CONSTITUTIONAL LAW

By ALBERT B. SAYE*

The most far-reaching decision in the field of American constitutional law during the year 1953-54 was that in the Segregation Cases[1] wherein the United States Supreme Court, Chief Justice Warren, announced: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

As late as 1946 there remained one member of the Supreme Court who held it "a fundamental concept of our Constitution that where conditions are diverse the solution of problems arising out of them may well come through the application of diversified treatment matching the diversified needs as determined by our local governments."[2] But in 1954 there appeared to be no member of the court who would follow the maxim *ex factor ius oritur* where the facts related to racial conditions.

The constitutional law of Georgia underwent only an evolution with minor modifications during the past year. The principal cases are reviewed here under topical headings suggested by the content of the cases. The last division of this article surveys the constitutional amendments passed by the General Assembly for ratification or rejection by the people in the general election of November 2, 1954.

JURISDICTION OF SUPREME COURT AND COURT OF APPEALS

A recurrent problem in the constitutional law of Georgia is the line of division between the jurisdiction of the Supreme Court and the Court of Appeals. The constitutional provision giving the Supreme Court appellate jurisdiction "in all cases that involve the construction of the Constitution of the State of Georgia or of the United States" is a dead letter and serves only as a stumbling

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1. Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L. Ed. 583 (1954).
2. Mr. Justice Burton, dissenting, in Morgan v. Virginia, 328 U.S. 373, 66 S.Ct. 1050, 90 L. Ed. 1317 (1946).

block to lawyers. I know of no case in which the Supreme Court has taken jurisdiction under this clause. Where attempts have been made to bring cases before the Supreme Court under it, the uniform practice has been to transfer the cases to the Court of Appeals. This practice is definitely established. Practicing lawyers should not be mislead by the repetition of the statement in the court reports that a case is transferred to the Court of Appeals because it involves merely the application of "unquestioned and unambigious provisions of the Constitution to a given state of facts." In practice, in so far as the jurisdiction of the Supreme Court is concerned, all provisions of the State and Federal Constitutions are unquestioned and unambigious.

The Supreme Court does take jurisdiction of cases "in which the constitutionality of any law of the State of Georgia or of the United States is drawn in question." *Wade v. Hooper*[3] raised this question: If the constitutionality of a state law is drawn in question in a case, but the case could be disposed of without settling that question, does the Supreme Court have jurisdiction? The majority of the court, Justice Wyatt, held, "No," and transferred the case to the Court of Appeals. Chief Justice Duckworth dissented on the ground that a constitutional question having been raised, "it is for this [the Supreme] court and not the Court of Appeals to decide that a decision can be made without deciding the constitutional question."

Criminal Prosecution

Jones v. Balkcom[4] raised the question of competency of counsel. Ozzie Jones, a Negro, was convicted of rape in the Superior Court of Chatham County. The judgment was affirmed by the Supreme Court. Thereafter Jones, aided by the National Association for the Advancement of Colored People, sought release through habeas corpus proceedings on the ground of incompetency and neglect on the part of his counsel during the trial. The petition was denied by the City Court of Reidsville, and came to the Supreme Court upon appeal.

Justice Almand, speaking for the Court, held that "if counsel for the defendant in a criminal case of the character of which the present stands convicted, whether appointed by the court or of the defendants selection, was so negligent or unfaithful in the trial of the case that the defendant was virtually unrepresented, or if the defendant did not in any real or substantial sense have the aid of counsel, this amounts to deprivation of a fundamental constitutional right, and the defendant under such circumstances

3. 209 Ga. 802, 76 S.E.2d 403 (1953).
4. 210 Ga. 262, 79 S.E.2d 1 (1953).

may complain that he has been denied due process of law." Yet from a careful review of the evidence, the Supreme Court found no basis for the charge that counsel in the instant case had been negligent or incompetent. He had practiced law for four years, and the record showed that he possessed skill and ability in procedural matters.

