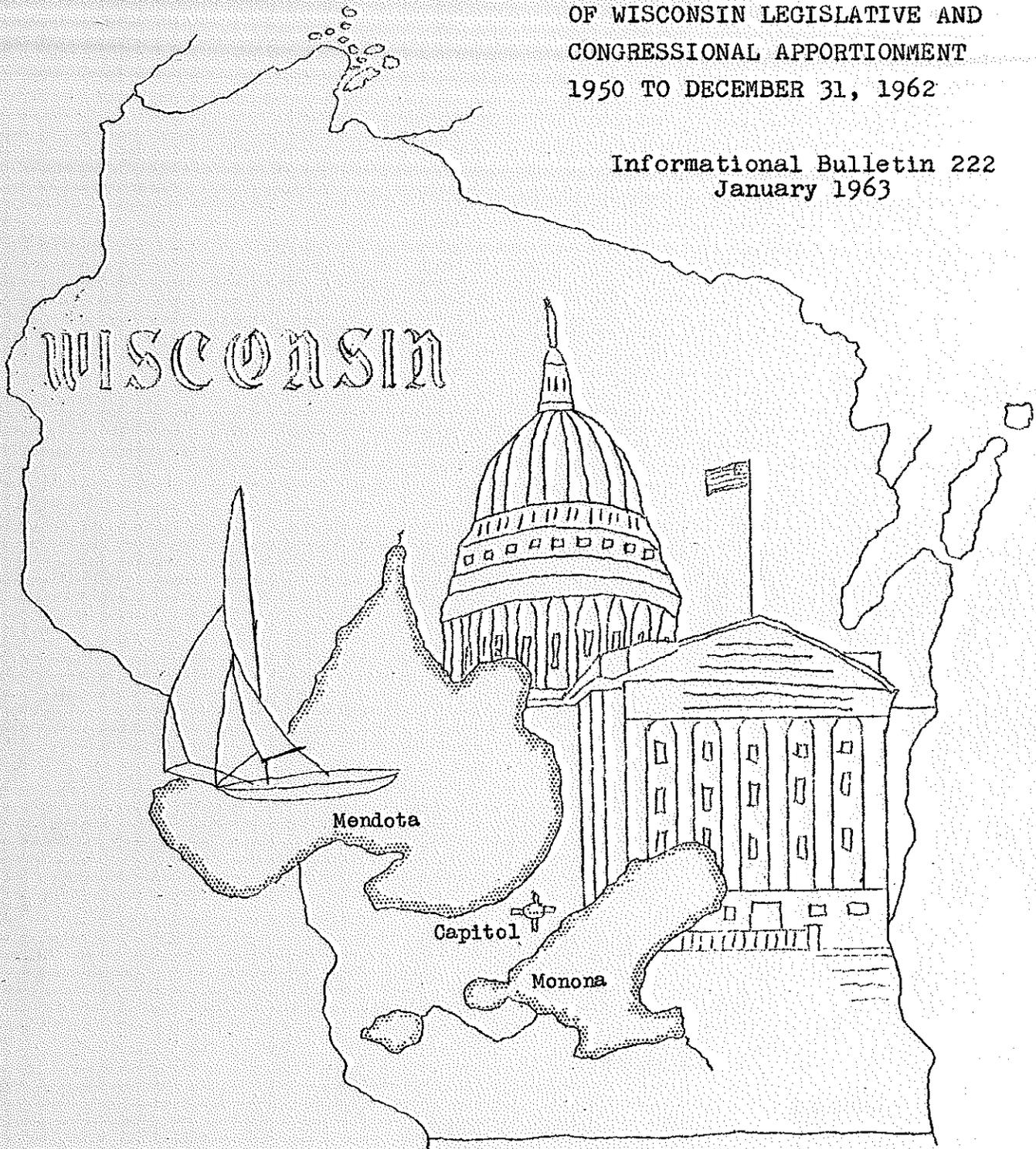


A CHRONOLOGICAL LISTING OF
IMPORTANT EVENTS IN THE HISTORY
OF WISCONSIN LEGISLATIVE AND
CONGRESSIONAL APPORTIONMENT
1950 TO DECEMBER 31, 1962

