to request a jury. In 1787, \$20 was a great sum and thus discouraged frivolous requests for jury trials.

United States Constitution

Amendment [VI.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment [VII.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment [VIII.]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment [IX.]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment [X.]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

More rights of the person accused of a crime are discussed in the Eighth Amendment. Large amounts of money may not be required as bail. Unreasonably high fines may not be imposed. Punishments may not involve cruel or unusual treatment.

The Ninth Amendment says that while the Constitution lists many fundamental rights, it cannot cover all of them. Just because a right isn't mentioned doesn't necessarily mean it doesn't exist. For example, the right to travel is not mentioned yet it is generally considered to be a fundamental right in our country.

According to the final section in the Bill of Rights, if a power is not specifically named as being a federal power or specifically denied to the states, it is a power reserved for the states.

In 1868 the Fourteenth Amendment, prohibiting the states from making a law which would infringe upon the rights named in the Constitution, was added to the Constitution. This amendment also says that constitu-

tional rights must be made available to all citizens—not just some. No state may deny a person the right to life, liberty or property without the proper legal process being followed. It is through this amendment that most of the restrictions on the federal government, which are contained in the Bill of Rights, are also extended to the states.

Illinois Bill of Rights

The Illinois Constitution also contains a bill of rights. Illinois has had a bill of rights, modeled originally after the federal Bill of Rights, in each constitution since 1818. The question is often asked whether there is a need for a state bill of rights since the federal government already has one. One reason is that the individual states can be much more specific in their rights than can the federal government. For example, the Illinois Constitution contains a specific right to privacy and an equal rights amendment for women.

The states may, if they wish, extend those basic rights in more detail. The states may include rights important to their state, which do not appear nationally as having the same degree of importance. It is true that there is duplication. It is also true that the basic rights are of importance to both the federal and the state governments and, therefore, are included in both constitutions. The state rights are more specific than the federal, just as the state powers of government are more specific.

The Illinois Constitution's Bill of Rights contains twenty-four sections. Some sections are advisory; that is, they are words intended to express ideals rather than be interpreted as rigid law. Section one is an example of those sections. It essentially says that people have the right to live and to be free, and the duty of the government is to protect these rights. It also says that the government's power shall come from the peo-

United States Constitution

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ple. This section reaffirms the concept that sovereignty remains with the people.

The second section concerns due process and is similar to the Fourteenth Amendment in the United States Constitution. Due process is the means by which fair treatment is attained. It protects one from unreasonable governmental actions by requiring that a person be notified before the government takes action against

him or her. The individual also has the right to a hearing and the opportunity to respond to any charges brought against him or her.

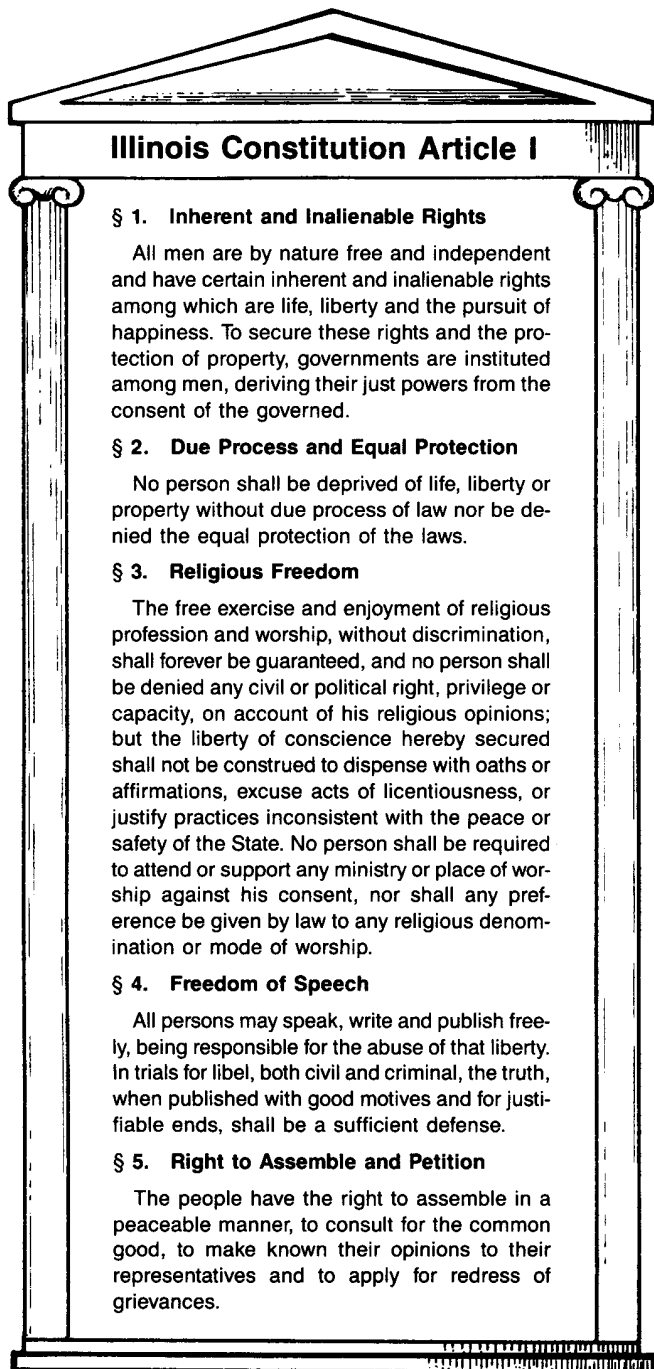
Religious freedom is the topic of section three. It is similar to the protections provided in the First Amendment of the United States Constitution. It is interesting to note that in 1910 the Illinois Supreme Court held that prayer and Bible reading in the public schools was unconstitutional in the case *People ex rel King v. Board of Ed of District 24*. But it was not until 1963 that the United States Supreme Court ruled school prayer to be unconstitutional in *School District of Abington v. Schempp*, (1963).

Free speech and freedom of the press are the First Amendment guarantees expressed in section four. The language parallels the free speech section of the federal First Amendment. People are guaranteed the right to express their views even when others don't like what they are saying. Unpopular expression is protected. A case in point is *Village of Skokie v. National Socialist Party*, (1977) in which the American Nazi Party wanted to conduct a march in a town in which many survivors of Nazi persecution were residents. The proposed march raised emotions in the community. The court held that even though the Nazis were especially repugnant to the citizens of that community, they could not be denied their right to free speech. The march was allowed.

Peaceful assembly and the right to petition are the same in section five as in the First Amendment. Illinois courts have, however, drawn the line on peaceful assembly by upholding the right of the police to use force on students who remained assembled in a school building after being told to leave.

The sixth section is taken from the Fourth Amendment of the United States Constitution, yet is more explicitly defined. The Fourth Amendment implies the right to privacy. The Illinois Constitution clearly includes the right to privacy. The guarantee against the invasion of privacy and eavesdropping is a new provision in the 1970 Constitution. Even so, not all governmental searches are illegal. For example, law enforcement officers may use dogs to sniff airport luggage for drug scents. Students and others often feel that school locker searches are invasions of privacy, but such searches have been held permissible. Also in several cases the Supreme Court has allowed automobile searches without a warrant. However, the Court in 1999 ruled that a search of a car following a routine and minor traffic stop with no other reason was in violation of the Fourth Amendment to the United States Constitution.

Sections seven, eight, nine and ten all refer to the rights of people who are arrested and placed on trial for crimes. There are similar provisions in the federal Bill of



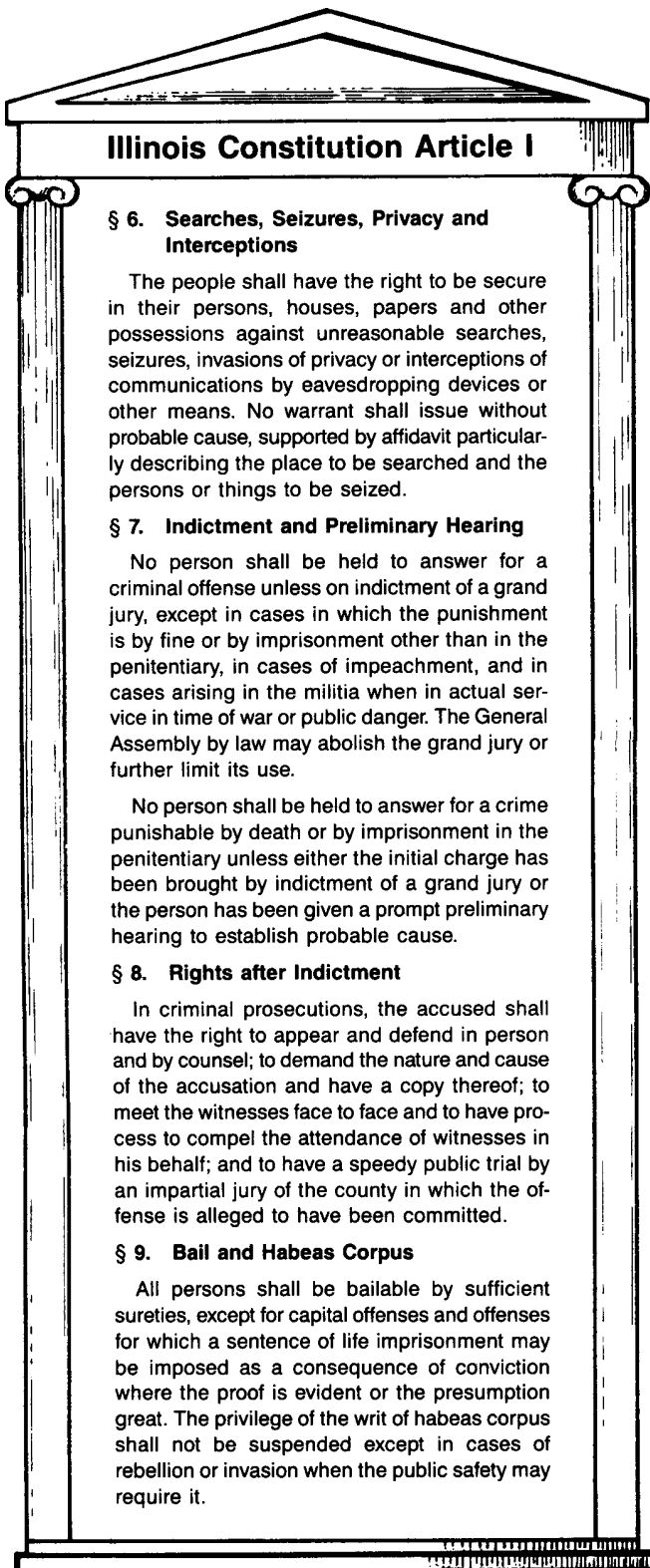
Rights. They guarantee due process of law in criminal trials. Section eight was amended in 1994 to make it clear that the section gives Illinois citizens the same pro-

tection to confront witnesses as found in the U.S Bill of Rights. Section nine uses the term, habeas corpus" which is a Latin phrase meaning, "you have the body." A writ of habeas corpus is an order to bring a person before the court in order to decide if they have been legally imprisoned. Section nine was amended in 1982 and 1986 to authorize a court to deny bail in cases where the death penalty or mandatory life sentence is possible.

An additional section, Section 8.1, was added to the Bill of Rights in 1992. This section defines the rights of victims in criminal cases. Victims are to be: (1) treated with dignity and respect which includes being notified of court proceeding and the right to be present at court hearings, (2) allowed to make a statement to the court at the time of sentencing, (3) protected from the accused during the court procedure, and, (4) the right to restitution. Restitution may be in the form of money from the accused to the victim but it may also include some form of work for the accused to repair the damage or community service.

Section eleven concerns prisoner rights. It states that the objective of the criminal justice system should be to restore the offender to a useful life. It holds the concept of rehabilitation to be more important than punishment. When the 1970 Constitution was drafted one of the most controversial issues was the death penalty. This section does not prohibit the death penalty or life imprisonment in Illinois. The voters were given a choice on the death penalty. By a vote of almost two to one, they voted to keep the penalty.

The term "no corruption of blood" is an old-fashioned term, which essentially means that children cannot be punished for what their parents do. It used to be



Illinois Constitution Article I

§ 6. Searches, Seizures, Privacy and Interceptions

The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

§ 7. Indictment and Preliminary Hearing

No person shall be held to answer for a criminal offense unless on indictment of a grand jury, except in cases in which the punishment is by fine or by imprisonment other than in the penitentiary, in cases of impeachment, and in cases arising in the militia when in actual service in time of war or public danger. The General Assembly by law may abolish the grand jury or further limit its use.

