PROPOSED LAW.

Section 23a. The railroad commission shall have and exercise such power and jurisdiction as shall be conferred upon it by the legislature to fix the just compensation to be paid for the taking of any property of a public utility in eminent domain proceedings by the state or any county, city and county, incorporated city or town, or municipal water district, and the right of the legislature to confer such powers upon the railroad commission is hereby declared to be plenary and to be unlimited by any provision of this constitution. All acts of the legislature heretofore adopted, which are in accordance herewith, are hereby confirmed and declared valid.

ARGUMENT IN FAVOR OF ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 87.

The state legislature, at its last session, adopted an act authorizing the state railroad commission to determine the just compensation to be paid by any county, city and county, incorporated city or town, or municipal water district for the acquisition in eminent domain proceedings of any public utility desired to be acquired and operated by such county, city and county, incorporated city or town, or municipal water district. The act makes it optional with such local subdivisions to either so call upon the railroad commission to determine this compensation or to have the same determined by a jury.

The reason for passing this law was that the railroad commission is in an ideal position to fix such values of public utilities. It has many trained experts whose business it is to fix such values at the present time for rate making and other purposes. The machinery is there and it was thought that an accurate and scientific estimation of values might be had from such a body. Considerable time and expense will thus be saved to the community seeking to acquire its own public utilities.

Several of the smaller cities have taken advantage of this law and asked the railroad commission to so assist them. It was thought this law was constitutional, but some question was suggested and, therefore, as an extra precaution the legislature submitted this constitutional amendment approving and ratifying the act and authorizing the adoption of any similar acts.

Since the adjournment of the legislature the state supreme court has, in the case of the Pacific Telephone and Telegraph Company vs. Eshleman, et al., Vol. No. 16, Cal. Dec., p. 551, decided, in effect, that such an act is valid under the present constitution. However, the adoption of this amendment will make even more certain the validity of such legislation adopted for the benefit of all the incorporated cities and towns and municipal water districts throughout the state.

If it is urged that this amendment will conflict with the provision of the federal constitution guaranteeing trial by jury, the answer is that this guarantee does not apply to suits in state courts but only to actions in federal courts. The United States supreme court has so held in the following cases: Edwards vs. Elliott, 38 U. S. 522; Livingston vs. Walker, 33 U. S. 551; Walker vs. Suitt, 22 U. S. 90. The same court has also held that this provision of the federal constitution applies only to common law actions and not to proceedings in eminent domain such as are contemplated by the proposed amendment. United States vs. Jones, 199 U. S. 512; Long Island, etc., Company vs. Brooklyn, 106 U. S. 594; Roosevelt vs. Rosa, 167 U. S. 548.

W. A. Sutherlaxn.
Assemblyman Fiftieth District.
J. H. Gull, Jr.,
Assemblyman Seventh District.

CONSTITUTIONAL CONVENTIONS.

Assembly Constitutional Amendment 83 amending section 2 of article XVIII of constitution.

Present section unchanged except in following particulars: provides that delegates to constitutional conventions shall be nominated at non-partisan primary election as prescribed by legislature, those receiving majority vote thereat being elected, otherwise two highest candidates or more if tied being only candidates at further election; authorizes legislature to submit for adoption by electors other plans for selecting delegates; provides that convention shall meet within nine months after election, and may submit new constitution or amendments or revisions of that existing, as alternative propositions or otherwise.

Assembly Constitutional Amendment No. 88, a resolution to propose to the people of the State of California an amendment to section 2 of article XVIII of the Constitution of the State of California relating to convention for revising the Constitution of the State of California.

The legislature of the State of California, at its regular session commencing on the sixth day of January, 1913, two thirds of the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes that section 2 of article XVIII of the Constitution of the State of California be amended to read as follows:

PROPOSED LAW.

Section 2. Whenever two thirds of the members elected to each branch of the legislature shall deem it necessary to revise this constitution, they shall recommend to the electorate to vote at the next general election for or against a convention for that purpose, and if a majority of the electors voting at such election on the proposition for a convention shall vote in favor thereof, the legislature shall, at its next session, by law for calling the same. In so providing for calling such convention, the legislature shall make provision for the election of delegates not to exceed in number that of both branches of the legislature who shall, except as herein provided, be chosen in the same manner and have the same qualifications as members of the legislature. Each of the delegates shall be considered as elected to a separate office. All delegates shall be nominated at a non-partisan primary election and not otherwise, and may also be finally elected at such non-partisan primary election as hereafter provided. Said non-partisan primary election shall be held as the legislature may direct, either at the time of holding any other primary election or at any general or special election or at an election to be called for that purpose. The legislature shall provide the manner in which all candidates shall obtain a place on the ballot at said non-partisan primary election. A candidate for any such office, receiving a majority of the votes cast at said non-partisan primary election for all the candidates for that office shall be declared elected, if at said non-partisan primary election any office to which no person was so elected, then as to such office that election shall be considered to have been a primary election for the nomination of candidates, and a further election shall be held for the election of delegates, or less if so there be, who received the highest number of votes cast at said non-partisan primary election, shall be the only
candidates at such further election; provided, that if there be any person who, under the foregoing provisions, would have been entitled to become a candidate for such office except for the fact that some other candidate received an equal number of votes therefore, then all such persons receiving such equal number of votes shall likewise become candidates for that office. The candidate for any such office who shall receive the highest number of votes at such further election shall be declared elected to such office.

