

.....TENNESSEE CONSTITUTIONAL HISTORY  
Settlement and 1796 Constitution

- □ The area that became Tennessee was part of the 1663 land grant of North Carolina from Charles II.
- In violation of the British Proclamation of 1763 prohibiting settlements west of the Appalachian Mountains, the Watauga settlement was founded in 1771. (T. R's "Great Leap Westward" He wrote that Robertson and Sevier were two of the three greatest leaders in the development west of the mountains, the third being George Rogers Clark) The Watauga Association adopted articles to govern their settlement in 1772—this was the first government west of the mountains. The last British Governor of Virginia, the Earl of Dunmore, wrote in 1774 that Watauga was "a dangerous example to the people of America of forming governments distinct from and independent of his majesty's authority."

---

□

In 1775, Richard Henderson purchased a large area of Kentucky and Middle Tennessee from the Cherokees--20 million acres for 6 wagon loads of goods. The governments of Virginia and North Carolina refused to recognize it. It was Henderson who was behind the settlement of Nashville in 1779-80. James Robertson led most of the men and the livestock over land to the settlement. John Donelson led a flotilla by water, down the Tennessee River to the Ohio, up the Ohio to the Cumberland, and up the Cumberland to the settlement. The Cumberland Compact was signed in 1780. It provided for the government of the settlement.

. After being ignored by North Carolina for many years, the eastern settlements attempt to form the state of Franklin in 1784. It collapsed in 1788.

. In 1789 North Carolina gave the western settlements (Nashville) their own district separate and apart from the eastern settlements- the District of Mero.

. After North Carolina ceded its western lands to the US, the Territory of the United States of America south of the Ohio River was formed. William Blount was the governor.

\* In 1795 Governor Blount and the territorial legislature authorized a census to determine territorial population to see if the population was sufficient to seek statehood. They had no direct congressional authority for this, but used the Northwest Ordinance as a guide for their actions. Once a census showed a sufficient population (over 60,000), a referendum was held. The eight eastern counties strongly favored statehood, the three western counties opposed it.

- A constitutional convention, composed of 5 delegates from each county, was held in early 1796. Some of the members are now famous--Andrew Jackson, William Blount, John McNairy, James Robertson (10 members had counties named for them--Anderson, Jackson, Robertson, Claiborne, Rhea, Roane, McMinn, Cocke, Smith and Carter). 16 members came from Virginia, 8 from Pennsylvania, 7 from North Carolina. They were not inexperienced in government, various members having served in the Watauga Association, the N.C. Constitutional Convention, the Cumberland Compact, the U.S. Constitutional Convention and the territorial government. The convention met in Knoxville for a total of 27 days and even voted to reduce their per diem from \$2.50 to \$1.50.

- General Assembly--two houses (it took three days to decide this), which met every other year in the fall

- Governor--elected for two year terms, could serve no more than 6 of any 8 years; commander of the army and navy; no veto--about half of this article comes from the Pa Constitution of 1790; weak governor

- Judicial System--"such superior and inferior cts ... as the legislature shall ... establish"; judges and attorneys for the state appointed by legislature to hold office during good behavior; treasurer(s), secretary of state, sheriff trustees, coroners constables all appointed

- every freeman age 21, who owned a freehold and had been in the county for six months could vote

—Declaration of Rights--discussed for 3 days. 3/4 of the provisions came from either Pa. or N. C.

- standard provisions on worship, speech, trial by jury, search and seizures, right to counsel, no double jeopardy, no ex post facto laws, no excessive bail
- \*right to equal participation of the free navigation of the Mississippi cannot be conceded to any prince, potentate, power or person
- \*right of preemption to settlers of certain areas of east Tn
- \*doctrine of nonresistance condemned

--county courts were appointed by the legislature, the county courts appointed local officers

--Knoxville declared the seat of government until 1802; change constitution by 2/3 of legislature agreeing on election on a convention, with majority of those voting for representatives voting for a convention

• No popular vote was taken. A copy of the document was delivered to Washington. After much debate and opposition by Federalists, the act admitting Tenn. as a state was passed and signed by President Washington on June 1, 1796.