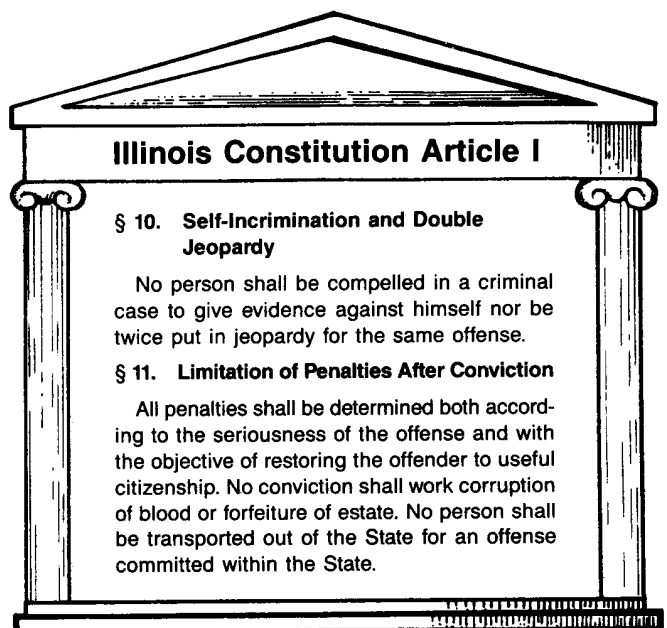
No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause.

§ 8. Rights after Indictment

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation and have a copy thereof; to meet the witnesses face to face and to have process to compel the attendance of witnesses in his behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

§ 9. Bail and Habeas Corpus

All persons shall be bailable by sufficient sureties, except for capital offenses and offenses for which a sentence of life imprisonment may be imposed as a consequence of conviction where the proof is evident or the presumption great. The privilege of the writ of habeas corpus shall not be suspended except in cases of rebellion or invasion when the public safety may require it.



Illinois Constitution Article I

§ 10. Self-Incrimination and Double Jeopardy

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

§ 11. Limitation of Penalties After Conviction

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of the State for an offense committed within the State.

thought if a person was guilty of a crime, his or her blood was tainted. By this reasoning, the children could not inherit from this tainted person. By including the “no corruption of blood” phrase, the constitution has ensured the right of prisoners both to inherit and to pass along assets to their children.

The final clause in this section concerns transportation out of the state. It prohibits the practice of giving criminals a small amount of money and telling them to leave the state. This practice was similar to the “never darken my doorway” line of old-time melodramas. In 1983 Illinois prisons were dangerously overcrowded. In an attempt to ease the overcrowding, some inmates were sent to Nevada prisons. Three of the inmates filed suit to prevent the transfer citing this section of the Illinois Constitution. An Illinois trial judge ruled that sending Illinois persons out-of-state is indeed illegal. Then, in 1984, the United States Supreme Court decided a parallel case in which it allowed Hawaii to place prisoners in California prisons. Other states have banishment clauses in their constitutions and have placed prisoners out-of-state during periods of overcrowding. To date, the issue has not been appealed in Illinois.

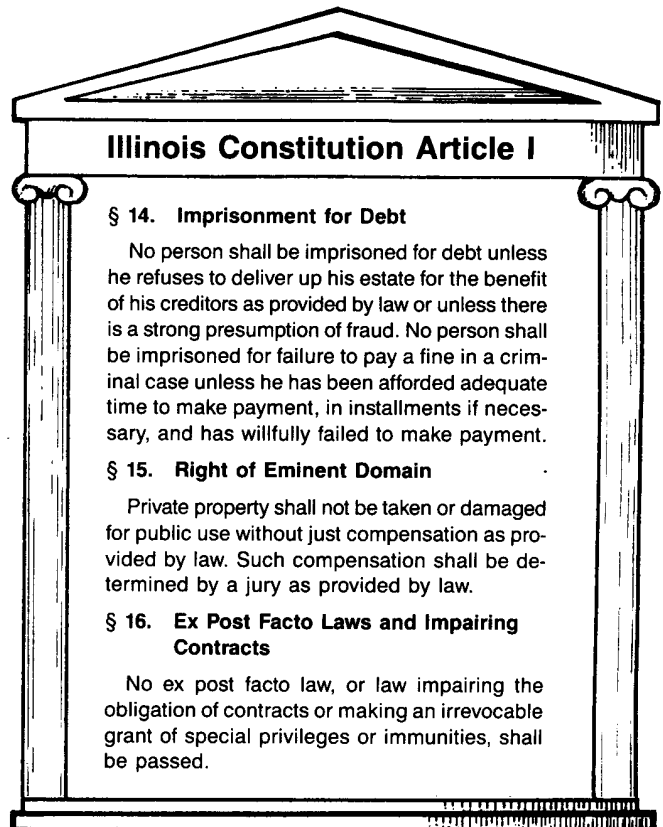
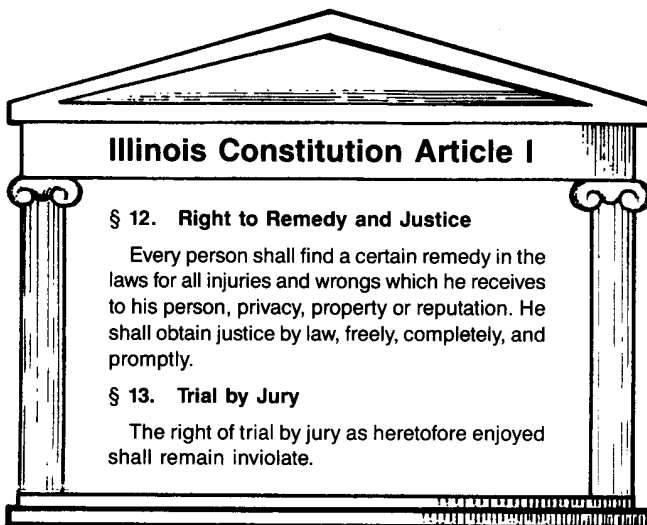
Section twelve says that everyone is entitled to their day in court to right a wrong. The courts, however, should not be used for unimportant situations. For example, some people feel that courts should not become involved in resolving disputes that arise in sports. An Illinois court has ruled in a case in which the official scorekeeper mistakenly counted a basket at the close of the first half of a basketball game. Two hours after the game, he called the officials and told them a mistake had been made. The final score was a difference of one point. Progressing in the state high school tournament depended on the final score.

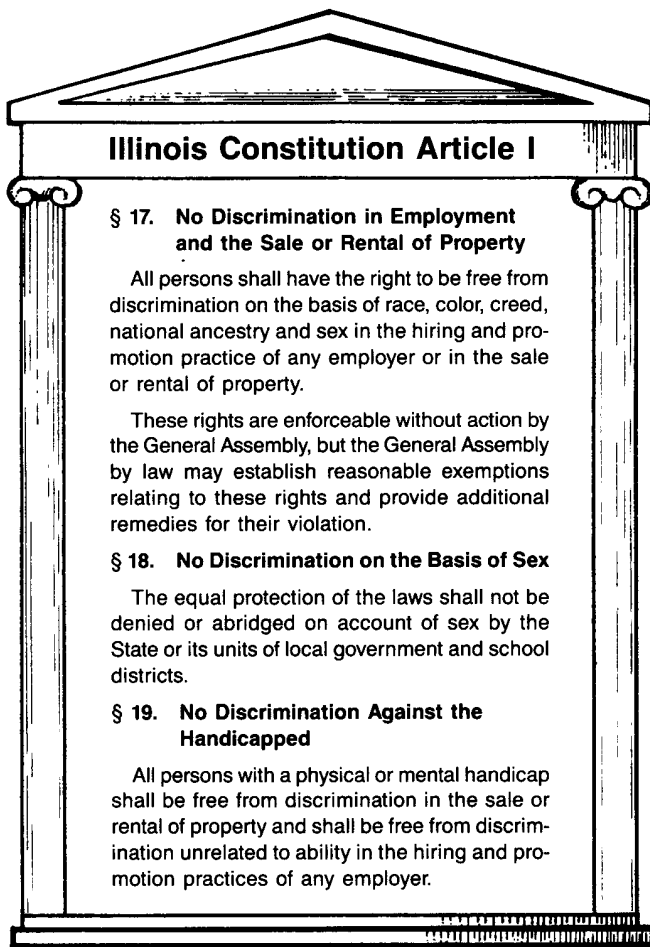
The facts of the case were not in dispute but neither

school would yield on its position as to who was the winner. One school said the team with the most points had won. The other school said the score at the end of the game should stand. The schools took the issue to court and the judge ordered the second half of the game replayed. The judge said that the issue was not the protest of the ruling of a game official, but an issue of mathematical computation. While these schools had their day in court to resolve a controversy, other sports disputes have been rejected by the courts on the grounds of being outside their jurisdiction.

Section thirteen guarantees a jury trial in state courts when demanded for both criminal and civil cases. Section fourteen was intended to end the practice of the old debtors prison in which poor persons were convicted of an offense, fined, and when they could not pay the fine, they were imprisoned; while a financially sound person convicted of the same offense who was able to pay the fine would go free. In 1970, when the section was written, approximately 40 to 60 percent of all people in the county jails were imprisoned because they could not pay fines. A person who has money but willfully refuses to pay a fine or a civil debt may still be imprisoned.

Section fifteen extends the Fifth Amendment provision on eminent domain by requiring compensation if a government project merely damages property. For





example, if a highway cuts off access to a farmer's field or creates drainage problems, there may be compensation even though the government did not take the land.

Ex post facto laws are those that punish people for something that happened before the law was passed. Such situations are the subject of section sixteen. This is like changing the rules in the middle of the game. An example of this is seatbelt legislation. In 1984, it was legal to drive without using seatbelts. Many people did not use them. In 1985 legislation was passed that made wearing seatbelts mandatory. You had to wear the belts after the law became effective, but you could not be punished if you did not wear them prior to the date that the seatbelt legislation became law.

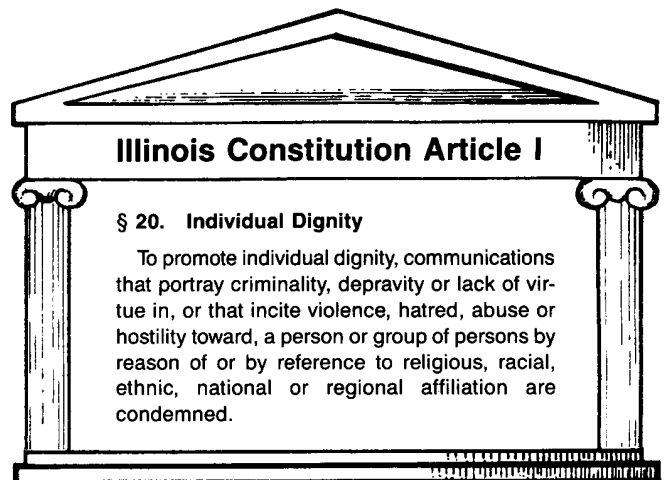
Sections seventeen, eighteen and nineteen deal with discriminatory practices. They are new in the 1970 Constitution and more far-reaching than anything of similar nature in the United States Constitution. They voice a common concern with discriminatory acts. They differ from each other in that section seventeen concerns discrimination on the basis of race, religion, origin, and sex in employment and in the rental and sale of property; section eighteen concerns discrimina-

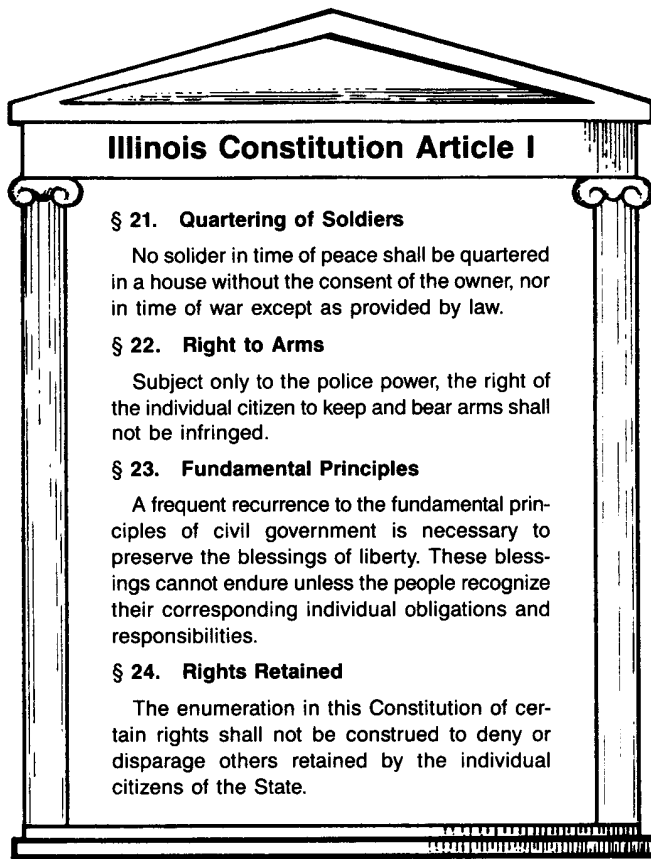
tion by the government on the basis of sex; and section nineteen concerns discrimination against handicapped individuals. Even though Illinois has had a state equal rights provision in its constitution since 1970, it still failed to support the federal Equal Rights Amendment.

These discrimination sections have resulted in many changes. For example, in the public schools some classes were only offered to one sex. Sewing was only for girls and woodworking was restricted to boys. Now all classes are open to both sexes. Employment opportunities previously closed to one sex have been made available to both.