Heard v. State[5] presents the recurrent problem of the charge of racial discrimination in the selection of juries. As early as 1880, in *Strauder v. West Virginia*,[6] the United States Supreme Court held the exclusion of members of his race from either the grand or petit jury denied a Negro defendant equal protection of the law. In that case a State law was involved which limited jury service to white persons; hence there was no question of the proof of discrimination. In recent years the United States Supreme Court has reversed many convictions of crime on the basis of racial discrimination in the selection of juries upon a finding of fact that laws fair on their face were administered with an evil eye. The question is essentially one of proof. Normally the burden of proof of discrimination would be upon the person challenging the validity of his conviction; but the United States Supreme Court, zealous to protect the rights of Negroes, has virtually placed the burden upon the State to show that there has been no discrimination. The Court accepts as *prima facie* evidence of discrimination statistical data showing that few or no Negroes have served on the jury in the county concerned in past years. As expressed by Mr. Justice Black in *Patton v. State of Mississippi*,[7] "It is to be noted at once that the indisputable fact that no Negro had served on a criminal court grand or petit jury for a period of thirty years created a very strong showing that during that period Negroes were systematically excluded from jury service because of race. When such a showing was made, it became a duty of the State to try to justify such an exclusion as having been brought about for some reason other than racial discrimination."

Heard v. State, supra, involved a conviction of rape of a white woman by a Negro convict, Lindsey Heard. The case arose in the Superior Court of Cherokee County. Counsel for Heard moved in the trial court to quash the indictment and to challenge the array of traverse jurors on the ground that for more than thirty years no member of the Negro race had served on the grand or traverse jury in Cherokee County. The only evidence in support of the charge of discrimination were census figures on

5. 210 Ga. 523, 81 S.E.2d 467 (1954).
6. 100 U.S. 303, 25 L. Ed. 664 (1880).
7. 332 U.S. 463, 68 S.Ct. 184, 92 L. Ed. 76 (1947).

the number of White and Negro citizens in Cherokee County and statements by seven local Negro residents that they had never served on the jury. Justice Hawkins, speaking for the Supreme Court of Georgia in a unanimous decision, upheld the conviction, saying in part: "A Negro, or a member of any other race, who is on trial is not entitled to a mixed jury composed of members of his own race and members of the white race, and the arbitrary, systematic, and purposeful exclusion of members of his race from his jury cannot be inferred merely from the fact that no one of that race is on such jury." Whether this decision would stand under attack in the United States Supreme Court is most questionable.

Bailey v. State[8] presents the nice question whether failure of the trial judge to include in his charge a provision of law otherwise applicable to the case but passed after the date of the alleged crime is error. In this instance, the Supreme Court held that it was.

At the time of the alleged homicide by Bailey there was no Georgia law whereby a jury under the general plea of not guilty could return a verdict finding the accused insane at the time of the commission of the alleged criminal act. An Act of February 15, 1952[9] provided that in *all* criminal trials wherein a plea of insanity at the time of the crime shall be introduced, "the trial judge shall instruct the jury that, in case of acquittal on such contention, the jury shall specify in their verdict that the accused was acquitted because of mental irresponsibility or insanity at the time of the commission of the act." In case of such a finding it becomes the duty of the judge to order confinement of the prisoner in the state hospital.

The conviction of Bailey was reversed by the Supreme Court because of failure to charge this law. The solicitor stood upon the code provision that "All crimes shall be prosecuted and punished under the laws in force at the time of the commission thereof." The Supreme Court, through Justice Head, held that due process of law "requires that every defendant be tried under the rules which have been established for his protection," including in this case a law passed after the date of the alleged crime. Justice Almand dissented. A law providing for the confinement of insane persons is not, it should be noted, a "criminal law" so as to introduce the question of *ex post facto* legislation into this case.

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8. 210 Ga. 52, 77 S.E.2d 511 (1953).
9. Ga. Laws 1952, p. 205, GA. CODE ANN. § 27-1503 (1953 Rev.).

JUVENILE COURT ACT OF 1951

In *Hampton v. Stevenson*[10] it was held that "Under section 19 of the Juvenile Court Act of 1951[11] and the decisions of this court dealing with previous acts containing similar provisions, no action taken against a child under the provisions of that act shall be denominated as a criminal action nor an adjudication as a con viction of a criminal offense, but proceedings thereunder are civil and not criminal." Hence the Juvenile Court Act did not violate the provision of the Constitution vesting the Superior Courts with exclusive jurisdiction "in criminal cases where the offender is subjected to loss of life or confinement in the penitentiary."[12] No valid ground was found for release of a girl confined in a reformatory for having stabbed another with a butcher knife.

But while a delinquent child may be confined in a reformatory, if he has committed a felony he is subject to criminal prosecution in the Superior Court. In *Jackson v. Balkcom,*[13] a boy under age 16 was convicted in the Superior Court of the crime of rape and sentenced to be electrocuted. An attempt was made through habeas corpus proceedings to have the sentence set aside and the boy committed to a juvenile court upon the ground that the Act of 1951 gave to the juvenile court original and exclusive jurisdiction concerning any child under seventeen years of age. The attempt failed. The court was of unanimous opinion that "Should any of the provisions of the Juvenile Court Act of 1951 have been intended to withdraw the jurisdiction of the superior courts to try an offense, within the age of accountability under the law, for an offense punishable by death or life imprisonment . . . such provisions would be unconstitutional and could be given no effect."