• Thomas Jefferson called the 1796 Tennessee Constitution "the least imperfect and most republican" of any state constitution of the time according to one historian, who has not been substantiated

## Development and 1834

. A number of attempts to amend the constitution failed. Finally, in 1833(?) a proposal for a constitutional convention passed.

□ Sixty delegates were elected in March, 1834 and began meeting in Nashville on May 9th. Delegates included Willie Blount (former governor); Newton Cannon (future governor); Francis Fogg (Hume-Fogg); Adam Huntsman ("Pegleg" Adam Huntsman defeated Davey Crockett for Congress, prompting Crockett to say "My constituents can go to hell, I'm going to Texas."); West Humphreys (future AG and son of Party Humphreys, for whom Humphreys Co is named); Robert McKinney (future S Ct justice); Robert Weakley (Weakley County).

· Taxation was a major reason for the convention. System under 1796 constitution did not produce enough revenue and favored large landowners and speculators.

. A second major reason for the convention was the judicial system. In 1829 a report of the Senate Judiciary Committee called Tennessee's judiciary system "the most expensive and least efficient of any in the United States." The 1796 Constitution let the legislature establish the courts. As a result, they were always tinkering with the system. The 1834 document established one supreme court with three judges, one from each grand division. The legislature was allowed to establish the inferior courts. The separation of powers provisions were added, although the courts had previously found that the separation of powers existed in the 1796 Constitution without its express mention. The alteration of judges salaries during their terms was also prohibited.

Curbing legislative power was another reason for the convention. The new document provided for popular election of local officials, no suspension of the general law for individuals, no granting of divorces or authorizing lotteries.

---

□

The Convention also:

- limited the vote to free white males
  - required that the capitol be selected by the first week of the 1843 session of the legislature
  - required the legislature to pass laws setting the interest rate
  - required the legislature to cherish literature and science and established the common school fund
- The 1834 Constitution was approved by a vote of the people in 1835.
    - 1853 Change
    - . Two consecutive General Assemblies passed proposed amendments to provide for the election of judges, the attorney general and the attorneys for the state for the judicial districts. These amendments were approved in an election in August 1853.

### 1865 Changes

- November 8, 1864 Andrew Johnson, Military Governor of Tennessee, was elected Vice-President.
- Four days later a group called the East Tennessee Union Executive Committee called for a convention to meet Dec. 19th to take such steps as wisdom may direct to restore Tenn. to the Union. The meeting was delayed by General Hood's invasion of Middle Tennessee. After the defeat of Hood's forces, General Thomas suggested that the restoration of civil government could begin. The Convention was rescheduled for January 9, 1865.
- □ Over 500 delegates assembled, including William Brownlow (future governor), DeWitt Senter (future governor), Samuel Milligan and James Shackelford (future S Ct justices), Horace Maynard and Lewis Tillman (future congressmen).

---

□

Many delegates thought they were there to nominate candidates for a constitutional convention. Andrew Johnson recommended, however, that the group go ahead and recommend constitutional amendments.

-Many delegates left in disgust, which allowed the rest to propose two amendments--one abolishing slavery and the other forbidding the legislature from making any law recognizing the right of property in man.

-The schedule to the amendments:

\*declared the secession act of May 6, 1861 and the agreement with the confederate states of May 7, 1861 unconstitutional, null and void

\*declared the acts of the state government since May 6, 1861 void,

\*ratified Governor Johnson's actions

\*disfranchised ex-confederates and sympathizers

\*set a vote on the amendments for February 22, 1865 and elections for governor and the General Assembly for March 4, 1865.

· The vote on the amendments was light. After the polls closed the ratification was celebrated with the firing of 100 guns on the capital grounds. Governor Johnson had to leave for Washington, so on February 25th he declared the amendments ratified before all the results were in. The vote totals were 25,293 for and 48 against. 27 counties sent in returns.

\* Subsequently William "Parson" Brownlow was elected governor and new General Assembly dominated by radicals was elected.