The twentieth section contains terminology condemning insulting statements about persons. There has been only one case reported in law books interpreting this section. A college student returned some merchandise to the store in which he had purchased it and requested a refund. While making out the refund slip the store employee made a written uncomplimentary remark about the customer's race. The customer brought suit under this section. The courts held that this section is like a sermon. It presents an ideal but is not a section under which a citizen may hope to correct a wrong. The sections in the constitution which sermonize are said to be constitutional hortatory. These sections establish goals for society to achieve.

Sections twenty-one, prohibiting the quartering of soldiers, and twenty-two, guaranteeing the right to bear arms, correspond respectively to amendments three and two of the U.S. Constitution. The right to bear arms is qualified by the term "subject only to police power." That means you may have a gun only if the police and the local law say you may. You may not have a gun in violation of the law. Local laws, which provide for an almost complete ban on handguns, have been upheld.





Section twenty-three emphasizes that good government is a two-way street. People can only expect the laws to be effective if they uphold them themselves.

The final section, twenty-four, corresponds to the Ninth Amendment. Just because the constitution doesn't mention a right doesn't mean a fundamental right is not protected. The state government has all powers not denied it by the United States or Illinois constitutions. The people, by delegating power to the state government, have also placed limits on the extent of that power.

Additional Rights

In addition to the rights in the Bill of Rights, there are three other rights named in other parts of the Illinois Constitution—the right to vote, the right to education, and the right to a healthful environment. Article 111, sections 1 and 2 contain the right to vote.

These sections state that the basic age requirement for voting shall be twenty-one. However, the United States Constitution, in the Twenty-sixth Amendment, has set the voting age at eighteen. The United States Constitution, being the supreme law, controls the voting age. In like manner, this section sets the residence requirement at six months though the U.S. Supreme Court has held a requirement of that length violates the United States Constitution. Consequently, Illinois law now sets the residency requirement at thirty days. A person who is in prison may not vote. The right to vote is restored after the sentence is completed.

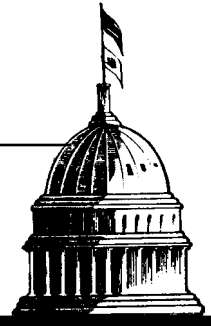
The right to an education is found in article X, section 1. There is no similar right in the federal Constitution. Courts have interpreted this section to mean the state must provide a free school system for elementary and secondary education. The "free" requirement applies only to tuition. It is permissible for school districts to charge for workbooks, maps and other items. The legislature is authorized to make higher education free but has not elected to do so. While education at a public university or college is much less expensive than at a private one, it is not free.

The final right is the right to a healthful environment found in article XI, sections 1 and 2. This is a new right in the 1970 Constitution. Its intent is to make both the state and its citizens more aware of their responsibility to protect the environment.

Conclusion

While both the federal and state constitutions protect many fundamental rights, these rights are not self-executing. The people must be vigilant in protecting their rights, and the courts must be available to allow individuals to challenge government activities. The courts in our system of government have the final say on what the Bill of Rights means, and must act as a check and balance against abuses by the executive and legislative branches. Furthermore, the privilege to exercise those rights is completely up to the individual. The Constitution guarantees freedom of speech, for example, but it does not say you must speak your views. How much the rights are exercised is individual choice. Let us be aware, however, that in some countries in which rights have not been exercised, they have been lost.

VII. Local Government and Education



Defining the powers of local government is an important aspect of the Illinois Constitution. The powers that a local government unit has in relation to the state must be established. In many ways, defining this relationship is a problem similar to defining the concept of federalism, which governs the relationship between the state and national governments.

Two separate constitutional articles define local governmental powers in the Illinois constitution. Article VII describes local government in general and article X covers schools. Many commentators have observed that the changes in local government allowed by the 1970 Illinois Constitution may be the most important and innovative development. The constitution strengthens local government making it more independent of state control and encouraging local units to undertake reforms and consolidation.

When the constitutional convention met in 1969, Illinois had more local units of government than any other state in the Union. It had over 6,400 units that included municipalities, counties, townships, school districts, and special districts. It was possible to reside in one city, one county, three school districts, one township and several special districts simultaneously. This fragmented form of local government grew out of the debt restrictions in the 1870 Constitution. The large number of overlapping local governmental units resulted in many inefficient services and unresponsive government, since the people had a hard time determining which of the local government units provided which services.

Another problem facing Illinois local government in 1970 was the rapid growth of cities since the adoption of the 1870 Constitution. With this growth came increasing demands at the municipal level for services such as police and fire protection, mass transit, pollution control, and parks and recreation facilities. To solve these problems and provide these services, the cities needed an efficient and flexible way of implementing change.

A third problem facing Illinois local governments in 1970 was the fact that they were totally dependent on the state legislature for authority to act. Local government only had those powers, which the General Assembly chose to give them. Local governments were

seen as mere creatures of the state.

Not only did local governments have to rely on the state legislature for powers, but the legislature itself was restricted by the 1870 Constitution which prohibited it from authorizing any local government, large or small, to incur a debt in excess of 5 percent of its property value. Consequently, the legislature was handicapped in its efforts to assist local governments, and, in an effort to respond to local needs created more and more local government units to circumvent the debt limitation. The old constitution stood as a barrier to efficient and flexible local government.

Home Rule

There was one certainty when the delegates met in 1969. The new constitution must meet the problems of fragmented local units, rapid growth of urban areas, and unnecessary legislative restrictions. To meet this challenge, the Local Government Committee, chaired by John Parkhurst, a legislator from Peoria, carefully constructed the local government article. This article contained an innovative and bold grant of home rule powers. The Home Rule Doctrine drastically altered the relationship between state and local governments. The General Assembly no longer reigned supreme over all affairs of local government. Just as federalism divides the powers between the federal government and the states, home rule divides the power between the state government and the various local governments.

What types of local government may become home rule units? According to article VIII, section 6, all cities with a population of 25,000 are automatically granted home rule status. Any county whose form of government includes a chief executive officer elected by the people is a home rule county. The only county to elect an executive and automatically obtain home rule is Cook County. In 1972, voters of nine counties turned down the proposition for home rule status. In 1976, two of the same counties repeated the effort and the issue again failed to pass. Cities with a population under 25,000 may obtain home rule status by a referendum vote. No other kind of local government, such as a township or a special district is eligible for home rule.

What powers do home rule units have? They have all powers except those specifically prohibited by the constitution or preempted by the legislature. They are free to exercise their general police powers to protect the health, safety, morals, and welfare of the community. They have the power, with limitations, to license, tax, and borrow money.

Although home rule powers are broad, they are not

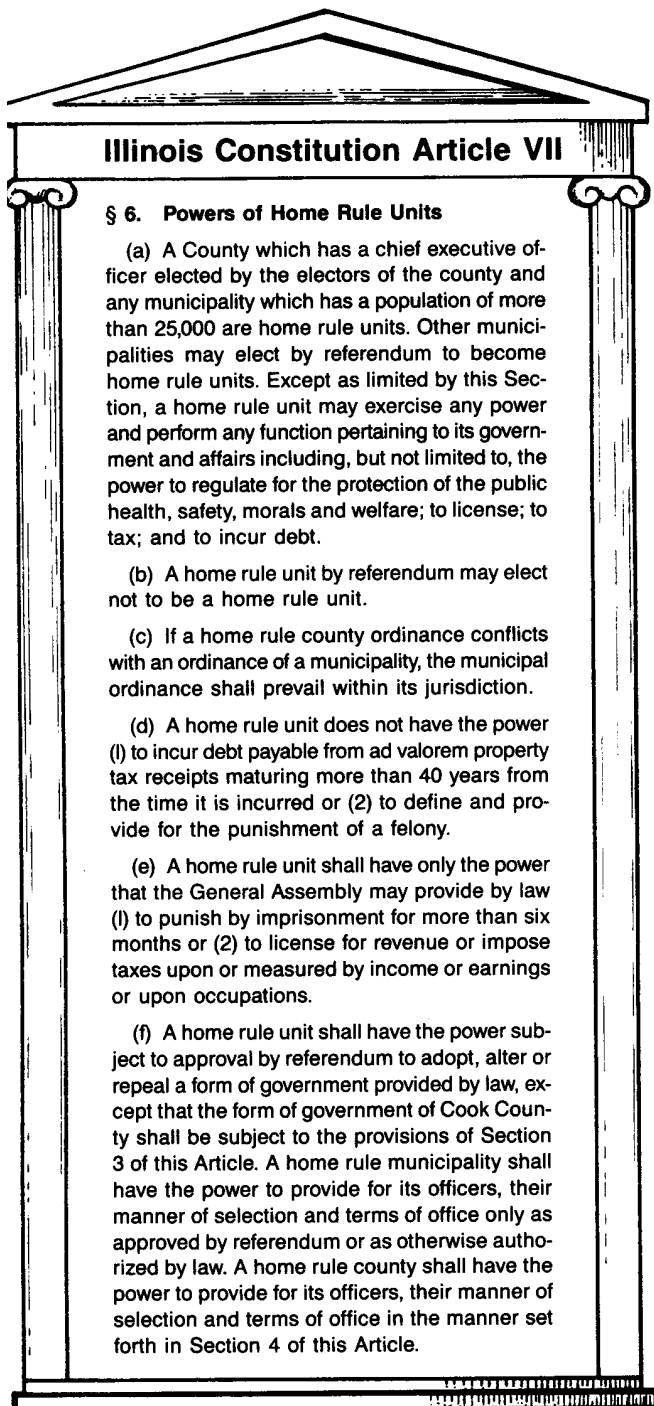
unlimited. The Illinois Supreme Court has upheld the power of home rule units to levy taxes on the sale of cigarettes, on parking in a parking garage, on the retail sale of alcoholic beverages, and on admission to amusements. The constitution prohibits home rule units from imposing taxes on income, on occupations, or on licensing for revenue unless authorized by a law passed by the General Assembly.

A home rule unit may not enact a criminal law with a punishment, which exceeds six months. A home rule unit is prohibited from borrowing money for more than forty years if the loan is to be paid back from taxes. Other restrictions on home rule units are found throughout the constitution. For example, the bill of rights guarantees that units of local—as well as the state—government do not deny equal protection of the laws because of an individual's sex.

The General Assembly may preempt a home rule government. This means that the General Assembly may take away the powers of a home rule unit by regulating the topic itself. There are two ways that the legislature may preempt. If the legislature determines that no regulation is needed, it must preempt by a three-fifths vote of each house. If, however, the legislature chooses to regulate the topic by state law, only a simple majority vote is needed. The General Assembly may not preempt a home rule unit's authority to make and pay for local improvements.