GENERAL VERSUS SPECIAL LAWS

Section IV of the Bill of Rights provides that "Laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law." If strictly enforced, this clause would put an end to much of the legislation enacted providing special treatment for particular cities or counties. But a way has been found of circumventing the limitation in many fields. The existence of one general law on a subject does not preclude enactment of another general law on the same subject, and a law may be general without applying at any given time

10. 210 Ga. 87, 78 S.E.2d 32 (1953).
11. Ga. Laws 1951, pp. 291, 302, GA. CODE ANN. § 24-2418 (Supp. 1951).
12. GA. CONST. Art. VI, § 4, ¶ 1, GA. CODE ANN. § 2-3901 (1948 Rev.).
13. 210 Ga. 412, 80 S.E.2d 319 (1954).

to all the political subdivisions of the State. All that is necessary to make a law general is the possibility of its being applied throughout the State. Its effectiveness in a given county may, for example, be conditioned upon affirmation by the grand jury of the county or upon a referendum.[14] By using population as a basis of classification, special legislation has in fact often been enacted in the guise of a "general law with local application." A law providing that in counties having a population of 26,750 to 27,750 according to a designated census, or any subsequent United States census, the clerk of the Superior Court shall be paid a salary in lieu of fees is such a law. In some cases this type of legislation is sustained;[15] in others it is held void.[16] The question of whether acts classifying political subdivisions by population should be sustained or held void is essentially one of due process — that is, of determining whether the classification employed had any real relation to the subject matter of the act.

City of Atlanta v. Sims[17] held void an act of 1953[18] providing a special procedure for the condemnation of property in counties or municipalities having a population of more than 250,000, or by counties having partly within their boundaries a municipality having a population of more than 250,000, according to the last or any future Federal decennial census. "Population in no wise effects or relates to such a privilege," said the court. The attempted classification being "purely arbitrary" was a violation of the equal protection clause[19] and the uniformity clause.[20] The 1953 act was similar to an act of 1952 on the same subject held void in *City of Atlanta v. Wilson*,[21] the chief difference being that the 1953 act did not empower the counties and municipalities therein classified to condemn private property for public purposes in other counties, as did the Act of 1953.

Public Officers

Two cases decided in 1954 make interesting additions to the case law governing the rights of public officers in Georgia. *Stewart v. Davis*[22] was a suit to restrain the Commissioners of Roads and Revenues of Echols County from carrying out a contract whereby they had employed an attorney for one year. The

14. Haney v. Commissioners, 91 Ga. 770, 18 S.E. 28 (1893).
15. See Sumter County v. Allen, 193 Ga. 171, 17 S.E.2d 567 (1941) and Estes v. Jones, 203 Ga. 686, 48 S.E. 2d 99 (1948).
16. See Southern Railway Co. v. Harrison, 172 Ga. 465, 157 S.E. 462 (1930), and Gibson v. Hood, 185 Ga. 426, 195 S.E. 494 (1938).
17. 210 Ga. 605, 82 S.E.2d 130 (1954).
18. Ga. Laws Jan.-Feb. Sess. 1953, p. 360.
19. Ga. Const. Art. 1, § I, ¶ II, Ga. Code Ann. § 2-102 (1948 Rev.).
20. Ga. Const. Art 1, § IV, ¶ I, Ga. Code Ann. § 2-401 (1948 Rev.).
21. 209 Ga. 527, 74 S.E.2d 455 (1953).
22. 210 Ga. 278, 79 S.E.2d 535 (1954).

contract was dated January 2, 1953. An Act of the General Assembly of February 3, 1953, required the County Attorney of Echols County to be a resident of the county. Judgment of the Superior Court dismissing the petition was sustained on the ground that the Act of the General Assembly could have no effect on the contract. Under the Constitution of Georgia, "no bill of attainder, *ex post facto law*, retroactive law, or law impairing the obligation of contracts . . . shall be passed."[23]

Fulton County v. Spratlin[24] presents a contrast. In 1952 Spratlin was appointed deputy clerk of the Superior Court of Fulton County for a term of four years. He reached retirement age one year after the appointment, but the existing law provided that "a member of the classified service serving a term of office to which such person was theretofore appointed extending beyond the time when retirement becomes mandatory hereunder shall be permitted to serve the balance of such term before being retired but no longer." An Act of 1953[25] repealed the provision permitting civil servants to serve the balance of their term before compulsory retirement. Could the Act of 1953 be applied in Spratlin's case? The Supreme Court answered, "Yes." "The fact that one obtains a status under the provisions of one law does not amount to a contract or create a vested right that prevents a subsequent legislature from repealing the old law and passing a new one."