## 1870 Convention

- . During Brownlow's administration, anyone who supported or sympathized with the Confederacy was disenfranchised, state debt increased dramatically and the state was not able to retire the railroad bonds maturing in 1867 and 1868.
- . When Brownlow was chosen for the United States Senate by the General Assembly, Lt. Governor Senter replaced him. Before the election of 1869 he set about restoring the franchise to ex-confederates. He was elected governor without much support from his party. The Democratic ex-confederates dominated both houses of the General Assembly.
  - Protection for the franchise and against a repeat of some of the recent government abuses called for permanent changes in the constitution, so a convention was called for. In December 1869 a majority of 40,500 people approved a convention and elected delegates. Many republicans refused to vote in this election.
  - The delegates convened on January 10, 1870 at the Davidson County Courthouse. Half had held a legislative or judicial office. Half were attorneys. They included a former US senator, a former US representative, three former members of the confederate congress, a former governor, 28 former state legislators and one member of the 1834 constitutional convention. Some notable members were--A.O.P. Nicholson (future Tn S Ct chiefjustice); Joseph Heiskell (future AG); John C. Brown (future governor); John Baxter (future US Circuit Judge).
  - Many of the conventions actions concerned the activities of the Brownlow administration and the aftermath of the Civil War
    - require the governor to state the reasons for special sessions
    - veto
    - single subject rule
    - limit lending of credit by state and counties

- limitations on lending of credit
- county offices filled by public or by county court
- no political tests for office
- safe and comfortable prisons
- all males vote
- increase number of S Ct judges to six to deal with backlog cause by war
- limit legislative pay to 75 days
- amend right to bear arms so as to clarify the power to regulate to prevent crime

. The 1870 Constitution was approved by the people.

### **1953 Convention**

- The Tennessee Constitution of 1870 was not amended again until 1953. At that time it was the oldest unamended constitution in the country. Many attempts were made, either through proposals for constitutional conventions or for specific amendments. Each attempt failed. Some reasons for this are sectional and rural mistrust, public indifference and conservatism.

- In 1945 the legislature authorized the governor to appoint a commission to study amendments to the constitution. It became known as the Frierson Commission, after William Frierson of Chattanooga, a former US Solicitor General.

- The commission proposed having a limited convention. This was not a new idea, Governor Turley having proposed having one in 1893 and the people having rejected such conventions in 1925 and 1931. In May of 1946, Attorney General Roy Beeler issued an opinion holding that a limited convention was unconstitutional.

- The Frierson Commission ignored the opinion and proposed a limited convention on 9 topics--the governors's term, item veto on appropriations, legislative pay, apportionment, legislative quorum, the amendment process, the poll tax, classification of property for taxation, and municipal home rule and city-county consolidation.

. In 1949 the legislature passed an act calling for a vote on whether to have a limited convention. In *Cummings v. Beeler*, 189 Tenn. 151 (1949), the act was upheld. In the November 1949 election the convention was narrowly defeated.

\* In 1951 another act was passed, but it left out the subjects of apportionment, taxation and the legislative quorum. It was approved by the people.

. The delegates chosen were experienced. Two thirds had prior experience in public life, including three former governors (Hooper, McCord and Cooper). Also serving were Ross Dyer (future chief justice), William Miller (future US district and circuit judge) and C.S.Carney and Kirby Matheme (future ct app. judges).

- Constitutional amendments approved were

- give governor a four year term, but he could not succeed himself

- remove the pocket veto and permit an item veto in appropriation bills

- delete the poll tax, lower county residence requirement to three months and maintain the 21 year age to vote despite a strong attempt to lower it to 18.

- prohibit legislature from passing special or local laws to remove local officials from office change their salaries or alter their terms; require local approval of local legislation; authorize municipal home rule; and allow the legislature to authorize city-county consolidation.

- change the amendment provisions to expressly allow limited conventions and allow approval of legislatively proposed amendments by a majority of those voting for governor

- raise the legislative per diem to \$10 and allow legislature to prospectively change it

### **1959 Convention**

. In 1958 the public approved a convention on the subjects of the sheriff's term, the trustee's term and lowering the voting age. The convention only approved lengthening the trustee's term and the public approved it.

### **1965 Convention**

. This convention occurred because of *Baker v. Carr*. The call limited the convention to the legislative provisions of the Constitution-appportionment, terms, elections, session, vacancies, adjournment and compensation. The delegates included Leonard Blanton, Lance Bracy, Harry Burn, Wyeth Chandler, Alex Darnell, Richard Fisher, Harris Gilbert, Carl Koella, Samuel Lewis, Gilbert Merritt, Frank Prescott, Lyle Reid, Herman Reviere, Thomas Wardlaw Steele.