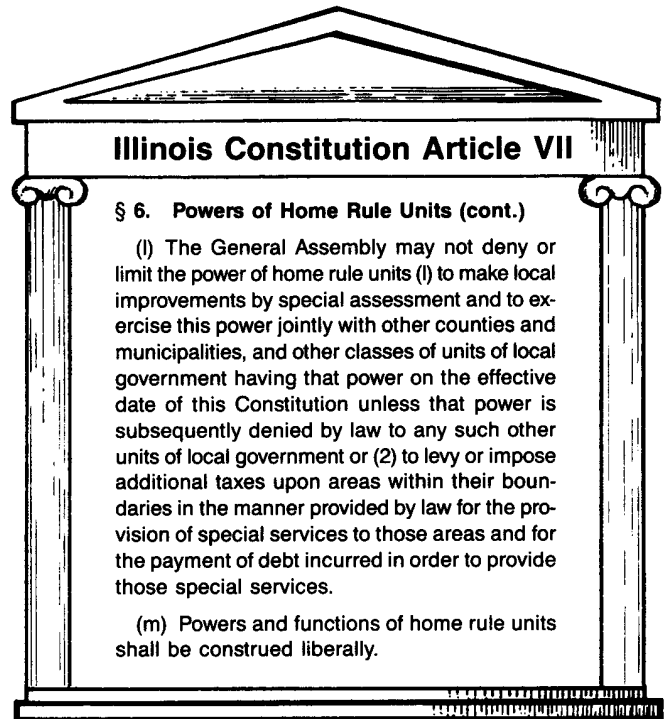
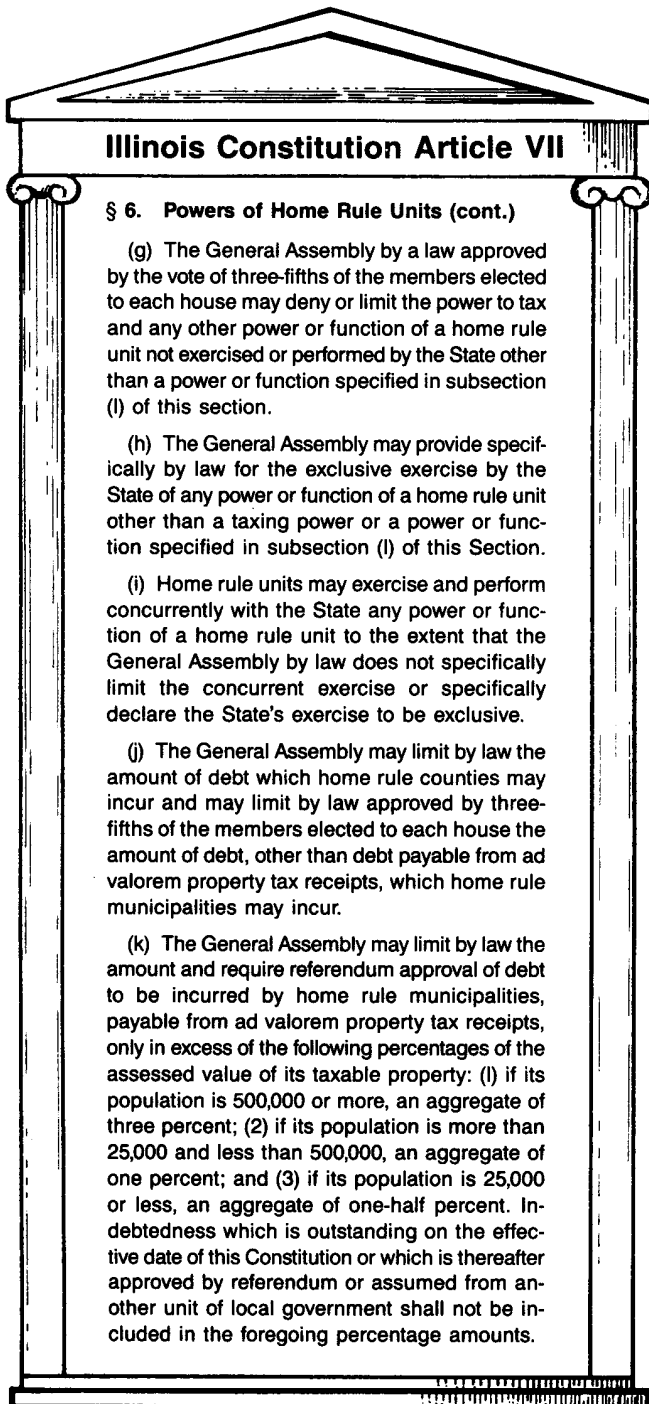
One of the first actions brought to limit home rule authority was a state action to retain the powers to license twenty-nine professional occupations which included real estate brokers, architects, detectives, and tree surgeons, among others. Officials in Chicago thought that the regulations should fall under the control of the local authorities that knew what needed to be regulated. However, the state argued that statewide uniformity of regulations was more important. The willingness of the General Assembly to allow local government units to develop independently will be determined by whether the constitution's home rule provisions, leaving the power in the hands of local government, are successful.

What happens if a home rule law conflicts with a state law? If a home rule ordinance is challenged—and many have been—the courts use the “pertaining to its government and affairs” clause found in article VII, section 6a, as the test in deciding the validity of the ordinance. For example, the Illinois Supreme Court said that a home rule ordinance which imposed an additional fee on the filing of a civil complaint was invalid because the administration of justice is a statewide concern and it does not pertain to local government and affairs.” In another case, the court held that banking is a state and national matter, and declared invalid a city



ordinance that authorized branch banking.

Generally, however, the Illinois Supreme Court has maintained a flexible approach that has been consistent with the constitution's requirement in section 6(m) that home rule powers be interpreted liberally. It is certain that there will be several other court cases involving preemption and home rule powers over the next several decades.



A home rule unit may also elect to abolish home rule. This happened in Rockford, the second largest city in Illinois, and represents a severe blow to the home rule system. With the loss of home rule, Rockford lost nearly \$8 million in taxes, and had to cut services and social programs. Those who formed home rule saw it as a progressive way to solve the city's financial problems. The people who voted against home rule wanted lower taxes. The recession had hurt Rockford's economy and the people were less willing than usual to pay taxes. Following the vote in Rockford three other communities, Lisle, Lombard and Villa Park, abolished home rule but this trend did not continue. Over 100 Illinois cities continue under this system.

Local Government Structure

Illinois had 6,467 local government units in 1982, the largest number of any state. It led the nation in the number of municipal governments, 1,280, and it had more than 1,000 school districts.

Basically, Illinois local governments may be divided into two categories: broad, general purpose units such as counties, municipalities (cities) and townships; and special purpose units such as parks, fire protection, and drainage and water districts. School districts, although a unit of local government, are excluded from the definition of a local government in article VII. Article X deals exclusively with school issues.

The state of Illinois is divided into 102 counties for the purpose of giving the people of each section control over their local affairs. The constitution provides for the election of a governing board in each county. Because early settlers in the state preferred different kinds of county government, two types of county boards exist in Illinois. In the northern part of the state, settlers from New England were accustomed to being served by small towns or townships; the people who settled in the southern part of the state were mostly from the South and were accustomed to larger districts. To keep everyone happy, the framers of the 1848 Constitution allowed the people of any county to adopt the township form of organization if favored by a majority of the people. This system continues at present.

Of the 102 counties, eighty-five have adopted the township form of government. They elect a board of supervisors who hold office for four years and who serve as the legislative body governing the business of the county. County boards vary in number, but none consist of less than five or more than twenty-nine members.

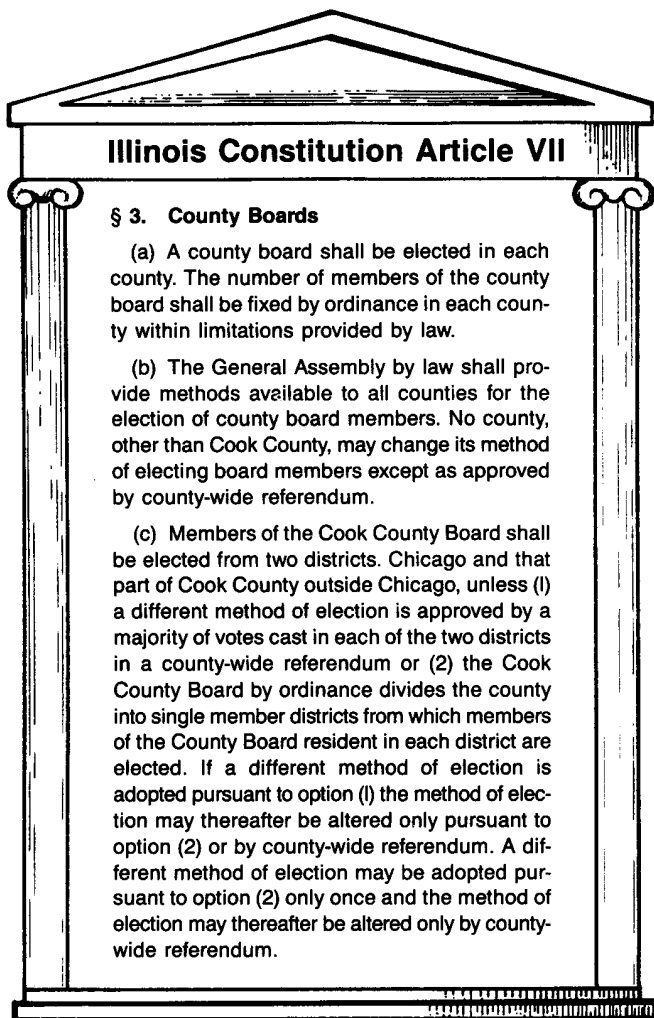
Due to the large population of Chicago and the problems that are unique to it, the constitution has made special provisions for Cook County. It is governed by a board of county commissioners, ten of whom are elected from Chicago and the other five from the rest of the county. The voters then elect a president of the board who is the chief executive officer of the county, an important government position. Federal courts following the equal protection doctrine of one-man, one-vote have ruled that Cook County's system of districting for the county board is unconstitutional under the United States Constitution. Reflecting population growth, there are now seven members elected from the rest of the county.

The seventeen counties in the southern part of Illinois chose to retain the county commission form of government. They are managed by a board of county commissioners, which consists of three members who serve for a term of three years. The county commissioners are elected at large. One commissioner is elected each November and the office of chairman is rotated. The county board holds all legislative and executive powers in the county.

The constitution requires that every county elect a sheriff, a treasurer, and a county clerk. The sheriff is the "conservator of peace" for the county and is responsible for maintaining peace and order and for assisting in orders of the court, such as serving a summons or a subpoena. The county treasurer is in charge of all the money received and paid out as ordered by the county board. The county clerk keeps the records for the county board. He or she keeps all the birth and death records, issues marriage licenses and computes the amount of taxes for each taxpayer. Usually these officers serve a four-year term, unless the time frame is changed by a countywide referendum. Most counties also elect other officers such as coroner, assessor and auditor.

A township is another form of local government in Illinois. It is of less importance than the county; and when the township contains a large city, the city government is considerably more important to the residents of the city. A township is a division of the county for governmental purposes and has a name like Pigeon Grove Township or Capitol Township. There are 1,433 townships in Illinois. These may be dissolved, divided or combined by a referendum vote in the township. The township's major responsibilities involve welfare assistance. They also have responsibility for the maintenance of rural roads, valuing property for tax purposes, and overseeing some health matters.

The other general-purpose unit of local government in Illinois is the municipality, or city. Legislation authorized areas that have a population of at least 2,500



within four square miles to incorporate as cities. Most of the cities in Illinois have a mayor-council form of government. Under this system cities are divided into wards. Aldermen are elected from each ward and the size of the city determines the number of aldermen. These aldermen form the city council.

The city council is responsible for maintaining order in the city, and is also responsible for health and safety. Therefore, it makes provisions for police and fire

departments, health regulations, sewage disposal, and use of public property.

The council also regulates the kinds of businesses in the city. The council has the power to tax and to borrow money, but is limited by the constitution and laws of the state.

The people elect the mayor for a term of four years. The mayor serves as the chief executive officer and presides over the city council meetings and signs or vetoes the city ordinances; votes on issues only when there is a tie; and reports to the council and makes recommendations.

This form of government, like our state and federal governments, is based on the principle of separation of powers discussed in Chapter II. The mayor, like the president and the governor, is part of the executive branch, while the city council, like the Congress and the General Assembly, makes up the legislative branch. In Illinois, there is no judicial branch in local government. All judicial activities are at the state level.

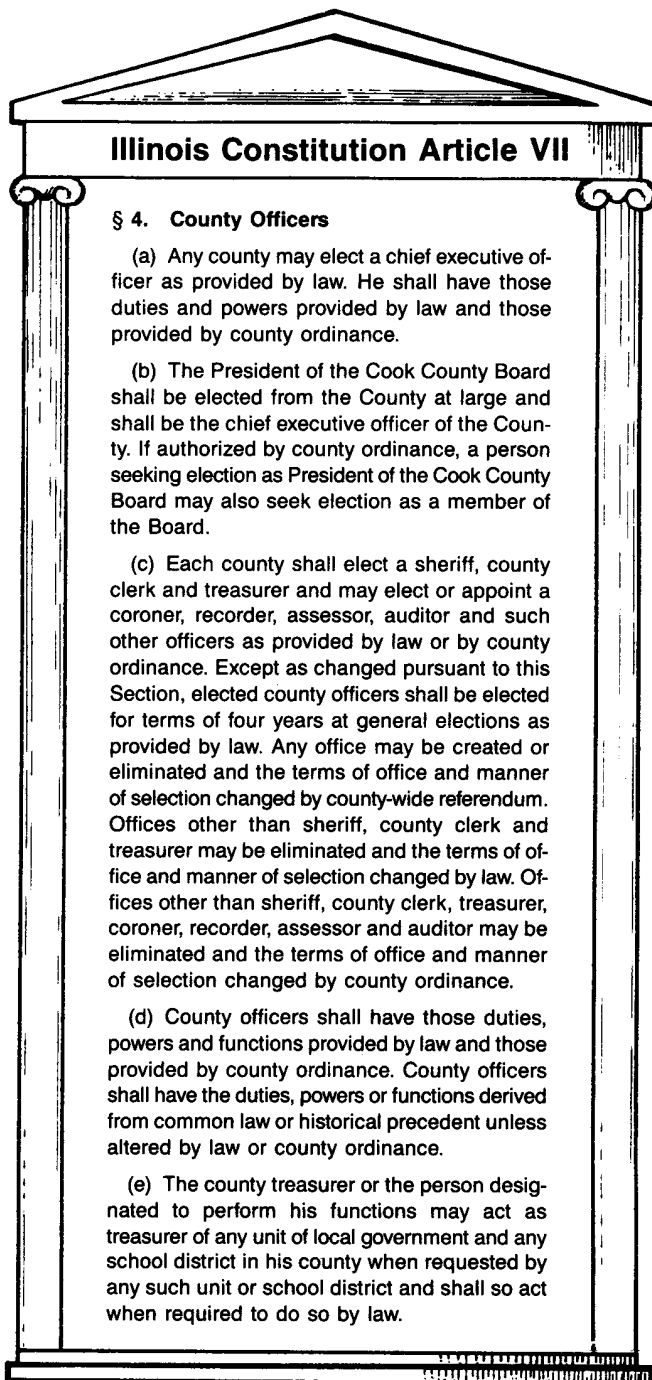
The other form of local government in Illinois is a special district. As discussed earlier, these districts furnish many services to the people by supplying fire protection, water and sewage, public housing or parks. These districts are usually established when other local units have used up their taxing and borrowing powers, and the special district becomes the best way to provide a needed service. If a proposal for a special district is ratified by a majority of the voters, it is established, and the governing body is elected or appointed by a mayor, the governor or some other public official.

