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Creating and Organizing CC 73

*E.L. Henry**

I. INTRODUCTION

Because of the procedure involved, amending a state constitution is a much more difficult task than merely passing an act of legislation. In Louisiana, for example, ratification of an amendment to the constitution requires a two-thirds majority vote from both the House of Representatives and the Senate, as well as a majority vote from the citizens of the state.¹ As such, the amendment of just one provision of the constitution is a relatively rare occurrence. The adoption of an entirely new constitution, however, occurs even less often and requires a constitutional convention.²

Louisiana held a constitutional convention in 1973, prompting the adoption and ratification of the Louisiana Constitution of 1974. As will be illustrated below, the convention was very effective, but hard work and determination were required before the Louisiana Constitution of 1974 was finally adopted. The effectiveness of the convention depended on an infinite number of factors; however, the method and procedure in which the convention was conducted is of particular importance and is the focus of this article.

II. THE LOUISIANA CONSTITUTIONAL CONVENTION OF 1973

Congressman Edwin Edwards made constitutional revision a priority in his 1971 campaign for Governor. He had also pledged to streamline the executive branch of state government by eliminating or consolidating many of the boards and commissions in Louisiana. After his election, however, he and his staff discovered much of the consolidation could not take place without revision of the constitution since so many of these boards and commissions were created by the Constitution of 1921. Constitutional reform became even a higher priority, and when the 1972 regular session of the Louisiana Legislature convened, House Bill 181 (which became Act 2 of the Regular Session of 1972) was filed as the vehicle that the Edwards administration would use to create a constitutional convention.

Strong opinions ran from one extreme to the other among legislators as to the composition of the convention. Some legislators

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1. La. Const. art. XIII, § 1.
2. La. Const. art. XIII, § 2.

wanted a commission to write a new constitution and believed the members of the House and Senate should sit as such. Others believed all delegates should be elected to the convention, and many believed no member of the House or Senate should be allowed to stand for election to the convention.³

In hindsight, the decision of the legislature to elect the overwhelming majority of the delegates to the convention was a very important one. While the Constitutional Convention of 1973 ("CC 73") was in progress, the Texas Legislature called a constitutional convention. Its enabling legislation allowed their House and Senate to sit as the convention, but their effort for a new state document failed. Many believed failure to elect delegates was a primary cause for their lack of success.

In the Louisiana Legislature, House Bill 181 passed both chambers in almost record time. In its final version, the bill was a compromise of ideas calling for the election of one hundred and five delegates, one from each district in the House of Representatives, plus twenty-seven additional delegates appointed by the governor. The twenty-seven appointed delegates would assure at least some representation of groups or interests that might not otherwise be given the opportunity to participate in the convention. Twelve of the twenty-seven appointed delegates were to be selected from the following special interest groups: industry, labor, education, civil service, wildlife and conservation, law enforcement, the judiciary, the professions, consumers, agriculture, youth and racial minorities.⁴

The election of the one hundred and five delegates was scheduled to take place along with the congressional elections in August and November of 1972. By mid-November, all one hundred and five elected delegates had been chosen. Several ministers, physicians, and businessmen and women were elected, and the variety of delegates provided "[a] reasonable measure of autonomy for the revision body."⁵

It should also be remembered that the United States Congress had passed the Voting Rights Act of 1965 several years prior to CC 73. In addition to three African-Americans appointed by the governor as delegates, nine were elected from various districts around the state.

Even before all the twenty-seven appointed delegates were named, the internal politics of the convention had begun. Some of the elected delegates expressed concern that Governor Edwards would attempt to exert too much influence on the outcome of the

3. Edward D. Grant, *Institutional and Rational Decision-Making: The Louisiana Constitutional Convention of 1973*, at 106 (1981) [hereinafter Grant].

4. 1972 La. Acts No. 2.

