

We put together this amendment because we both felt, at least I felt, that the whole concept of damages was good—

THE CHAIRMAN: Let the Chair interrupt you because there is apparently a misconception or else the Chair is not understanding the situation.

The present motion is for reconsideration of Amendment No. 20.

DELEGATE BARD: I understand that.

THE CHAIRMAN: Just a second.

Amendment No. 20 was an amendment which would remove the words "or damaged" from section 9(B).

DELEGATE BARD: That is right.

THE CHAIRMAN: If the motion for reconsideration is carried, then Amendment No. 20 to remove those words is before the committee. If the motion for reconsideration is rejected, section 9(B) is still open to amendment, and Amendment AR would be properly considered as an amendment to section 9.

In other words, if the words are removed, there is nothing for your amendment to apply to. If the words remain in, your amendment would apply to them.

DELEGATE BARD: May I ask this question:

Would the amendment as indicated on AR be possible only if reconsideration fails?

THE CHAIRMAN: No, you could rephrase your amendment so that your amendment could be offered as a substitute for Amendment No. 20, but what I am trying to point out to you is that your right to offer your amendment AR does not depend upon the outcome of the motion to reconsider.

DELEGATE BARD: I thought it was the other way around.

THE CHAIRMAN: Mr. Gleason.

DELEGATE GLEASON: In view of that elucidation on the situation, could I suggest to the sponsors of the amendment that they now offer it, please?

THE CHAIRMAN: Could you suggest what, Delegate Gleason?

DELEGATE GLEASON: Could I suggest to the sponsors of this amendment that they withdraw their motion to reconsider and, instead, offer their amendment.

THE CHAIRMAN: The sponsors of the motion are not the ones who made the motion to reconsider.

Delegate Adkins is the one who made the motion to reconsider. Do you want to make that suggestion to Delegate Adkins?

DELEGATE GLEASON: Yes.

THE CHAIRMAN: Delegate Adkins.

DELEGATE ADKINS: Mr. Chairman, I would prefer to have the motion to reconsider considered by this body. My own feeling is that we would be in a stronger posture if we eliminated the words from the constitution which would thereby leave the General Assembly in a position to add such measure of damages in condemnation cases as it thought wise.

It seems to me that the addition of the language in the constitution raises many questionable problems during the hiatus between the adoption of the constitution and the time when the General Assembly should see fit to act.

My position therefore is that I would prefer to have the language eliminated should the convention reject that proposal. I should then prefer to have the amendment considered, but I would like to have the motion to reconsider and the original Gilchrist amendment again considered by the Convention.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, I have to rise to a point here. Delegate Adkins is incorrectly stating a legal situation.

The General Assembly cannot add "damages to" as we contemplate the concept in this amendment because the word "use" by itself in the constitution as we have studied it and read it and as it has been interpreted by the Court of Appeals means only a physical taking. This goes beyond that. The legislature would not have an opportunity to provide for damages other than damages when there is involved an actual physical taking.

That is the reason why we put this in the constitution.

THE CHAIRMAN: Delegate Kiefer, the Chair is lost completely. I may not have caught what Delegate Adkins said at the last.

Are you saying that if there were no provision at all as to eminent domain in the Constitution that the legislature would