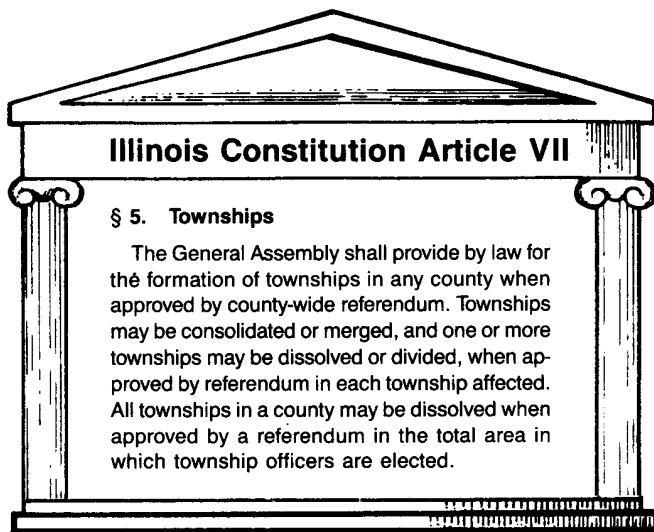
Section 10 of article VII encourages cooperation among units of local government, school districts, the state, and even the United States, in contracting with one another, individuals and corporations to share services and functions. For example, one city may contract to provide police protection to other cities. This allows governments to work out common problems by sharing services and the costs involved in providing them.

The 1970 Constitution gives local government units more power, but it also gives the voters much more control over local governmental units. The voters have the authority to place initiatives and referendums on the ballot to change local government's home rule power, to abolish offices, or to consolidate government units.

Schools

There is no right to education contained in the United States Constitution. Doesn't it seem strange that the Founding Fathers, who were mostly educated men, didn't include at least a reference to education? Yet, the fact remains that the words "school" and "education" are not to be found anywhere in the Constitution.





One reason for this omission is the social structure of the times. Most of the northern colonies had public schools that taught basic skills. The schools, however, were located in settlements and likely to be crude. They were almost nonexistent in rural areas. Attendance was not enforced and the family was counted on to shoulder most of the burden for learning. The skills of earning a living and survival were taught in the home. The schools taught reading, writing, arithmetic, and the rules of good conduct. Many children progressed no further than the primary grades.

In the southern colonies it was customary for children to be taught at home by their parents or by tutors. People in general married at a young age and were well into the business of maintaining a family in their early twenties. Those who went on to what we consider high school, then called grammar schools or Latin schools, were young men preparing for college. The Latin schools taught Latin, Greek, English composition, math, modern languages, and philosophy. College was only for the upper classes. Only the wealthy could afford the luxury of supporting students while they studied. It was from this college-educated group that most of the delegates to the Philadelphia convention in 1787 were drawn. They accepted the educational system that existed.

The other reason that education was omitted from the United States Constitution is that it was seen as a state issue. It was entwined in the concept of federalism. The drafters thought that it was the responsibility of each individual state to decide how much and what form public education was to take. This is the prevailing philosophy even today.

We would be naive indeed if we believed that the states have the exclusive responsibility for education.

We know that the federal government has a significant influence on the schools; however, the states have the primary authority to create, maintain and support a system of public schools. The role of the federal government is to aid in the provision of education. The Illinois constitution has, in turn, given the responsibility for education to local governmental units, the school districts. The feeling among many educators is that local districts would better emphasize community values and encourage community participation in education. Even today, debates continue on which level of government should be most responsible for education.

As early as 1785, a federal land ordinance reserved land in Illinois for common schools. The Northwest Ordinance stated: "Schools and the means of education shall forever be encouraged." When Illinois became a state in 1818, Congress provided for schools in Illinois by setting aside 3 percent of the money from the sale of state land for education.

The first school law in Illinois was enacted in 1825 when school districts were provided to educate children from age six to twenty-one. The law was short lived, however, because the payment of school taxes was a matter of choice. One did not have to pay a school tax unless one agreed to do so in writing beforehand.

For some time, as in most fledgling communities, the matter of education was left to parents and consisted of practical education centered on the skills necessary to conduct daily life. "Book learning" was of secondary importance. As the state became less primitive, its inhabitants became more interested in education. It may be argued that the reverse was also true: as the inhabitants became more interested in education, the state became less primitive. A change in perspective may be seen in a period of only ten years. In 1845, the supervision of education was just one facet of the secretary of state's responsibilities. By 1855 Ninian W. Edwards, son of an earlier governor, had been appointed officer of public instruction and an expanded public school law was passed. At Edwards' urging, a compulsory attendance law requiring white children up to the age of twelve to attend school was passed and public education in Illinois was firmly established.

The Constitution of 1870 was the first Illinois constitution to provide for public education. It proposed that the public school system should be thorough and efficient, available to all children of the state, and free. It also provided for an elected state superintendent of public instruction.

During the 1969 constitutional convention a committee was formed to draft the article addressing education. Five educators sat on the eleven-member committee. The committee had to grapple with issues such

as aid to non-public schools, provisions for higher education, the creation of a state board of education, and the financing of education. After considerable deliberation the education article was presented in three concise sections.

Section 1 begins with the fundamental goal that all people shall be educated to the limits of their capabilities. The courts have decided that this sentence only expresses a philosophy. The constitution holds out a goal, an ideal toward which we should strive. Regarding the handicapped, Illinois and federal law have gone beyond the constitutional requirements and have required public schools to offer special instruction extending even to hospital instruction for children who are confined for a prolonged period.

Another part of section I states that education in public schools through the secondary level shall be free. A 1970 court case held that the requirement that education be free means only that tuition shall be free. The School Code leaves the practice of whether to charge for textbooks, laboratory costs, and so forth, up to individual school districts.

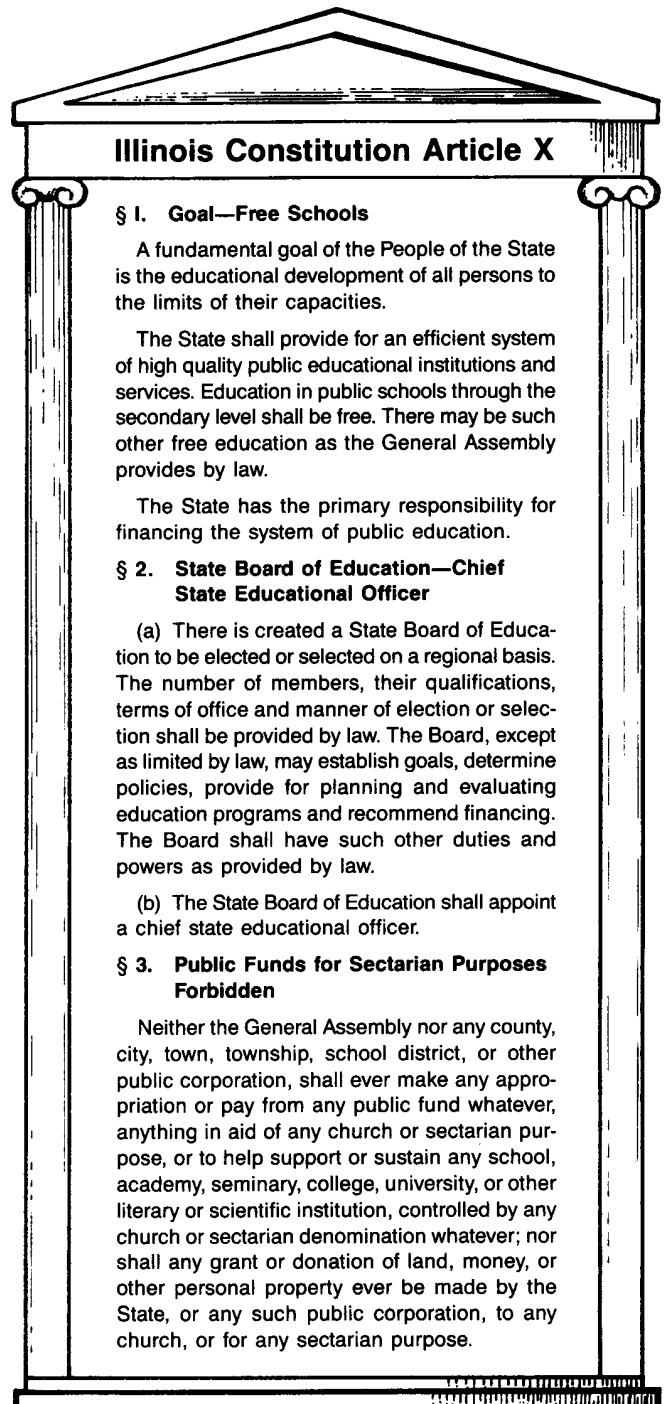
College education may be free if the legislature determines this is appropriate. To date this has not been done, but tuition fees at state colleges are much less than at private colleges. The state charges tuition to meet part of the cost of college education.

The final sentence in section I states that the primary responsibility for financing public schools lies with the state. Some feel this means the state should provide at least the majority of funds needed for the schools, but the Illinois Supreme Court has ruled that the phrase "primary responsibility" does not require the state to provide any set percentage of school funding. Some school funding will come from the state, but not necessarily the majority of funding. There have been amendments proposed to amend this section to make it clear that the majority of the money for education must come from the state. The legislature has passed none of these amendments.

State financial aid is important to all school districts. It would seem as if all districts would welcome increased state monies. There are some communities, however, where there is a concern that an increase in state funds will mean an increase in state control of the schools. As mentioned in earlier chapters, fear of a strong central government is not a new concern. Local versus state control of the schools has become a sensitive issue in many communities.

Section 2 provides for a state superintendent of schools to be appointed. Previously, the state superintendent had been an elected official. By making the office an appointed one, the intent was to take the

office out of the political arena. It was felt that a trained professional educational administrator who would not be subjected to running for office every four years should fill the post. Critics felt that merely making the post an appointed one did not necessarily remove it from the realm of politics. Appointments may be—but do not have to be—patronage orientated. They also argue that the appointed superintendent does not have



Illinois Constitution Article X

§ 1. Goal—Free Schools

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

§ 2. State Board of Education—Chief State Educational Officer

(a) There is created a State Board of Education to be elected or selected on a regional basis. The number of members, their qualifications, terms of office and manner of election or selection shall be provided by law. The Board, except as limited by law, may establish goals, determine policies, provide for planning and evaluating education programs and recommend financing. The Board shall have such other duties and powers as provided by law.

(b) The State Board of Education shall appoint a chief state educational officer.

§ 3. Public Funds for Sectarian Purposes Forbidden

Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose.

a political base to approach the legislature. There have been suggestions in recent years to return to an elected superintendent, but there has not been sufficient interest to propose an amendment enacting legislation.

Section 3 also provides for a State Board of Education, which plans, administers, and evaluates educational programs on a statewide basis. Currently the Board is made up of nine individuals appointed by the governor. The board makes recommendations regarding education to the General Assembly. The legislature makes the actual laws. Implementation of these laws is the responsibility of the school board.

At the local level, public education units are called school districts. Representatives are elected from each district to serve on the local school board. They receive no pay for holding this office. They set local school policy and control the budget for that district.

Each district has a superintendent of schools who is hired by the local school board. The various administrative officers of the school district, the special aides to education that the district employs, teachers, and the staff (clerical, custodial, and the like) are under the superintendent. It is important, therefore, that the superintendent be knowledgeable in educational matters and a good administrator as well. The major responsibility of the teacher is to teach. The various administrative levels are a way to relieve teachers of

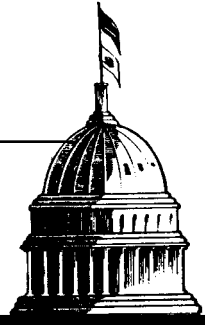
administrative duties, to assist them in performing their teaching efforts for the optimum good. It is hoped these efforts combine to produce a place where students are able learn.

There is an intermediate level in school administration as well. The constitution authorizes a regional superintendent of schools. This office is countywide, or several counties may combine to create an educational service region. The main function of this level is service orientated. The office of the regional superintendent processes teacher certificates, sponsors teacher workshops, coordinates programs, and interprets state laws and regulations for the local schools. Some feel this level could be eliminated and the functions absorbed at other levels. Others feel the office relieves local school districts and the state board from having to deal with the duties performed at its level.

One of the most controversial subjects at the 1970 Constitutional Convention was aid to non-public schools.

The right to an education is no different from the other rights in the constitution, in that whether or not you use it is your choice. The electorate determines how effective the schools will be. Through the power of the vote, people are elected who will set school policies. Responsibility for good public education rests with the citizens.

