

4672.

DISAPPROVAL, AMENDMENT TO CONSTITUTION KNOWN
AS SECTION 106 OF ARTICLE I.

COLUMBUS, OHIO, September 17, 1935.

MR. CHARLES H. HUBBELL, 10401 *Almira Avenue, Cleveland, Ohio.*

DEAR SIR:—You have submitted to me for my examination a purported amendment to the Constitution to be proposed, together with a summary of the same, in pursuance of Section 4785-175 of the General Code. It is proposed to amend the Constitution by adopting a new section to be known as Section 105 of Article I, to read as follows:

“To persons, who, after holding any position as a teacher, instructor or professor in any state educational institution or in any public school in this state for a continuous period of more than ten school years, shall cease to hold such a position after reaching the age of seventy years, teachers’ pensions shall be paid in such amounts as may be provided in this constitution or by statute; and there is incorporated in and made a part of this constitution the contents of a certain memorandum, document or instrument, designated as “5-E” by the person named thereon as the proponent thereof, and filed for record in the office of the Recorder of Medina County, Ohio, at the Court House in Medina, Ohio, on May 14, 1935; upon which memorandum, document or instrument there appears the symbol “5-E” (composed of the figure “5” and the letter “E”), to which memorandum, document or instrument there has been assigned official number 45,339 in the office of said Recorder, and which memorandum, document or instrument is recorded or does appear on Page 32 of Volume 6, of Miscellaneous Records in the office of said Recorder, in which public record said memorandum, document or instrument and the contents thereof (even if same shall heretofore have been or shall hereafter be expunged therefrom) may be examined and inspected by any elector of the State of Ohio or by any other person; excepting that there is not incorporated in or made a part of this constitution the title of the contents of said memorandum, document or instrument as set forth thereon, nor any of the data thereon preceding said title; provided, however, that a copy of said memorandum, document or instrument, certified by said Recorder or verified under oath by the person named thereon as the proponent thereof, be or was furnished to each of not less than three elective state officers or to three judges of the supreme court

not less than sixty days prior to the date of the election for the submission of this amendment to a vote of the people."

The summary submitted reads as follows:

"The proposed amendment to the Constitution provides that to persons, who, after holding any position as a teacher, instructor or professor in any state educational institution or in any public school for a certain period, shall cease to hold such a position after reaching the age of seventy years, teachers pensions shall be paid in such amounts as may be provided in this constitution or by statute; and provides that there shall be incorporated in and made a part of the constitution the contents of a certain memorandum, document or instrument, designated as "5-E", filed for record in the office of the Recorder of Medina County, Ohio, on May 14, 1935, and identified or described in said amendment (excepting the title of the contents thereof and certain other specified data contained therein); provided, however, that a copy of said memorandum, document or instrument be or was furnished to each of not less than three elective state officers or to three judges of the supreme court not less than sixty days prior to the election for the submission of the amendment to a vote of the people."

It will be seen that said proposed Section 105 of Article I does not contain the entire proposed amendment itself. It proposes to amend the Constitution by making a part of it not any organic or fundamental law which is set forth in said section but an entirely separate memorandum, document or instrument which is filed in the Recorder's office in Medina County and which document presumably contains the principles and laws of government which are sought to be made a part of the Constitution.

Our government is founded upon a written Constitution as distinguished from an unwritten Constitution. This distinction is set forth in Bryce's *American Constitution*, 3rd edition:

"By the 'Constitution' of a state or a nation we mean those of its rules or laws which determine the form of its government, and the respective rights and duties of the government towards the citizens and of the citizens towards the government. These rules, or the more important among them may be contained in one document, such as the Swiss or Belgian Constitution, or may be scattered through a multitude of statutes and reports of judicial decisions as in the case in what may be called the English Constitution."

And in 12 C. J. 677, the following is said:

“An unwritten or evolved constitution may be defined as one which, both in form and substance, is entirely the product of political evolution, not inaugurated at any specific time, and changing by accretions rather than by any systematic method. It may include scattered written provisions, but is unwritten in the sense of having no compact written form.”

I am of the view that our Constitution cannot be amended by the adoption of a section which does not contain the amendment itself but which refers and attempts to make a part of the Constitution an entirely separate instrument or document. As stated in the case of *State, ex rel. vs. Roach*, 230 Mo. 408, “A mere designation of itself as a constitutional amendment does not make it such.” In that case, the court refused to compel the Secretary of State to submit to the electors a purported constitutional amendment on the ground that it was in fact not an amendment.

Section 4785-175, General Code, provides that the proposed amendment, together with a summary of the same, shall be submitted to the Attorney General for examination and Section 1a of Article II of the Constitution provides that the petition which is to be filed with the Secretary of State shall contain the full text of the amendment. Said proposed Section 105 does not in my opinion contain the full text of the amendment since the proposed amendment is really contained in the document which is recorded in the office of the Recorder of Medina County.

Likewise, the summary, while it is a summary of what is set forth in section 105, is not a summary of what is contained in the document referred to which is sought to be made a part of the Constitution.

For these reasons, I am unable to certify that the summary which you have submitted is a fair and truthful statement of the proposed constitutional amendment.

Respectfully,

JOHN W. BRICKER,
Attorney General.