5. Grant, *supra* note 3, at 113.

convention, beginning with the election of the chairman. Throughout late November and December of 1972, various groups of delegates, elected and appointed, met to discuss issues such as the organization and procedure of the convention and the election of the chairman.⁶ While some proclaimed that Governor Edwards was attempting to influence the election of the chairman, many candidates began to surface. Of those that emerged as candidates, three were elected delegates: a Senator, a Representative, and a district judge. The fourth, an appointed delegate, was a Louisiana Supreme Court Justice.⁷ At least three of the four candidates appeared to have close ties to Governor Edwards. But, if the governor had attempted to influence the outcome of the election, his efforts were well disguised.

The enabling legislation provided that the Chief Justice of the Louisiana Supreme Court, or an associate justice, would preside at the convention until a presiding officer was elected.⁸ The delegates were not drawn closer to each other when it was discovered that a small group of delegates had met with justices of the state supreme court. The meeting had taken place to discuss how the events and procedure of the opening day would be handled. Many of these details were not covered in the enabling legislation.

The enabling legislation directed that the convention would convene on January 5, 1973; the delegates would take their oath and "effect the permanent organization of the convention."⁹ This included adopting rules of procedure, creating substantive and procedural committees, and electing officers and an executive committee. The delegates would then adjourn until July 5, 1973.¹⁰ Although the legislation seemed clear, when the delegates convened on January 5, they were of a mind to take a different approach. As it actually happened, the delegates did the following after taking their oath:

- a. Resolved to establish and established a seventeen member Temporary Committee on Rules and Resolutions to draft a set of rules to be submitted to the full convention for consideration. The chairman of the committee was selected by the full convention. Of the remaining 16 members, 2 each were elected from each of the state's eight congressional districts; and¹¹

6. *Id.* at 123.

7. I Records of the Louisiana Constitutional Convention of 1973: Journal of Proceedings at 6-7 (Jan. 5, 1973).

8. 1972 La. Acts No. 2.

9. *Id.*

10. *Id.*

11. I Records of the Louisiana Constitutional Convention of 1973: Journal of

b. Elected a chairman of the convention but deferred election of other officers until the adoption of the permanent rules of procedure.¹²

The full convention then adjourned until January 12, 1973, when it planned to receive and debate the proposal of the Temporary Committee on Rules and Resolutions. It had become obvious from the first day of the convention that the delegates, both elected and appointed, planned to determine their own course, independent of outside influence.

The delegates, overwhelmingly composed of Democrats, had elected Tom Stagg, a blue-blood Republican lawyer from Caddo Parish, to chair the Temporary Committee. Some outstanding delegates from the congressional districts had been selected to serve on the Temporary Committee. The convention had a good Temporary Committee and was finally beginning to take shape.

As it began its work, the Temporary Committee had no permanent staff, and none of the delegates or staff had ever written rules and procedure for a constitutional convention. The committee had to use the cumbersome procedures set forth in Robert's Rules of Order¹³ which, when used in a deliberative body, are difficult at best. There were no electronic voting machines, and the hundreds of votes were taken by voice vote. When elections were close, the time-consuming method of roll call was the voting procedure.

Even under these circumstances, the Temporary Committee did a splendid job of drafting rules of procedure to present to the full convention. In its deliberations, the committee utilized the expertise of the Clerk of the Louisiana House of Representatives, David R. Poynter. He provided invaluable assistance in educating the committee on the need to adopt procedural rules akin to those used by both houses of the Louisiana Legislature and to require Mason's Manual of Legislative Procedure to be the authority on questions of parliamentary practice.¹⁴ The committee was also able to call on legislative staff for research and clerical assistance.

One week later, when the full convention met on January 12 to debate the rules proposed by the Temporary Committee, most assumed the debate would be brief. The first fifteen rules considered by the delegates took little or no time at all.¹⁵ However, upon the

Proceedings at 4-5 (Jan. 5, 1973).

12. *Id.* at 6-7.

13. *Id.* at 7.