VIII. Finances, Taxes and General Government



The cost of maintaining government is an important topic in the Illinois Constitution. Article VIII, finance; article IX, revenue; and many of the sections in article XIII, entitled general provisions, address the financial concerns of government. Articles VIII and IX should be studied together, because they address interrelated topics. Article VIII tells government how it may spend the money it raises; article IX tells government how it may raise the money it plans to spend.

The need to finance government activities and programs has played an important role in the development of both the United States and Illinois constitutions. The need to establish a taxing power in the federal government was one of the primary reasons the Founding Fathers gathered in Philadelphia in 1787. Under the Articles of Confederation, the federal government had to request funding from the states in order to operate. The states were often not responsive to the government's requests.

The question of the power to tax was not an easy one to resolve during the 1787 Constitutional Convention. Many delegates to the convention feared that a central government with taxing power would become too strong. It must be remembered that abuse of the taxing power was one of the causes of the American Revolution leading to the battle cry, "No taxation without representation." Despite these fears, there was the general recognition that government may not function without a reliable source of revenue, and the federal government was given the power to tax.

The taxing power of the federal government was increased in 1913 with the passage of the Sixteenth Amendment allowing the enactment of a graduated income tax. This is a system in which the tax rate varies with the amount of income: the higher the income, the higher the rate of tax. Under a flat rate income tax, such as that authorized in the Illinois Constitution, all people pay the same rate regardless of the size of their individual income.

Taxes and the need for revenue were major reasons why Illinois adopted a new constitution in 1970. Since the 1848 Constitution, the state had a severe limitation on the amount of debt state and local governments

could incur. This limitation hampered long-term development of building and improvements.

Through the 1950's and 1960's the state had experienced a series of financial crises leaving the balance in the state treasury extremely low. At the same time that revenues were limited, there was increasing demand upon government for more programs and services. It was generally agreed that there was a need for revision in the way revenue was raised and state programs financed. This was easier said than done, for the debate over revenue highlighted all the downstate-Chicago differences that have existed throughout the history of the state.

A compromise was eventually reached with each section of the state satisfying its interest. The net result was a modern revenue article and a finance article, which are generally regarded as two of the more significant accomplishments of the 1970 Constitution. The current constitution gives the government the power to tax and to spend for public purpose. Beyond this grant of general power, the constitution contains many provisions that place limitations on taxing and spending powers. The result is that state government looks toward the income and sales taxes as basic sources of revenue, while the property tax on land and buildings is the major source of funds for local government and school districts.

Finance

The constitution makes government finance a public matter. The state, local governments, and school districts are required to keep records of their expenditures and these are open to public inspection. State government may only make expenditures if they are approved by the legislature through an appropriation bill. Local government units must have expenditures passed by ordinance. All expenditures must be for a public purpose. Private individuals may benefit, but the benefit must be incidental to a legitimate public purpose.

In the case of state government, an extensive budgeting procedure is outlined in the constitution. The legislature has added more budgeting requirements. Each year the governor is responsible for preparing

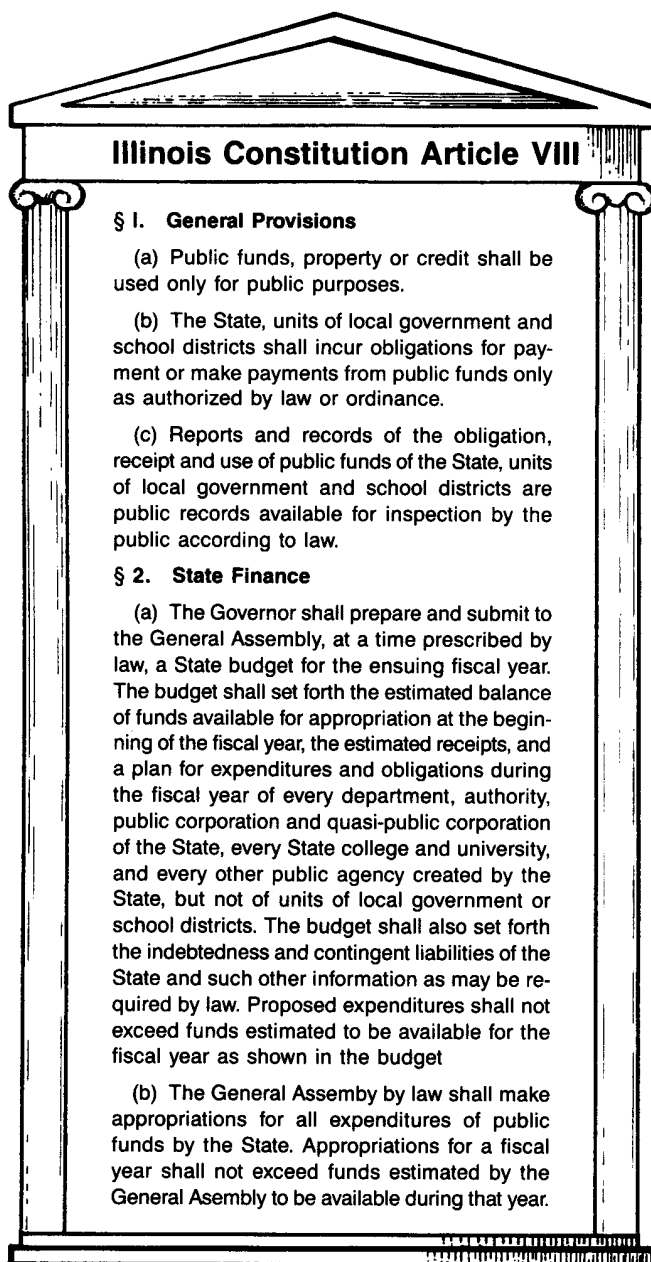
the budget for all state government agencies and departments, including universities and the state board of education. Local government and local school districts are not included in the state budgeting process. The Bureau of the Budget has been created to assist the governor in the development of the budget. The governor presents the annual budget to the General Assembly on the first Wednesday in March.

The budget includes all the proposed spending of the state and the revenue that is likely to be collected during the year from taxes and other sources. The amount of proposed spending may not exceed the

amount of proposed revenue, as the constitution requires a balanced budget. This provision of the constitution does not prohibit the state from incurring debts, but it does require that the state have revenue to pay off debts in an orderly manner. There may be no recurring budget deficits, such as those that occur at the federal level. An amendment to the United States Constitution was proposed in the 1995-96 session that would require a balanced budget. While the proposed "Balanced Budget Amendment" to the Constitution failed to gain support in Washington, President Clinton and Congress worked together on a budget proposal which reduced the national deficit and balanced the budget.

The budgeting process is an important aspect of state government. The state's priority programs and plans are outlined in the budget. Programs that are high priorities are given increased funds, while low priorities are not increased or are reduced. The budget must be approved by the legislature before it becomes effective. The legislature passes appropriations bills, which authorize state spending. In every session of the legislature there are likely to be extensive debates over the budget and appropriations.

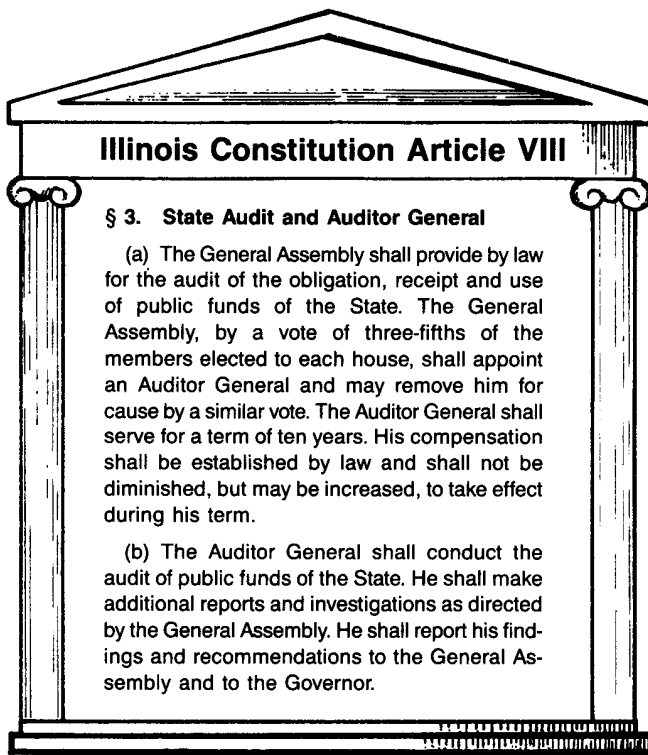
The office of auditor general was created by the 1970 Constitution. The auditor general monitors state spending to assure that funds are being spent honestly and in a manner consistent with the intent of the legislature. The auditor general is appointed for a ten-year term by a three-fifths vote of the members of each house of the General Assembly. The auditor general, the treasurer, and the comptroller have a role in monitoring the state's money.



Taxes

The revenue article is one of the more complex articles of the constitution. Taxes give government the resources to operate. Nobody really likes to pay taxes but government programs cannot operate without money. It is important that taxes be fair and that all people pay their fair share. The key questions are "What is fair?" and "What is a fair share?" Should a person with a large income pay more than a person with a small income? Should a business pay more than a private individual? Should only those who directly use the services be required to pay for them? These and many other questions must be answered in establishing a fair tax policy.

The constitution provides for three basic types of taxes: the real property tax, the excise tax, and the income tax. The real property tax is a tax on the value



of real estate—homes, land, and other buildings. An excise tax is a tax on a transaction or an item. The sales tax is the principal excise tax used by Illinois' government. Every time there is a retail sale, there is a tax assessed. The income tax is paid as a percentage of income earned primarily through a job or the sale of property. Local governments may also assess income taxes, but this is not a home rule power and may be imposed only if authorized by the General Assembly.

Primarily sales and income taxes finance the state government, while the real property tax is used as a principal source of revenue for local government and school districts. In recent years there has been considerable discussion about whether the income tax or the property tax is a better method of funding government. Property taxes are more stable because the value of property does not change quickly, but income may vary depending on whether a person has a job. On the other hand, someone such as a retired person with real property, a home, and reduced income still has to pay taxes on the home.

The state may have an income tax, but the income tax must be a flat rate rather than a graduated tax. Corporations may be taxed at a higher rate than individuals, but the rate for corporations may not exceed a ratio of eight to five. In 1985, Illinois had a 2.5 percent tax on the income of individuals and, consistent with the constitutional limitation, had a 4 percent tax on cor-

porations, a figure which is the highest allowable if the individual rate remains at 2.5 percent. Illinois generally follows the practice of the United States Tax Code in determining what is taxable income. The constitution authorized—but does not require—this practice.

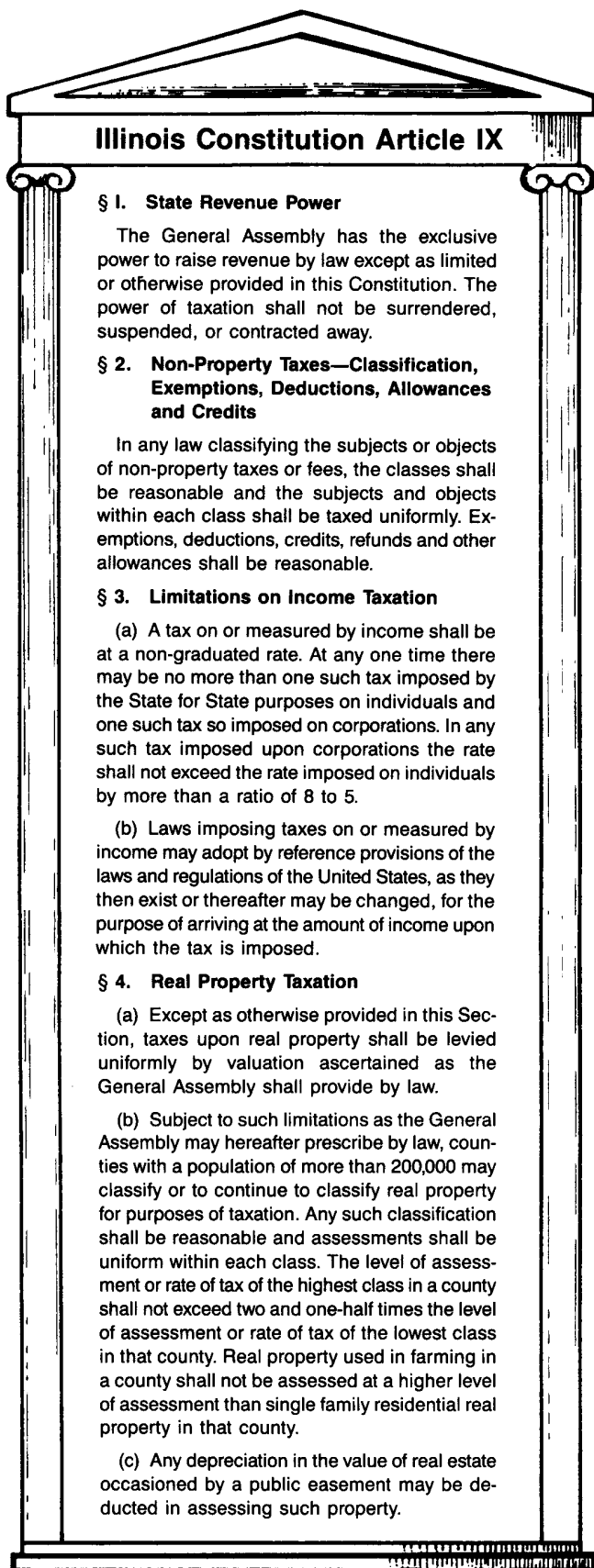
Real property, in counties with a 200,000 population or larger, may be classified for the purpose of assessing the value of the real estate. This means that there may be different rates on private housing and on business property. To insure a degree of equality, the ratio of the highest classification may not exceed two to one of the lowest classification. Farmland may never be assessed at a rate higher than the rate for individual residents. Local government officials do the assessment of real estate. It is possible that assessments will vary from one local government to another.