If the General Assembly can change the age qualification for civil servants and apply the new qualification to a deputy clerk already in office, why is it prohibited from prescribing a qualification of residence and applying it to one already chosen as county attorney? The two decisions involved here might be distinguished on the frequently employed basis that a public *officer* has no contractural right in his position while a public *employee* hired by contract to render a particular service does possess a vested right in his contract of employment.[26] The difficulty with the application of that theory here, however, lies in the fact that in the *Stewart* case the court stated that the same decision would follow whether or not the contract in question had the effect of constituting the attorney in question as "county attorney." Perhaps the basis for the distinction in the two cases lies in the fact that the attorney was employed by an express contract. The headnote decisions do not reveal much on the reasoning of the justices, and few precedents are cited.[27]

23. GA. CONST., Art. 1, § 3, ¶ 2, GA. CODE ANN. § 2-302 (1948 Rev.).
24. 210 Ga. 447, 80 S.E.2d 780 (1954).
25. Ga. Laws Nov.-Dec. Sess. 1953, p. 2716.
26. See JAMES HART, AN INTRODUCTION TO ADMINISTRATIVE LAW 111-122 (1950).
27. Among the clearer earlier decisions on the position of public officers in Georgia is Walton v. Davis, 188 Ga. 56, 2 S.E.2d 603 (1939).

School Laws

In the selection of teachers, what is the line of demarcation between the authority of the County Board of Education and the County School Superintendent? *Trapp v. Martin*[28] sheds some light on the problem. In this case the County Board of Educatoin brought mandamus proceedings to compel the County School Superintendent to execute contracts for hiring teachers employed by the board without the superintendent's recommendation. Judgment for the board in the Superior Court was reversed by the Supreme Court.

The Constitution of Georgia provides that "Each county, exclusive of any independent school system now in existence in a county, shall compose one school district and shall be confined to the control and management of a County Board of Education."[29] The Minimum Foundation Program Act of 1949[30] provides that "In the local units of administration, the several teachers, principals and other school employees shall be elected by the board of education on recommendation of the respective superintendents." The Supreme Court saw no conflict between the statute and the constitution and it held as mandatory the provision of the stature, that "the several teachers . . . shall be elected by the board of education on the recommendation of the respective superintendents." In a concurring opinion, Justice Candler stated that "where the county school superintendent makes a recommendation of a person not satisfactory to the board of education, the board may decline to elect the person so recommended and require the superintendent to submit other recommendations."

Release of Sureties

Under Georgia law, "any surety, guarantor, or indorser, at any time after the debt on which he is liable becomes due, may give notice in writing to the creditor, his agent, or any person having possession or control of the obligation, to proceed to collect the same from the principal, or any one of the several principals liable therefor; and if the creditor refuses or fails to commence an action for the space of three months after such notice (the principal being within the jurisdiction of this State), the indorser, guarantor, or surety giving the notice, as well as all subsequent indorsers and all co-sureties, shall be discharged."[31] *Frick v. J. R. Watkins Co.*[32] raised the question whether a surety

28. 210 Ga. 284, 79 S.E.2d 521 (1954).
29. Ga. Const. Art VIII, § 5, ¶ 1, Ga. Code Ann. § 2-6801 (1948 Rev.).
30. Ga. Laws 1949, p. 1406, Ga. Code Ann. § 32-604 (1952 Rev.).
31. Ga. Code § 103-205 (1933).
32. 88 Ga. App. 276, 76 S.E.2d 518 (1953).

could through specific contractural provisions waive this statutory right of release through notice.

The J. R. Watkins Company entered a contract to furnish one Beaty with articles for sale, to be paid for at wholesale prices when resold. Frick and Bobo signed the contract as sureties for Beaty. The contract specifically waived the right of the sureties to release upon notice to the creditor to proceed against the debtor. Nonetheless, when the Watkins Company sued the sureties, they set up as a defense the failure of the company to bring suit against the principal debtor within three months of notice to do so by the sureties. Thus the question of the right of sureties to waive the protection afforded under Code Section 103-205, quoted above, was squarely before the court, and for the first time. The Court of Appeals, Judge Townsend, held that the statutory provision was " in the nature of a limitation of actions" and could not, under the public policy of Georgia, be waived. There is diversity of law among the several states on this point.