Without the constitution being amended the legislature may, by resolution submitted to the electors of the state in the same manner that a proposed amendment to the constitution is submitted by the legislature, provide for any other plan for nominating and electing any delegates to any such convention. The delegates so elected shall meet within nine months after their election at such place as the legislature may direct. At a special election to be provided for by law, any amendments, alterations, revisions or new constitution, in any form that may be directed by such resolution, either as alternative articles or propositions or otherwise, shall be submitted to the people for their ratification or rejection, in such manner as the convention may determine. The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the state, who shall call to his assistance the controller, treasurer, and secretary of state, and compare the returns so certified to him: and it shall be the duty of the executive to declare, by his proclamation, such revised constitution, as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

Section 2. Article XVIII, proposed to be amended, now reads as follows:

EXISTING LAW.

Section 2. Whenever two thirds of the members elected to each branch of the legislature shall deem it necessary to revise this constitution, they shall assemble and to the electors to vote, at the next general election, for or against a convention for that purpose, and if a majority of the electors voting at such election on the proposition for a convention shall vote in favor thereof, the legislature shall, at its next session, provide by law for calling the same. The convention shall consist of a number of delegates not to exceed that of both branches of the legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the legislature. The delegates so elected shall meet within three months after their election, at such place as the legislature may direct. At a special election to be provided for by law, the constitution that may be agreed upon by such convention shall be submitted to the people for their ratification or rejection, in such manner as the convention may determine. The returns of such election shall, in such manner as the convention shall direct, be certified to the executive of the state, who shall call to his assistance the controller, treasurer, and secretary of state, and compare the returns so certified to him; and it shall be the duty of the executive to declare, by his proclamation, such constitution as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

ARGUMENT IN FAVOR OF ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 58.

When the question of calling a convention to revise our present state constitution was before the last legislature for consideration, certain radical defects both as to the method of choosing delegates to and the powers of such a convention were discovered. This amendment corrects such defects. It was heartily supported both by those who opposed a convention at this time (including the author of this amendment) and by those favoring such a convention (including the author of that proposition).

The defects corrected are:

First—A non-partisan method of selecting delegates is substituted for a partisan one.

By requiring their election In the same manner as members of the legislature, the present wording necessitates the election of delegates as partisans—Progressive, Republican, Democratic, or what not. The same compelling reason that now requires the non-partisan selection of freeholders to frame a city charter still more demands that the framers of a new constitution shall be so selected.

The method of selection is the so-called “Berkeley” plan, now in force in San Francisco, Sacramento, Berkeley and other cities. If one candidate gets a majority of all votes cast at the first, or primary, election, he is thereby elected. If no one gets a majority the two highest fight it out at the second election. However, if any other plan of selecting delegates shall hereafter seem better, the legislature submitting the question of a convention can, at the same time, submit such other plan, which if approved is used for such convention without necessitating a change in the constitution.

Second—The time within which the convention must meet after the election of delegates is changed from “three” to “nine” months.

In order that the attention of the people of the state be focused on the work of such an important convention, it should not be held during a session of the legislature. The only way this could be avoided under the present provision would be to hold two special elections for the nomination and election of such delegates, thereby involving a public expense of at least half a million dollars, which could be saved under the “nine months” provision by utilizing the regular elections.

Third—Proper powers are given the convention.

Under the present provision, the convention can do but one thing—submit for adoption or rejection one entire, complete constitution. A constitution, desirable on the whole, may be defeated through containing some one provision upon which the voters differ from the convention, and so the whole work and expense of the convention go for naught. The added power to submit alternative propositions (already possessed by city charter framers) makes possible the approval or rejection of a doubtful provision without endangering the constitution as a whole.

It is further made possible (as is now the case in many states) for the convention to submit its work in the form of separate amendments, thus giving the people a chance to vote on each separate amendment.

Out of the thirty-five states providing for constitutional conventions, but four place such limits on their powers as does California.

Wm. C. Clark, Assemblyman Thirty-seventh District.

Henry Ward Brown, Assemblyman Forty-second District.