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A CHRONOLOGICAL LISTING OF IMPORTANT EVENTS IN THE HISTORY OF
WISCONSIN LEGISLATIVE AND CONGRESSIONAL APPORTIONMENT,
1950 TO DECEMBER 31, 1962*

HIGHLIGHTS

In anticipation of the results of the 1950 Census of population, the Wisconsin Joint Legislative Council appointed a committee to study the problems of apportionment in Wisconsin, and to make recommendations to the 1951 Legislature. This committee was headed by the late Chief Justice Marvin B. Rosenberry. It formulated a plan for legislative apportionment; that plan was introduced in the 1951 Legislature and enacted as Chap. 728, Laws of 1951. The apportionment became known as the ROSENBERRY ACT.

Both houses of the Wisconsin Legislature have been apportioned "according to the number of inhabitants" since the Wisconsin Constitution was enacted in 1848. In 1951 proposals were made to incorporate an "area" factor into the apportionment formula for the Senate. By amendment, a Sec. 3 was incorporated into the Rosenberry Plan to let that act become effective only if in November 1952 the people of Wisconsin rejected a proposition to amend the Constitution so that there would be area representation in one house. The people did reject this proposition, and the Rosenberry Act became effective.

Together with passing the Rosenberry Act, the 1951 Legislature had also given first consideration approval to a constitutional amendment providing for area apportionment of the Senate. Following the rejection of the proposition in the 1952 election, the 1953 Legislature nevertheless went ahead and gave this amendment its second consideration approval. The amendment was submitted to the people in April 1953, and ratified. In implementation of the amendment, Senator Rogan then had a bill drafted, which was introduced by the Committee on Legislative Procedure, to reapportion the Senate according to a formula which gave 30% of the total weight to land area, and the remaining 70% to population. This bill passed and became Chap. 242, Laws of 1953, popularly known as the ROGAN ACT.

Secretary of State Fred Zimmerman then let it be known that he intended to use the Rosenberry Act, and not the Rogan Act, in calling the 1954 elections. In the resulting litigation of STATE, EX REL. THOMSON V. ZIMMERMAN, the Wisconsin Supreme Court held that the April 1953 constitutional amendment had been invalidly ratified and that the Rogan Act, which relied on it for its validity, was in consequence invalid. The court also stated that it is not possible under the existing wording of the Wisconsin Constitution to make 2 valid apportionments during a decade. Thus, even had the constitutional amendment been valid, its formula could not have been applied until after the publication of the results of the 1960 Census.

The 1959 Legislature, in anticipation of the results of the 1960 Census, again provided for an interim study of legislative apportionment. None of the apportionment proposals made by the committee were voted on by the Wisconsin Joint Legislative Council and introduced as

*Compiled by H. Rupert Theobald of the Wisconsin Legislative Reference Library, and James P. Altman of the Wis. Joint Legislative Council.

council bills; instead, individual members of the Legislature introduced bills based on the committee's studies. With minor exceptions, the 1961 Legislature did not act on apportionment measures during its opening session from January to August, 1961. When the Legislature still showed no inclination to deal with apportionment in its adjourned session beginning in October of that year the Attorney General threatened, in a letter sent to each member of the Legislature, "to call this matter to the attention of our Supreme Court."

By mid-November 1961, a bill was introduced which later passed and became Chap. 679, Laws of 1961. It changed the boundaries of Wisconsin Congressional, Senate, and Assembly districts as they relate to MENOMINEE COUNTY. On January 12, 1962, the Legislature adjourned, stating its plan not to meet again until January 1963, one hour before the convocation of the 1963 Legislature. In February, the Attorney General brought 2 actions before the Wisconsin Supreme Court.

The first petition, which was denied, cited the Senate and Assembly as defendants. The second petition sought to enjoin the Secretary of State from using the existing apportionment in calling future elections. Here the Wisconsin Supreme Court declined to take action for the present, but invited a RENEWAL OF THE SUIT AFTER JUNE 1, 1963, should the apportionment issue still not be settled at that time.

