

Preface

Louis Prashker

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SHALL THERE BE A CONSTITUTIONAL CONVENTION IN 1959?

A SYMPOSIUM

PREFACE

LOUIS PRASHKER †

IN NOVEMBER, 1957, at the general election to be then held, the citizens of New York State will be offered the opportunity of voting on the question "Shall there be a convention to revise the constitution and amend the same?". The submission of the question ensues from the provision contained in the New York Constitution prescribing a mandatory submission of the stated referendum to the electors of New York.¹

If a majority of the electors voting on the referendum answer the question in the affirmative, delegates to the next Constitutional Convention will be elected in November, 1958, and the delegates will meet in convention on the first Tuesday of April, 1959. Thus the Ninth Constitutional Convention held in the State of New York would come into being. If the answer to the referendum is in the negative, the electors will have forfeited the opportunity of having a Constitutional Convention held in 1959.

The provision in the Constitution for the referendum stems from the initial inclusion in the Constitution in 1846 of a mandatory provision for submission to the state elec-

† Professor of Law, St. John's University School of Law.

¹ N.Y. CONST. art. 19, § 2.

torate of a referendum for the holding of a Constitutional Convention. In the Constitutional Convention held that year the delegates thereto elected initiated the constitutional policy of this state that the electorate shall be afforded an opportunity every twenty years to determine whether a constitutional convention shall be held to revise the Constitution and amend the same. The net effect of the constitutional policy has been to enable each generation to determine whether it wishes the Constitution to become subject to revision by a convention elected specifically for that purpose.

The last Constitutional Convention, held in 1938, was based on a referendum submitted in 1936. Small preparation had been made to condition the citizenry of New York for a considered answer to the referendum. The New York Times, a week before election day, wrote editorially that the voters ". . . have had little guidance . . . : the rival platforms are silent on the subject, campaign speakers have had nothing illuminating to say about it, civic bodies have given it only casual or belated consideration. There is no organized propaganda behind this particular referendum. . . ." ² The Times advised its readers to vote "NO." But the citizens who voted on the referendum voted "YES." It was not a mighty YES. Less than half of the electors who voted for governor (1936 was a gubernatorial year) voted on the referendum, and it was approved by approximately twenty-five per cent of the votes cast for governor. Twenty-one per cent of the electors who voted for governor voted in opposition to the holding of a constitutional convention. The preponderant vote in favor of the referendum came from New York City. Albany was the only county of the fifty-seven counties outside the City of New York wherein the electors voted in favor of the referendum.

In anticipation of the constitutional referendum of 1957, the New York Legislature, at its 1956 session, passed an act creating The Temporary State Commission on the Constitutional Convention.³ The members thereof were appointed

² N.Y. Times, Oct. 27, 1936, p. 2, col. 2.

³ Laws of N.Y. 1956, c. 814.

on August 29, 1956. The Commission has two primary objectives:

- (1) To prepare the electors of the State of New York to answer the referendum with intelligence and discernment.
- (2) If the answer to the referendum is in the affirmative, to collect and compile such information and data as may be useful to the delegates of the convention.

The immediate role of the Commission affects the first objective.

This symposium has been planned by the St. John's Law Review to assist the educational process which must precede the referendum, and to indicate some of the problems with which the proposed convention would be faced. Three of the contributors thereto (Justices James B. M. McNally, Walter A. Lynch, and Mr. Robert Moses) were delegates to the Constitutional Convention of 1938. The Very Reverend John A. Flynn, C.M., President of St. John's University, is an educator of wide national repute.