. The convention proposed

- reapportionment of legislature based on population, with a clause allowing apportionment of one house using geography and other factors if the federal constitution ever allowed it, counties entitled to more than one representative or senator could be divided into districts

- Senator's terms increased to four years and staggered

- allow split sessions

- allow local legislative bodies to fill vacancies in legislative delegations

- legislature could call itself into special session by written request of two thirds of each house

- annual salary and expenses of legislators

- These proposals were approved by the people

### **1972 Changes**

. The legislature proposed a limited convention on five issues: the judiciary, local government, classification of property, governor's succession and term, and lowering the voting age. The only subject approved by the people for the convention was the classification of property.

. Members of the convention included William M. Leech, Jr., Clifford Allen, Robert Brandt, Harry Burn, Lewis Donelson, I.H. Murphy, Jack Norman, and Frank Prescott (member of the 1953, 1959, 1965 and 1971 Conventions)

. The convention set the assessments for four classes of property, a \$7,500 personal property exemption and allowed the legislature to provide tax relief to elderly, lowincome and disabled taxpayers. These proposals were approved by the electorate.

### **1978 Changes**

. The most recent limited constitutional convention was held in 1977. The legislature had proposed and the people had approved a convention on a number of subjects involving the legislature, the governor, voting age, the judiciary local government, interest rates, a homestead exemption, segregation and interracial marriage.

. Members of the convention included J.D. Lee, Steve Cohen, Gordon Ball, Shirley Duer, Joseph Baugh, Charles Burson, C.S. Carney, Roscoe Dixon, N.J.Ford, William Leech, and Mary Pruitt.

. The convention proposed several amendments

- altering the way vacancies in the legislature are filled by requiring a new election if more than twelve months are left in the term

- requiring three considerations of bills in each house instead of three readings

- creating limits on expenditures, conditioned increases in appropriations beyond the estimated rate of growth of the state's economy, requiring appropriations to be made during the session in which the bill being funded was passed, requiring the state to share the cost of laws imposing increased expenditure requirements on cities or counties
- allowing governor to serve two consecutive four year terms
- allowing the governor ten days instead of five to decide whether to sign or veto legislation
- allowing eighteen year olds to vote
- revising local government by doing away with county courts, county judges and justices of the peace and replacing them with county executives and county commissions or other alternative forms of county government, and by requiring the vacancies in local offices be filled by the county legislative body until a successor is elected
- requiring vacancies in county offices to be filled by the county legislative body until a successor is elected
- revising the education article by simplifying the language, requiring the maintenance of free public schools and allowing for establishing and supporting post secondary schools
- allowing legislature to set maximum interest rate
- deleting the prohibition on interracial marriage

-revising the judicial article to create a uniform judicial system, require one S Ct justice from each grand division but not requiring a maximum of two from any one grand division, expressly provide for S Ct rulemaking authority, create one court of appeals, appoint appellate judges by governor from nominations of a commission, create a Superior Court as the main trial court, create general sessions courts, allow legislature to establish juvenile courts and municipal courts, create a court of discipline and removal for judges, district attorneys, public defenders, the attorney general, provide for an attorney general appointed by the governor from a list recommended by the nominating commission, reduce number of court clerks,

-changing the homestead exemption to a minimum of \$5,000 and allowing the legislature to raise it and define the exemption

- All of these proposals with the exception of the revision of the judicial article were approved by the electorate

#### 1982 Change

- The 91st General Assembly and the 92nd General Assembly passed a resolution amending the constitution by revising Article II, Section 28 as to tax relief to elderly low-income taxpayers. This revision was approved by the public.

#### Other Attempts

- A number of bills have been submitted over the last 18 years calling for a constitutional convention on various topics, including taxation, local government, the judiciary, the attorney general, and lotteries. Obviously, none have passed.

### 1998 Changes

- The 99th and 100d' General Assemblies passed resolutions deleting "and comfortable" from the "safe and comfortable prisons" requirement in Article I, Section 32 and adding a list of victims' rights to the Declaration of Rights. These revisions were approved by the electorate in 1998.