On March 26, 1962, the U.S. Supreme Court held in BAKER V. CARR that legislative apportionment is a justiciable issue, that federal courts stand ready to take action to protect individual rights guaranteed by the U.S. Constitution where state courts have failed to give relief, and that in balancing the equities "invidious discrimination" can be used as a standard upon which the necessity for relief shall be measured.

Subsequently, the Attorney General again circularized the members of the Legislature to take action on apportionment, and once more petitioned the Wisconsin Supreme Court for relief. When both moves failed, he started action in federal court. A special 3-judge federal district court was convened to hear the suit in which the Attorney General appeared as plaintiff and the Secretary of State as defendant. In May 1962, at the suggestion of the 3-judge federal district court, 5 residents of Waukesha County joined the suit as co-petitioners.

In June the Legislative Council appointed a new apportionment committee, scheduled to hold its first meeting June 21, 1962, in Stevens Point. Meanwhile, the Attorney General advised the Governor that he could call a special session even though the Legislature had not adjourned sine die. On June 13, 1962, the federal court requested that the Legislature convene within 10 days to act on apportionment. The Governor then called a SPECIAL SESSION to convene on June 18. Before the Legislature convened petitions in both houses received a sufficient number of signatures to permit the LEGISLATURE also to CALL ITSELF BACK INTO SESSION.

Through June and July, the Legislature passed 2 separate plans to reapportion Wisconsin's Congressional districts, and another plan to apportion the Senate and Assembly districts. All 3 PLANS were VETOED by the Governor. During the same period, the federal court appointed former Wisconsin Supreme Court Justice Wingert to function as SPECIAL MASTER, hold hearings, supply the court with factual information

concerning the apportionment issue, and recommend a possible solution if a new apportionment seemed indicated. On July 25, 1962, Special Master Wingert submitted his preliminary conclusion that "the existing apportionment ... does not presently deny to plaintiffs any rights guaranteed them by the Constitution of the United States," and recommended RENEWAL OF THE SUIT AFTER NOVEMBER 1, 1963. In his final recommendations filed later, Mr. Wingert suggested that the Attorney General should look "primarily to Wisconsin courts" to force legislative apportionment; however, the federal court invited renewal of the suit after AUGUST 1, 1963.

On July 31, 1962, unable to come to any agreement with the Governor, the Legislature adjourned, again stating its plan not to meet again until January 1963. On December 27 and 28, 1962, the Legislature met once more, killed all remaining pending legislation (including apportionment measures) and then adjourned, again, to January 9, 1963.

INTRODUCTION

For the present study the form of a chronology was selected to provide a quick survey of the apportionment action in Wisconsin during the last 12 years. In doing this, it was decided to treat the decade of the 1950's in more summary fashion, and to confine the minute detail of a truly chronological, day-by-day account to the events which have occurred since the 1961 Legislature convened on January 11, 1961.

- 7/17/1950 By its own resolution the Wisconsin Joint Legislative Council appointed a committee consisting of 2 Senators, 3 Assemblymen and 3 public members to study apportionment of the Senate and Assembly. One of the public members was former Chief Justice Marvin Rosenberry of the Wisconsin Supreme Court who was elected chairman of the committee. The committee was authorized to conduct public hearings, administer oaths and summon witnesses by subpoena. The plan for legislative apportionment worked out by the committee later became known as the "Rosenberry Act."
- 11/24/1950 Milwaukee's Common Council adopted an ordinance redistricting the ward lines of that city to facilitate the apportionment process. As redistricted, each ward contained approximately 1% of the state's population.
- 1/18/1951 Joint Resolution 8, A., was introduced, complimenting the City of Milwaukee on the redistricting of its wards. This joint resolution failed in the Assembly in the mass adverse disposal of pending legislation on June 14, 1951, the day of sine die adjournment.
- 1/25/1951 Joint Resolution 13, A., was introduced, creating a special joint committee to consider problems of apportioning the Senate and Assembly. The joint resolution was adopted on March 9, 1951. It was the purpose of the special committee to consider all apportionment legislation submitted to the 1951 Legislature.

