

DELEGATE SCANLAN: I do, Mr. Chairman.

THE CHAIRMAN: Pages will please distribute amendment Q. This will be Amendment No. 9.

The Clerk will read the amendment.

READING CLERK: Amendment No. 9 to Committee Recommendation R&P-2 by Delegate Scanlan: On page 3, section 7, Right to Sue State Local Governments, strike out all of lines 1 through 9, inclusive.

THE CHAIRMAN: The amendment has been submitted by Delegate Scanlan, is there a second?

*(The amendment was duly seconded.)*

THE CHAIRMAN: The amendment is seconded by Delegate Bennett.

For what purpose does Delegate Kiefer rise?

DELEGATE KIEFER: Mr. Chairman, I will argue against this, but I believe it would be helpful to the Committee if they would also have before them while this discussion is going on my Amendment D.

THE CHAIRMAN: Very well.

The chief page will please distribute Amendment D.

The Amendment No. 9 has been distributed.

The Chair recognizes Delegate Scanlan to speak to the amendment.

DELEGATE SCANLAN: Mr. Chairman and fellow delegates, once again I arise to oppose insertion in the constitution of a provision that is meaningless at best and reckless at worst.

I read section 7 several times. Reading it one way I concluded that it does not change the present status of the law under which the General Assembly has full power to relax the doctrine of sovereign immunity in those areas where, in its judgment, the doctrine should be relaxed.

On the other hand, reading it again, I concluded that the proposition contained in section 7 would lay open not only the State but all the political subdivisions of this State including the smallest municipality to the danger of being sued for damages because of the torts committed by agents of the municipality in the performance of their duties.

There is another area where, again, this doctrine would carry us far from existing

law. At the present time when an officer of the State abuses his authority or acts in a manner which a citizen regards as illegal, he does not sue the State. He sues the officer for breach of his authority. Under this provision, I believe, it would be perfectly logical to argue that the State would equally be a defendant.

The point is that the whole matter dealt with in section 7 is a statutory concept. The federal government has taken the lead in relaxations of sovereign immunity and many of you have probably heard of the federal Tort Claims Act in which that immunity is relaxed. But in the same act, there are carefully reserved exceptions.

This cannot be dealt with in a constitutional clause. It has to be dealt with in a fairly detailed statute. I do not see how in writing the Constitution we can write a tort claims act into it. It is unnecessary. I wish Judge Henderson were here. He spoke to this point yesterday, I believe. The General Assembly has already acted in this area and can continue to act in this area.

I see no reason time after time to attempt to put into this constitution grants of power which the General Assembly already has, or provisions designed to goad the General Assembly to take action it has already taken.

There is absolutely no necessity for section 7 and in Delegate Kiefer's substitute, all he does is reverse the words. But he comes out the same place and as far as I see it, restates the law as it now stands, namely that the General Assembly has full, complete unlimited power to relax the doctrine of sovereign immunity. The legislature is proceeding in that direction, will proceed in that direction, and therefore section 7 is completely unnecessary.

Let us not clutter up the constitution with unnecessary language.

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman and ladies and gentlemen of the Committee, I rise to oppose this amendment, which would strike any reference completely to sovereign immunity.

This is a matter that is not in the Declaration of Rights and we do not intend it to be there. This is part of what we had envisioned as I explained to you earlier, namely a statement of various principles concerning the government and how it operates.

One of these concepts, and it has been stated in many other state constitutions,