14. Rule 88, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 403 (formally adopted on Jan. 31, 1973).

15. I Records of the Louisiana Constitutional Convention of 1973: Journal of

proposal of Rule 16¹⁶ which enumerated the officers of the convention and provided that they would serve as the Executive Committee, a two-day debate began. The full convention refused to give the power of the Executive Committee to the officers of the convention even though the delegates would elect each officer. The delegates repeatedly attempted to make clear that they wanted every possible assurance of an independent convention. They believed this would more likely be accomplished with an independent Executive Committee, and independence would be best assured by electing a majority of the members of this committee.

As finally adopted, Rule 16 provided the Executive Committee be composed of the officers of the convention and sixteen delegates, with two delegates elected from each congressional district.¹⁷ Members of the Executive Committee, with the exception of the chair of the convention, were prohibited from serving on the Committee on Committees.

While discussion as to the number and types of committees to be used in the process was relatively brief,¹⁸ the delegates were cautious and deliberate as to how service on the various committees would be determined and how the chair of each committee would be selected. Once again, the delegates created a committee comprised of sixteen delegates, with two elected from each congressional district. The chair of the convention was chosen to serve as chair of a Committee on Committees which would select delegates for service on substantive and procedural committees.¹⁹

In order to assure equity in the appointment of delegates to committees, or to prevent a "stacking" of them depending on one's point of view,²⁰ each delegate was allowed the opportunity to express his or her committee preference to the Committee on Committees. The Committee on Committees was charged with the responsibility of giving "due consideration" to these preferences.²¹ Furthermore, each delegate was to serve on a substantive committee, but delegates were prohibited from serving on more than one substantive and one procedural committee. Finally, each committee elected its own chair,

Proceedings at 15-19 (Jan. 12, 1973).

16. I Records of the Louisiana Constitutional Convention of 1973: Journal of Proceedings at 19 (Jan. 16, 1973).

17. *Id.* at 71.

18. *Id.* at 31-35.

19. Rule 52, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 397-98 (formally adopted on Jan. 31, 1973).

20. Grant, *supra* note 3, at 141.

21. Rule 51, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 397 (formally adopted on Jan. 31, 1973).

a matter of great importance to the delegates.²² At the end of five full days of discussing, debating and amending Committee Resolution No. 1, the delegates adopted the permanent rules of procedure for the convention.²³

Numerous safeguards had been incorporated into these rules for the purpose of assuring open access to both the general public and the news media.²⁴ The committees of the convention were required to be open to the public,²⁵ to give advance public notice of such meetings,²⁶ and to record the minutes of each committee meeting.²⁷ The public was allowed and encouraged to participate in the committee process,²⁸ and all records and reports of committees were subject to the Public Records Act.²⁹ Proposals and resolutions could not be reported from committee unless a public hearing had been held—*i.e.*, instruments could not be reported by a “round robin” procedure.³⁰

Even after the convention adopted its permanent rules on January 18, 1973, the organization of the convention was not finished. On January 19, the delegates met to elect officers³¹ and to allow the eight congressional districts to caucus and elect two members each to both the Executive Committee and the Committee on Committees.³²

The convention then recessed until January 30, when it met to receive certain reports. The Committee on Committees submitted its

22. Rule 53, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 50 (formally adopted on Jan. 31, 1973).

23. I Records of the Louisiana Constitutional Convention of 1973: Journal of Proceedings at 50 (Jan. 18, 1973).

24. Rules 11 and 15, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 391 (formally adopted on Jan. 31, 1973).

25. Rule 58, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 398 (formally adopted on Jan. 31, 1973).

26. Rule 66, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 399 (formally adopted on Jan. 31, 1973).

27. Rule 58, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 398 (formally adopted on Jan. 31, 1973).

28. *Id.*

29. Rule 64, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 399 (formally adopted on Jan. 31, 1973).

30. Rule 60, Comm. Res. 1, at IV Records of the Louisiana Constitutional Convention of 1973: Convention Instruments at 399 (formally adopted on Jan. 31, 1973).