- 1/25/1951
(Cont.) The committee was composed of 4 Senators (Robinson, chm.; Hicks, Kaftan, Mayer) and 6 Assemblymen (Ludvigsen, Abraham, Huber, Bergeron, Romell, Bice).
Recommendations, and apportionment bills, were to be presented by this committee on or before April 30, 1951; otherwise, all bills and resolutions referred to the committee were to be placed on the calendars of both houses.
- 2/21/1951 The Wisconsin Joint Legislative Council introduced Bill 393, A., but made no recommendation for passage. This bill incorporated the "Rosenberry Plan."
- 3/20/1951 Bill 608, S., a Senate companion bill to the already submitted Rosenberry Plan, was introduced, sponsored by 15 members of the Senate, including members from both parties.
- 4/30/1951 By this date the Special Committee on Reapportionment had completed its recommendations to the Legislature. Measures recommended for passage were:
(1) Bill 393, A., or Bill 608, S., both incorporating the Rosenberry Plan.
(2) Joint Resolution 30, A., introduced February 20, 1951, by the Wisconsin Legislative Council without a recommendation for passage. This joint resolution provided for a constitutional amendment to apportion the Senate 40% on area and 60% on population, and to continue Assembly apportionment on the basis of population only.
Several other joint resolutions and bills were reported without recommendation or recommending indefinite postponement. All of the latter measures were ultimately rejected by the Legislature.
- 5/11/1951 Joint Resolution 50, S., introduced, providing in general terms for Senate apportionment on an "area and population" basis, permitting Assembly districts to cross county lines, and Senate districts to split Assembly districts. The proposal was adopted (action completed by June 11, 1951) and recommended to the 1953 Legislature for second consideration. In 1953 the proposal was adopted and ratified.
- 6/26/1951 Joint Resolution 30, A., the Legislative Council constitutional amendment proposal for Senate apportionment 40% on area and 60% on population, adopted and recommended to 1953 Legislature for second consideration. In 1953 the proposal was rejected.
- 8/3/1951 The Rosenberry Act, in the form of Bill 608, S., as amended, was signed by the Governor to become Chap. 728, Laws of 1951 (the Assembly version, Bill 393, A., had been rejected on May 22).
The Rosenberry Act consisted of 4 sections:
Sections 1 and 2 apportioned the Senate and Assembly "according to the number of inhabitants" on the basis of the 1950 Census of Population, in conformity with Sec. 3 of Article IV of the Wisconsin Constitution.

8/3/1951
(Cont.)

Section 3, which was made part of the proposal by amendments sponsored by Senators Leverich and Kaftan and by Assemblyman Ludvigsen, provided for an advisory referendum to be held in connection with the general election in November 1952 on the question: whether apportionment of either house of the Wisconsin Legislature should be based on area as well as on population. Further, Section 3 provided Sections 1 and 2 of the act would become operative on January 1, 1954, only if the voters rejected the area apportionment concept in the referendum.

Section 4 of the act was a nonseverability clause stating that the entire act should become inoperative if the courts should hold any one of the preceding 3 sections invalid.

8/7/1951

Chapter 669, Laws of 1951, was published. It provided that until December 31, 1953, the wards of Milwaukee referred to in the apportionment sections of the Wisconsin Statutes were the wards created by the common council in 1931, and that within 90 days after January 1, 1954, and thereafter following each decennial census, the Common Council of the City of Milwaukee readjust the wards to create wards as nearly equal in population, and as compact in area, as possible.

4/8/1952

Decision in State, ex rel. Broughton v. Zimmerman, 261 Wis. 398. The Rosenberry Act had been challenged on the allegation that the Legislature, having once apportioned the Senate and Assembly in accordance with the latest Federal Census, had thereby exhausted its apportionment function and, therefore, could not make the apportionment contingent on the outcome of a referendum. The Wisconsin Supreme Court denied the petition for the following reasons:

(1) "While the Legislature may not delegate its power to make a law, it can make a law to become operative on the happening of a certain contingency ... on which the law makes or intends to make its own actions depend."

(2) On the postponement of the effective date of Chap. 728, Laws of 1951 (January 1, 1954) the court said that the duty of the Legislature to apportion "is a continuing one so that, if the legislature fails to reapportion at its first session after the census, it may do so at a subsequent session."