To assure uniformity in taxes across the state, the constitution gives the legislature the power to enact laws equalizing taxes, and the legislature has passed such a law. Each year the state produces what is known as a multiplier, which is literally multiplied against the assessed valuation. If, for example, a building is assessed at \$10,000 and the multiplier for the county is 1.2, the building would be assessed at \$12,000 (10,000 x 1.2) for real property tax purposes.

If a person fails to pay taxes on real estate, the constitution outlines a method for selling the property for taxes. An elaborate process has been established to protect the property owner from losing the property unjustly.

The legislature is authorized to grant exemptions from property taxes for property held by schools, local government units, and religious and charitable organizations, as long as the property is being used for governmental, religious, or charitable purposes. The legislature has also enacted a partial exemption for elderly taxpayers and for taxpayers using the property as a home. The legislature may also grant deductions, exemptions, and classifications in other non-property taxes as long as they are reasonable. An example of reasonable classification is the reduction of sales tax on food and drugs.

The ad valorem personal property tax was abolished in the 1970 Constitution. An ad valorem tax is a tax on the value of personal property. Personal property is all property other than real estate. Furniture, savings accounts, automobiles, or stocks and bonds are examples of personal property. A tax still may be assessed against personal property but it may not be based on value. A flat rate vehicle tax on each auto or truck would be constitutional. The rates may even vary based on the size of the vehicle, but may not be directly tied to the value of the property.



State Debt

Questions of state indebtedness have played an important part in the history of Illinois. Both the 1848 and 1870 constitutions provided extremely strict limitations on the amount of debt state and local governments could incur. These limitations led to an increased number of local government units and a variety of other practices to incur debt without technically violating the constitution.

The 1970 Constitution eliminated the debt limitation on both state and local governments. The state may incur a long-term debt if it is approved by a three-fifths majority vote of each house of the General Assembly or a majority of the voters casting ballots on a referendum approving the debt. By a majority vote, the legislature may incur short-term debts that are to be paid within one year. These short-term debts may not exceed 15 percent of the state's annual appropriation.

The constitution requires a balanced budget, but this does not mean that debts may not be incurred. Debts may be necessary for government to operate. Debts must be planned and a means must be enacted to pay off these debts.

General Government

Article XIII, is the catchall portion of the constitution. Most of its sections are straightforward and need little explanation. Many sections are new in the 1970 Constitution.

The constitution requires that all holders of state offices, boards, and commissions file economic interest statements. The General Assembly has passed legislation surpassing this constitutional requirement. The Illinois Governmental Ethics Act requires that virtually all candidates for office, elected public officials, state and local employees earning more than \$25,000, must file an economic interest statement with the secretary of state. All economic statements are subject to public inspection. Additionally, the legislature prohibits certain types of public employees from seeking offices in which there may be a conflict of interest. These ethics provisions, and the open records provisions of the constitution, have improved the quality of government and the public's faith in the integrity of government.

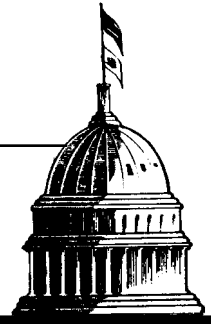
Sovereign immunity was abolished by the constitution except to the extent that the legislature restores it. Sovereign immunity is the doctrine that people may not sue government for money damages. The legislature has, in fact, restored most aspects of sovereign immunity for state government. With limited exceptions, you may not sue state government in the state's

courts. For the most part, however, local governments may be sued in court. The state of Illinois maintains the court of claims, which is a specialized agency of the executive branch to hear disputes against state government. The court of claims makes damage awards against the state which are submitted to the legislature for payment.

The delegates who drafted the 1970 Constitution hotly debated branch banking. The debate was primarily between the large banks in the Chicago area and smaller downstate and neighborhood banks that feared that the large banks would open branch offices. The debate revolved around whether Illinois would be better served with a few large banks that kept branch offices or several independent small banks. The small banks argued that they would be closer to the people

and more responsive to local concerns. An outright constitutional prohibition on branch banking was not included in the constitution. Instead, a provision making it harder for the legislature to pass branch-banking legislation was included. In order to authorize branch banking, the legislature needs a three fifths majority vote of those casting ballots or a majority of the members elected in each house, whichever is greater. Illinois now has a limited form of branch banking.

The debate over banking continues in the Illinois legislature, only now the debate is not simply between the large Illinois banks and the small banks. Added to the debate are large national and foreign banks and other big financial institutions. Interstate and branch banking may be hotly debated political issues during the 1980's and 1990's.



IX. Change and the Constitution

Constitutional change is the subject of article XIV, the last article of the constitution. Constitutions are written to last. The 1870 Illinois Constitution governed the state for 100 years, and it was the hope of the writers of our present Illinois Constitution that it would be effective well into the twenty-first century. To make this more likely, constitutions must be flexible to allow for orderly change when social, economic, and political conditions call for change. Illinois has had four constitutions during its statehood. Even the United States Constitution, which has existed since 1787, has had twenty-six amendments since it was written. Each constitution is a reflection of its time. As Illinois changed from a frontier state to a modern agricultural and industrial state, new constitutional principles were needed. A good constitution should allow for change, but should not make change too easy.

One of the difficulties of the 1870 Illinois Constitution was that it had a restrictive amendment provision. Of the thirty-six attempts to amend the constitution, only fifteen were successful. Furthermore, because of changes in the way constitutional issues were placed on the ballot, it became increasingly difficult for issues to pass.

An amendment process should be sufficiently long and complicated to assure that all aspects of the change have been carefully considered, but not so difficult that amendment is impossible. It must require that a clear majority of legislators and voters be in favor of the change.

The constitution may be changed in three ways: (1) by constitutional convention, (2) by amendment, or (3) by interpretation. The first method, constitutional convention, takes place when the legislature approves—and the people ratify—the calling of a convention to review the entire document and consider thorough revision. The 1969 Convention was called only after years of work and common recognition that questions of revenue had to be addressed.

An amendment to the constitution may be proposed by a vote of three fifths of each house of the legislature and subsequent approval of the amendment by the people at an election. This is a piecemeal approach to constitutional change. The constitution is changed section by section as the need arises.

The final method of constitutional change is by changing interpretation. As we saw in Chapter V, the courts, through the process of judicial review, are the final decision-makers about the meaning of the constitution. This is probably the most important avenue of change and is frequently used.

A more in-depth look at the constitution would need to involve a study of the courts and their changing interpretation of the language of the constitution. Sometimes the relationship of the courts to a constitution is compared to the relationship of a band conductor to the writer of the song. The writer puts the words and notes on paper but the conductor interprets them. The same song may sound different years later when a different group plays it. For example, Illinois courts ruled for many years that the 1870 Constitution prohibited an income tax. Yet in 1968 they found a way to declare a tax similar to an income tax constitutional. The 1970 Constitution was written to remove all doubt about the constitutionality of the state income tax.

Constitutional Conventions

Should it appear that a major revision of the constitution is necessary, the state legislature, by a three-fifths majority vote of each house, may pass a resolution to place the question to call a convention on the ballot at the next general election. The election must occur at least six months after the legislative resolution. The question of whether to call a convention must be on a separate ballot and must be approved by three-fifths of those voting on the question or by a majority of those voting at the election.

If a constitutional convention is approved, each of the fifty-nine legislative districts is entitled to elect two delegates. The legislature, at the next session, must appropriate salary for delegates and money for the convention's budget, as well as set the time and method for electing delegates. A delegate must be twenty-five years old, a citizen of the United States, and a resident of the state. These are the same eligibility requirements a member of the legislature must meet.

Proposed constitutional changes must be approved by a majority of the delegates and submitted to the voters at an election not less than two months, nor more



Illinois Constitution Article XIV

§ I. Constitutional Convention

(a) Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.

(b) If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.

(c) The vote on whether to call a Convention shall be on a separate ballot. A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.

(d) The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.

(e) To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.

(f) The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.

(g) The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the Convention provides, if approved by a majority of those voting on the question.

than six months, following the adjournment of the convention. The vote must be on a separate ballot and must receive a simple majority of those voting on the question.

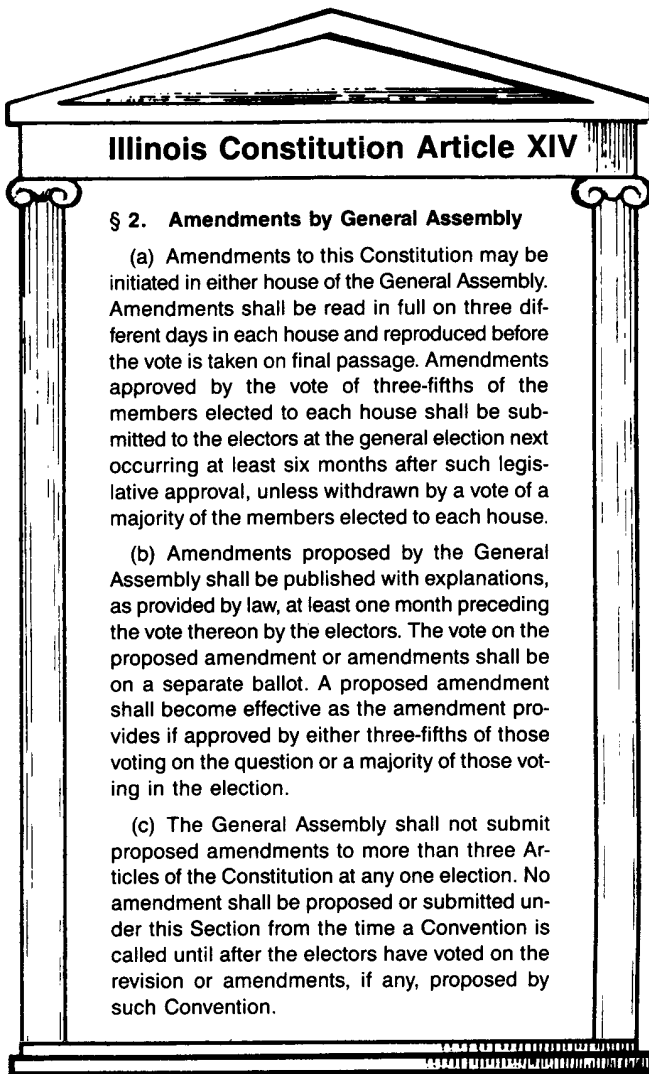
The 1970 Constitution contains a provision, which automatically places a constitutional call question on the ballot twenty years after the last convention call vote. In 1988, the voters were given the opportunity to decide whether to revise the constitution. The issue to call a constitutional convention was soundly defeated. The voters apparently were content with the form of government provided for in the 1970 Constitution. However voters in the year 2008 will have another opportunity to call for a constitutional convention.

The writers of our constitution followed Jefferson's advice that every generation ought to think about the foundations of government. The requirement that the people vote on the constitution every twenty years is the essence of the concept that government is to exist only by the consent of the people. Even though there may be no interest in a total revision of the constitution at any given time, there may be in the future and an opportunity for change is guaranteed. The important point is that the drafters of the constitution learned from the struggle to amend the 1870 Constitution and created a relatively easy method for voters to consider a constitutional revision.

Amendments

The constitution provides two methods of proposing amendments. First, the legislature may propose an amendment by a three-fifths vote of both houses. No more than three articles of the constitution may be amended at any election. Second, amendments to the legislative article (article VI) may be placed on the ballot by an initiative originated by the citizens. An initiative is a petition signed by a specified number of voters. This initiative method was included to give the voter the possibility of changing the constitution even if the legislature was unwilling to do so. The power to amend by initiative was limited to the legislative article because it was thought that legislators would be more willing to support amendments to articles not involving their own self interest.

In order for an initiative amendment to be placed on the ballot, a petition containing signatures of voters equal to at least 8 percent of the number who voted in the preceding gubernatorial election must be completed. In 1982, for example, there were 3,627,128 votes for candidates for governor, so 290,170 signatures would have been required to place an amendment on the ballot. The legislature has passed laws, which describe the



petition process and the form of petition.