STATE BRIDGE BUILDING AUTHORITY

An act of March 25, 1953, created the State Bridge Building Authority as a means of securing funds to speed up the construction of bridges on the State highway system. Creation of an "authority," or public corporation, is an ingenious method used in Georgia and other states to circumvent constitutional debt limitations. The practice received judicial sanction in Georgia in *State of Georgia v. Regents of the University System of Georgia*,[33] and in *Sheffield v. State School Building Authority*.[34] The decision in *McLucas v. State Bridge Building Authority*[35] covers again in general the same ground plowed in the previous cases.

The Bridge Act of 1953[36] created the State Bridge Building Authority and authorized it to issue negotiable revenue bonds in a sum not exceeding $30,000,000 outstanding at any one time. The authority is authorized to use the proceeds from the sale of its bonds to finance projects requested by the State Highway Board. It will retire its bonds through revenue obtained from leasing or renting its facilities to the State Highway Department. The Act creating the authority declares it to be an institution of purely public charity and exempts its bonds and the income therefrom from all taxation within the State. In sustaining this provision of the act, Justice Candler, speaking for the court, pointed

33. 179 Ga. 210, 175 S.E. 567 (1934).
34. 208 Ga. 575, 68 S.E.2d 590 (1952).
35. 210 Ga. 1, 77 S.E.2d 531 (1953).
36. Ga. Laws Jan.-Feb. Sess. 1953, p. 626, GA. CODE ANN. § 95-2301 *et seq.* (Supp. 1954).

to the beneficient purposes for which the authority was created and "the fact that it has no shareholders or other owners of any character to which its corporate profits or income is distributable." On this particular point, Justice Wyatt concurred solely because he felt bound by former decisions.

The wisdom of the use of public "authorities" as a means of performing public functions remains a matter of debate, but the legality of the procedure is settled beyond question in Georgia.

Tax on Branch National Banks Void

In *Goodwin v. Citizens and Southern National Bank*[37] the Georgia tax on branch banks was held void when applied to branches of national banks. By act of Congress, the shares of national banks are specifically made subject to state taxation, but through faulty draftsmanship, the Georgia law provided for the taxation of branch banks (including branch national banks) "on the value of the capital employed in their operation." No serious constitutional problem is involved. The problem is merely one of drafting the State law in accord with the terms of the federal statute authorizing taxation of this federal instrumentality.

Miscellaneous

Buchanan v. Heath[38] held void Code Section 94-707. This is a part of the Code dealing with injuries from the operation of railroads. Track foremen are required to file weekly with the station agent nearest the point at which the stock was killed, a list of the marks and brands of all stock killed upon their sections. Failure to comply with this provision, under the statute, made the track foreman liable to pay the owner of stock killed on his section double its value. With little supporting authority, Chief Justice Duckworth, speaking for the majority, held the law void as contrary to due process in that it automatically made the foreman liable "regardless of any mitigating circumstances which he might have as a defense." Justices Wyatt and Head dissented.

In *Gulledge v. Augusta Coach Co.*[39] citizens and taxpayers sought to enjoin the expenditure of public money to employ extra policemen "to act as bodyguards and special agents in protecting the coach company" during a labor dispute with its employees. Judgment of the trial court dismissing the petition upon demurrer was sustained by the Supreme Court. "The paramount duty of government, as stated in our State Constitution, is the protection of persons and property," observed Justice Worrill.

37. 209 Ga. 908, 76 S.E.2d 620 (1953).
38. 210 Ga. 410, 80 S.E.2d 393 (1954).
39. 210 Ga. 377, 80 S.E.2d 274 (1954).

And the Code, Section 69-203, provides that "The council or other governing body of a municipality has a discretion in the management and disposition of its property, and where it is exercised in good faith, equity will not interfere therewith."