11/4/1952

Vote on the referendum question: "Shall the constitution be amended to provide for the establishment of either senate or assembly districts on an area as well as population basis?" The proposition was rejected by a vote of 753,092 "NO" to 689,615 "YES".

By the provision of Section 3 of the Rosenberry Act (Chap. 728, Laws of 1951), the outcome of the referendum made the Rosenberry Act operative as of January 1, 1954.

1/20/1953

Joint Resolution 7, A., introduced, providing for second consideration of the constitutional amendment proposed by 1951 SJR 50. By February 18, 1953, the proposal had received its second consideration approval by both houses of the Wisconsin Legislature.

This proposed constitutional amendment provided in general terms for the apportionment of the Senate on an area and population basis, permitted Assembly districts to cross county lines, and permitted the splitting of Assembly districts in the apportionment of the Senate.

Because of the early completion of legislative action on 1953 AJR 7, it was possible to submit the proposed constitutional amendment to the people of Wisconsin for ratification at the 1953 spring election.

4/7/1953

Vote on the referendum question: "Shall sections 3, 4 and 5 of article IV of the constitution be amended so that the legislature shall apportion along town, village or ward lines, the senate districts on the basis of area and population and the assembly districts according to population?" The constitutional amendment submitted by this proposition was ratified by a vote of 433,043 "YES" to 406,133 "NO".

4/29/1953

Bill 632, S., introduced by the Committee on Legislative Procedure. Drafting of this bill had been requested by Senator Rogan; popularly, the law resulting from the enactment of this bill later became known as the "Rogan Act." In implementation of the constitutional amendment the Rogan Act, dealing essentially with the Senate, apportioned the Senate seats approximately 30% on area and 70% on population. The Rogan Act was published on June 6, 1953.

8/4/1953

Chapter 550, Laws of 1953, was a corrective measure to eliminate "errors in the apportionment of assemblymen" in the Assembly apportionment of the Rosenberry Act, "as re-enacted by" the Rogan Act.

10/6/1953

Decision in State, ex rel. Thomson v. Zimmerman, 264 Wis. 644. After the Rogan Act had been enacted in implementation of the 1953 constitutional amendment, Secretary of State Fred Zimmerman let it be known that he would hold the 1954 elections in accordance with the provisions of the Rosenberry Act, and ignore the Rogan Act. The Attorney General brought action before the Wisconsin Supreme Court, attempting to force the Secretary of State to apply the Rogan Act as the later law. The Attorney General lost -- the Supreme Court set aside the 1953 constitutional amendment as invalidly ratified, stating:

(1) Article XII, Sec. 1, of the Wisconsin Constitution requires that amendment be submitted to the people separately. The court held that the April 1953 referendum question submitting the proposed constitutional amendment for ratification had been improper because the language of one question actually contained several separable amendments. Thus, the proposition should have been divided into 2 questions submitted separately.

10/6/1953
(Cont.)

(2) The proposition submitted to the people did not reasonably and fairly comprise, or have reference to, every essential element of the proposed amendment, as required by the ruling of State, ex rel. Ekern v. Zimmerman (1925), 187 Wis. 180.

(3) Inasmuch as the constitutional amendment has been set aside the Rogan Act, which relies on the amendment for its validity, becomes invalid. The invalid Rogan Act did not repeal or supersede the Rosenberry Act.

(4) Even had the constitutional amendment been validly ratified, the 1951 Legislature, enacting the Rosenberry Act, would for the 1950 decade have exhausted the power of the Wisconsin Legislature to make a new legislative apportionment because the Wisconsin Constitution provides for only one apportionment by the Legislature "at their first session" after each federal census.

12/5/1953

Chapter 687, Laws of 1953, was a corrective measure to gear the description of Senate districts to Assembly districts rather than to wards, and to make corrections in the internal descriptions of 2 Assembly districts.