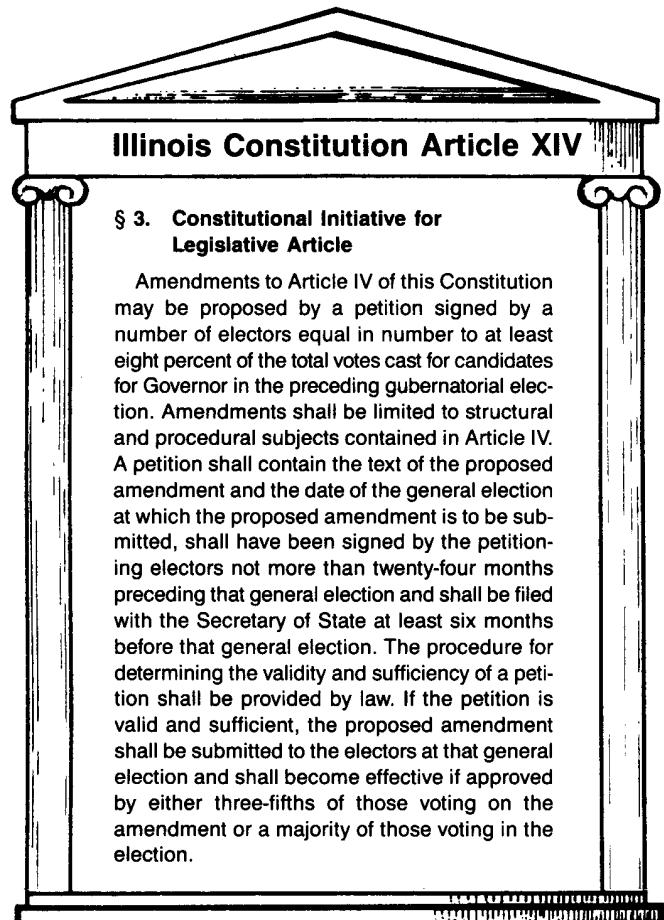
Whether a proposed amendment comes from the legislature or through the initiative process, it must be placed on the ballot at the next general election and must be approved by three-fifths of those voting on the amendment or by a majority of those voting in the election. Constitutional amendments are on a separate ballot. The proposed amendment and an explanation of the amendment are distributed, usually by mail, to the voter at least one month prior to the election. The secretary of state has been assigned the duty of distributing the information by the legislature.

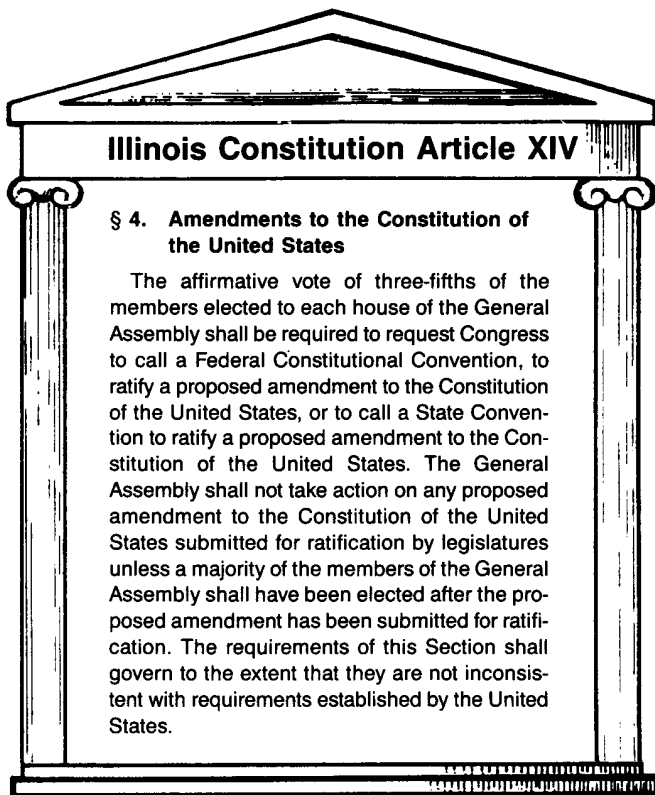
Because of oversight, ignorance, or lack of interest, there are always people who do not bother to vote on constitutional questions. For example, on the 1984 vote to exempt property of veterans' groups from real estate taxes, 4,969,330 voted in the general election, but only 2,190,348 voted on the amendment question. To pass, the amendment would have needed 2,484,666 votes to

obtain a majority of those voting in the election, and it needed 1,314,209 votes to meet the three-fifths requirement. The amendment received only 1,147,864 votes. Therefore, it failed to meet either test.

Article XIV also contains a provision to guide the legislature in ratifying amendments to the United States Constitution. The United States Constitution merely provides that amendments must be ratified by the legislatures of three-fourths of the states. However, under our state constitution, the Illinois legislature is prohibited from voting on a federal amendment until there has been an election after the proposed amendment has been sent to the states by the Congress. Also, the amendment must receive a three-fifths majority vote in each house to pass.

The three-fifths majority requirement became an issue during the long effort to pass the Equal Rights Amendment (ERA), providing equal rights to women. Illinois, even though it has an equal rights clause in its own constitution, never ratified the amendment. The ERA would have passed if Illinois and one other state had passed it. The ERA always had at least a majority in both houses of the legislature but could never





receive a three-fifths vote. Efforts to have the courts declare the three-fifths rule unconstitutional were unsuccessful.

Amendments to the 1970 Constitution

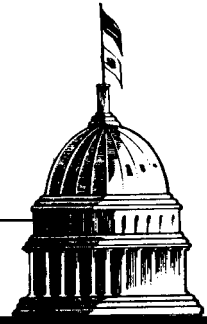
Through 1999, there have been seventeen proposals to amend the constitution presented to Illinois voters. Of these ten have passed. Four of these amendments deal with criminal trial rights of the accused and victims. Amendments to the Illinois Constitution, unlike amendments to the United States Constitution, are not found in a separate amendment section. The language of each amended section will appear as amended in later printings of the constitution.

Of the amendments that have passed, the Legislative Cutback Amendment is the most notable. This amendment reduced the size of the Illinois House of Representatives and eliminated cumulative voting. Now there are 118 members running in single member districts. Four of the remaining amendments dealt with criminal trial rights of the accused and victims. Three amendments were technical amendments dealing with collecting delinquent taxes and the effective date of legislation. In 1988 an amendment allowing for a reduction of the residency requirement for voting for the President and Vice President was approved. Also in 1998 the membership of the Courts Commission was expanded giving the governor the authority to appoint nonlawyer members.

Amendments to reduce the governor's amendatory veto power, to extend the personal property tax, and to give real estate tax exemption to veterans' organizations have failed. The voters have rejected the proposal on veterans' exemptions three times, in 1978, in 1984 and again in 1986. Also a proposal to return to an elected state board of education failed in 1992.

There are sure be future attempts to amend the Illinois Constitution. Proposals to appoint judges, to elect superintendents of schools, to reduce the number of executive branch officers who are elected, to have the state pay the majority of the cost of grade and high school education, to narrow the governor's veto powers, and many others, have been discussed in recent years. It is impossible to guess which proposed amendments, if any, will eventually become part of the constitution. Voters will, from time to time, be asked to undertake their sovereign power and review the constitution.

Voters who make decisions should know something of the past and understand the theories and workings of government in order to make decisions that will affect the future. The theory of government by the consent of the governed will remain the basis of our system only if citizens learn about government and to exercise their power wisely.



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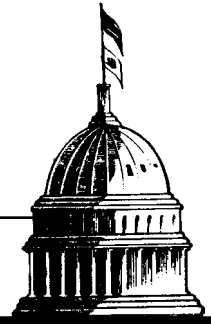
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Glossary



- Absolute:** completely free from constitutional or other restraint
- administrative code:** a collection of rules which regulate and guide administrative agencies
- adjourn:** to suspend until a later time
- alderman:** person representing a certain districts on a council or boards governing a city, town or borough
- amend:** to change; to correct
- analogy:** a comparison showing likeness in some ways, with differences in others
- antitrust laws:** to protect against monopolies and unfair business practices
- appropriation:** sum of money set apart for a special use
- assess:** to estimate the value of property for taxation; to fix the amount of a tax or fine
- auditor:** one who examines and checks business accounts
- bail:** guarantee, usually money, necessary to set a person free from arrest until they appear for trial
- balanced budget:** a plan for spending in which the income is equal to the expenditure
- ballot:** piece of paper or other object used in voting
- branch banking:** when a bank has separate facilities that are smaller than the main bank yet provides basic banking functions
- budget:** estimate of the amount that may be spent, and the amounts to be spent for various purposes
- bureaucracy:** administrative, policymaking group made up of nonelective government officials
- capital punishment:** punishment by death
- census:** an official count
- charter:** a written document creating and defining a city or town
- civil suits:** law suits that do not concern criminal acts
- civil rights:** the rights of personal liberty guaranteed to U.S. citizens by the 13th, 14th, and 24th amendments to the Constitution and certain acts of Congress
- clause:** a single provision of a law
- conflict of interest:** a conflict between the private interest and the official responsibilities of a person in a position of trust such as a government official
- corporation:** a group of persons who form and are authorized by law to act as a single person and who are given various rights and duties
- consolidation:** the process of uniting; the unification of two districts by the creation of one new district
- constitution:** basic principles and laws of a nation, state, or social group that determine the powers and duties of the government and guarantee certain rights to the people in it
- coroner:** public officer who investigates any death not clearly due to natural causes
- criminal law:** law that governs acts by which a person may be punished by imprisonment
- deficit:** when the amount of money taken in is not as great as the amount spent
- dictatorship:** a government in which absolute power is concentrated in one group or person who must be obeyed
- discrimination:** prejudicial action or treatment
- economic interest statement:** written report detailing sources of income and business affiliations a public official may have
- electorate:** the persons having the right to vote in an election
- eminent domain:** the right of government to take private property for public use
- enabling legislation:** laws that give legal power to an agency or government unit
- enact:** to make into law
- expenditure:** that which is spent
- federalism:** political philosophy advocating shared power between a strong central government and a number of smaller units

general assembly: the congress of the Illinois legislature; the Illinois House of Representatives and the Illinois Senate, combined

grand jury: jury chosen to investigate accusations and decide whether there is enough evidence for a trial in court before an ordinary jury

gubernatorial: relating to a governor

hortatory: a sermon; an oration

impeach: to accuse; to charge with wrongdoing

inalienable: incapable of being surrendered or transferred

indictment: a formal written statement charging a person with an offense

inherent: involved in the essential character of something; belonging by nature

initiative: a procedure in which a specified number of voters by petition may propose a law

jurisdiction: the right or power to give out justice; authority, power, control; the things over which authority extends

landmark case: an important legal case that marks a turning point in legal history

landslide: a great majority of votes for one side; an overwhelming victory

legislature: that branch of the government that is charged with the power to make law

lobbyist: one who conducts activities aimed at influencing public officials in legislation

magistrate: a local official having limited authority, usually over police matters

mandatory: an order that must be obeyed

militia: an army of citizens partially trained for war

monarchy: a government with a hereditary ruler such as a king or queen

on the side: to do something in addition to your primary responsibilities

ordinance: a regulation, law or rule

pardon: to set free from punishment

patronage: giving government jobs on a basis other than merit

petition: a formal, written request

preempt: to secure before someone else may do so; to acquire or take possession of beforehand

primary election: election to choose candidates for office from within political parties

procedural: subject that which concerns the method of doing things prosecute: to bring before a court of law; to pursue for punishment of a crime

recession: a period of reduced economic activity

redress remedy: set right

referendum: submitting a bill already passed by the lawmaking body to direct vote of the citizens

rehabilitation: restoring to good condition, health or constructive activity

resolution: a formal expression of opinion or intent voted by an official body or group

revenue income: that which a government unit receives into the treasury for public use

statute: a law passed by the legislature

structural subject: that which concerns the way things are organized subpoena: an official written order commanding a person to appear in a court of law

summons: written warning to appear in court on a specific day

taint: spoil

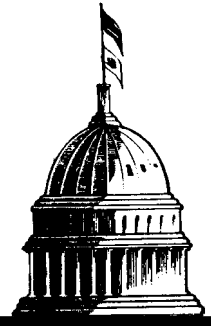
tyranny: cruel or unjust use of power

unconstitutional: contradictory to the constitution

vagrancy: the state of being a wanderer without a residence or means of support

veto: power vested in a chief executive to prevent a measure, passed by the legislature, from becoming law

warrant: written order issued by a judge giving authority to arrest, search or command other activities



Information on the Internet

www.isba.org Is the Illinois State Bar Association Web site. Has links to law-related education committee materials, including reading lists and the annual mock trial problem. Also links to a variety of state and federal resources.

www.state.il.us Is the State of Illinois Web site. Links to other state agencies, including Secretary of State. Includes a "Kid Zone" appropriate for younger students.

www.firstgov.gov is the Web site run by the U.S. Government, with links to a variety of government agencies.

www.whitehouse.gov is the Web site for the White House. Links to a number of interesting sites and includes historical information.

www.nara.gov Is the National Archives and Records Administration Web site. Includes a link to a "digital classroom."

www.aclu.com Is the American Civil Liberties Union Web site.

www.senate.gov Is the Web site for the United States Senate.

www.house.gov Is the Web site for the U.S. House of Representatives.