Proposed Constitutional Amendments

The leading argument for the adoption of a new State Constitution in 1945 was that the Constitution of 1877 had, through 301 amendments, become a hodgepodge. Unless the prevailing trend is altered, the Constitution of 1945 will soon be a much more amended document than the one it replaced. Eighty-eight election of November 2, 1954, a total of 46 more amendments are to be submitted to the people for ratification or rejection.[40] These figures indicate a prevailing disregard of the distinction between constitutional and statutory law, but the situation is not as disconcerting as the bare figures would indicate. Seventy-two of the amendments adopted between 1945 and 1952 were amendments of local application only, and 39 of the amendments to be voted on in November 1954, apply to only one county or municipality. Among the more interesting of these local amendments is the one providing for a merger of the governments of Dougherty County and the City of Albany. Most of them deal with matters which through repetition appear almost as routine, such, for example, as the method of selecting the County Board of Education.

Are all of these local amendments necessary? How can an end be made to them? Article VIII, Section 5, Paragraph 1 provides for each county a Board of Education composed of 5 members appointed by the Grand Jury. This paragraph has already been amended 26 times, and this year 15 more amendments to it are proposed. Instead of so many local amendments, why not make one general amendment authorizing the General Assembly to alter the method of selecting the Board of Education in any county, provided such alteration is approved by a referendum in the county affected? Similar changes should be made in other constitutional clauses that are the subject of frequent amendment where no fundamental principle is at stake.

Seven of the proposed amendments are of state-wide application. One of these provides for the removal of the 15 mill limitation on taxation for school purposes in any county upon a majority vote of the electors voting in a special election held on the question. A second authorizes the General Assembly to "provide for grants of State, county or municipal funds to citizens of the

40. For a table of these amendments, see XVI *Georgia Bar Journal*, (1953).

State for educational purposes, in discharge of all obligations of the State to provide adequate education for its citizens." This amendment has been so widely publicized and debated that comment upon it here would be inappropriate. A third amendment would institute annual sessions of forty days for the General Assembly. This would give 80 days of regular sessions within a two year period rather than 70 days as at present under the biennially-adjourned system. A fourth amendment would authorize a city, town, or housing authority to acquire through eminent domain property in slum areas and to sell such property to private enterprises for private use. The decision in *Housing Authority of the City of Atlanta v. Johnson*[41] that property could be acquired through eminent domain only for a public use provides the background for this amendment. A fifth amendment would authorize taxation by the State, counties, and municipalities to support pension systems for firemen. This is an amendment to Aritcle VII, Section 2, which at present authorizes taxation for a teacher retirement system. Why single out teachers and fireman? If any amendment is needed, why not pass a general amendment authorizing retirement systems for any or all groups of state and local government employees? A sixth amendment authorizes the General Assembly to exempt from taxation "property owned by religious groups used only for residential purposes and from which no income is derived." A motion to include "parsonages" in the list of properties to which tax exemption might be granted was made in the Commission of 1943-44 to Revise the Constitution of Georgia. The proper terminology proved a stumbling block. After it was brought out that in Jehovah's Witnesses every member is a preacher, the motion was withdrawn.[42] A seventh amendment would rewrite the Home Rule article of the Constitution. This amendment is a result of the decision in *Phillips v. City of Atlanta*[43] holding void the Municipal Home Rule Act of 1951.[44] The case involved in particular the power of a city, acting under authority of the Home Rule Act, to extend its corporate limits. This power was held to be a legislative power which the General Assembly could not delegate to municipalities unless authority for such delegation stemmed from the Home Rule Article of the Constitution.[45] The Home Rule Act of 1951 clearly was not authorized by the constitutional provision that

41. 209 Ga. 560, 74 S.E.2d 891 (1953).
42. Saye, ed., 1 *Records of the Commission of 1943-1944 to Revise the Constitution of Georgia* 396 (State Library, 1946).
43. 210 Ga. 73, 77 S.E.2d 723 (1953).
44. Ga. Laws 1951, p. 116 and Ga. Laws 1952, p. 46, GA. CODE ANN. c. 69-10 (Supp. 1954).
45. Art. XV.

"The General Assembly shall provide for uniform systems of county and municipal government, and provide optional plans of both." It provided no optional plans. It was therefore held void.

The proposed amendment to the Constitution, to be voted on by the people in November, 1954, provides that the present Home Rule Article be stricken in its entirety and the following paragraph be inserted in lieu thereof: "The General Assembly is authorized to provide by law for the self-government of municipalities and to that end is hereby expressly given the authority to delegate its powers so that matters pertaining to municipalities upon which, prior to the ratification of this amendment, it was necessary for the General Assembly to act, may be dealt with without the necessity of action by the General Assembly. Any powers granted as provided herein shall be exercised subject only to statutes of general application pertaining to municipalities."[46]

46. Ga. Laws Nov.-Dec. Sess. 1953, p. 505.