31. I Records of the Louisiana Constitutional Convention of 1973: Journal of Proceedings at 56-57 (Jan. 18, 1973).

32. *Id.* at 58.

report setting forth the membership of the substantive committees,³³ and the convention treasurer submitted a financial report. The treasurer's report projected that the expenses of the convention would be substantially greater than the amount of money that the legislature had appropriated.³⁴ This was a direct result of the delegates' determination to be more involved in the drafting of the document than the legislature intended.

Finally, on January 31, each of the convention committees reported the names of the elected officers,³⁵ addressed some routine clerical business, and passed Delegate Resolution No. 18 before recessing until July 5, 1993. Delegate Resolution No. 18 created a committee to hold public hearings in the state and seek public input with respect to the 1974 constitution.³⁶

By this point, the convention was finally organized, and once the Executive Committee hired staff, the real work of the convention could begin. Even though a full month had passed, the time and effort expended by the delegates would serve the convention well in the remaining months of its work.

No delegate could honestly claim that he or she had been excluded from participating or that the convention was controlled by any one person or group. When the delegates came together on January 5, 1973, no one knew where they were going or how they would get there. By January 31, the delegates had developed their own plan of procedure to write a new constitution for Louisiana.

The plan of the delegates was different than that of the legislature when it passed House Bill 181. The governor and the legislature thought the delegates would convene on January 5, 1973, take their oath, and "effect the permanent organization of the convention." It was also the intent of the legislature that the executive committee would employ professional staff "to perform the necessary research and to prepare a preliminary draft of a new constitution for the state."³⁷ This draft would be used by the various substantive committees for the full convention as a vehicle for discussion and debate when the delegates reconvened on July 5, 1973.

However, after completing the organization of the convention, it was clear the delegates planned to use the professional staff to aid the substantive committees in the drafting of the new constitution.³⁸ The

33. I Records of the Louisiana Constitutional Convention of 1973: Journal of Proceedings at 61 (Jan. 30, 1973)

34. *Id.* at 62-65.

35. I Records of the Louisiana Constitutional Convention of 1973: Journal of Proceedings at 66-67 (Jan. 31, 1973).

36. *Id.* at 66.

37. 1972 La. Acts No. 2.

38. Grant, *supra* note 3, at 125-27.

delegates also believed their efforts would be better received if the Composite Committee, created by Delegate Resolution No. 18, held public meetings in the major population centers around the state. A series of well-publicized meetings were scheduled in the spring of 1973. The committee covered the state, inviting the public to come to its meetings and express opinions as to what should or should not be in a new constitution.

While huge crowds of people did not attend these meetings, the attendance was certainly significant. The meetings were also extremely well covered by the media, as was the entire convention. People came out in every area of the state and were given the opportunity to speak even though this process required the delegates to suffer a handful of unusual people and ideas. As a result, there was much awareness with regard to what was taking place in CC 73. It helped convince the public that the process was an open one, and it no doubt contributed to the eventual ratification of the final product of the convention.

When the delegates reconvened on July 5, 1973, the majority of the document had been written by the members of the eight substantive committees. While it would be months before the convention completed the final document on January 19, 1974, the time and effort the delegates initially used in debating and finally adopting the permanent rules of procedure caused them to have a format of openness and honesty among themselves, the media, and the public.

III. CONCLUSION

The method and procedure employed in conducting the Louisiana Constitutional Convention of 1973 allowed the delegates to have great flexibility in the creation of a new constitution. That flexibility resulted in a highly effective convention, as evidenced by the adoption of the Louisiana Constitution of 1974. In hindsight, the plan may not have been perfect, and there is no certainty that another constitutional convention following the same procedures would be as effective. Nevertheless, the importance of choosing and following a certain procedure is clearly demonstrated. At the very least, a review of the Constitutional Convention of 1973 provides a proven model that may be followed in future constitutional conventions.