12/24/1953

Senator Clifford Krueger of Merrill had requested a ruling from the Attorney General because, under the Rosenberry Act's Senate apportionment provisions, the people of Lincoln, Dunn and Portage Counties would not be able to vote for state Senators from 1950 until 1956. Voters living in these counties would be represented in the Senate by persons for whom they did not have a chance to vote and this, Sen. Krueger alleged, made the Rosenberry Act unconstitutional.

Attorney General Vernon Thomson replied informally, citing the 1892 Cunningham case (81 Wis. 440, 531) which had held that the Legislature has absolute power to make Senate districts, even though some electors are unable to vote for 6 years.

3/2/1954

Decision in State, ex rel. Smith v. Zimmerman, 266 Wis. 307. In Chap. 550, Laws of 1953, the Legislature had attempted to correct some mistakes which had been found in the Assembly apportionment provisions of the Rosenberry Act (as taken over into the Rogan Act). Also in Chap. 550, Laws of 1953, the Legislature had changed the Assembly district boundaries in Brown County. This latter provision was challenged on the ground that the Brown County provisions constituted another apportionment within the decade covered by the Rosenberry Act, contrary to the one-apportionment-per-federal-census provision of the Wisconsin Constitution as interpreted in State, ex rel. Thomson v. Zimmerman.

The Wisconsin Supreme Court agreed; as far as Brown County was concerned the provisions of Chap. 550, Laws of 1953, were set aside and the Rosenberry Act (Chap. 728, Laws of 1951) remained controlling.

11/27/1955

Little attention had been given during the 1950's to Congressional apportionment--in fact, nothing significant

11/27/1955
(Cont.)

had been done since 1931. In that year, a special session had been called to deal, among other things, with Congressional apportionment and Chap. 28, Laws of the 1931 Special Session, had reduced the number of Wisconsin Congressional districts from 11 to 10 in accordance with the 1930 Census of Population, and had established the Congressional district boundaries in force until 1961.

In 1955, Bill 522, A., was introduced to adjust the boundary between the 4th and 5th Congressional Districts, both wholly in Milwaukee County. The bill passed both houses but met with cries of "Gerrymander" in the press, because it allegedly altered the political balance between the 2 districts by adding the City of Wauwatosa to the 5th District and moving the parts of the 2nd, 3rd, 4th, and 10th Wards now in the 5th District into the 4th Congressional District so that that district would contain all of these wards.

Governor Kohler "pocket vetoed" Bill 522, A., of 1955, since the Legislature was no longer in session. However, he stated his reasons in press releases published November 27, 1955, giving particular weight to the fact that the bill failed to make a state-wide reapportionment of Congressional districts. The Governor recommended that such action be taken by the 1957 Legislature, but this was not done.

11/29/1955

Chapter 665, Laws of 1955, made corrections in the internal descriptions of Assembly districts, occasioned by municipal incorporations in several counties.

11/23/1956

The City of Madison had annexed a substantial area on its west side, and designated this area as the 21st Ward of the City of Madison. Mrs. Glenn M. Wise, Secretary of State, was concerned about the effect of this annexation on Senate and Assembly districts in Dane County; particularly, because the 26th Senate District was described as consisting of "the city of Madison." She asked Attorney General Thomson for a ruling.

The Attorney General ruled that an annexation by a political subdivision of the state "cannot work any alteration of the boundaries of the assembly and senate districts" since not even the Legislature itself could "alter the boundaries of assembly and senate districts as laid out in" the Rosenberry Act "until after the next decennial census."

8/8/1957

The City of La Crosse had changed its ward lines after the Rosenberry apportionment had been made. Chap. 483, Laws of 1957, reconciled the Assembly district descriptions for La Crosse County with these new ward lines. The act did not change the external limits of the Assembly districts in La Crosse County; these remained as they had been provided for in the Rosenberry Act.

6/18/1959

Joint Resolution 12, S., to remove the exclusion of "Indians not taxed" from the population apportionment formula, was adopted by the 1959 Legislature and recommended to the 1961 Legislature for second consideration.

- 6/18/1959 (Cont.) In 1961 the proposal was again adopted, and in November of 1962 the constitutional amendment was ratified.
- 6/20/1959 Chapter 100, Laws of 1959, made corrections in the internal descriptions of Senate and Assembly districts, occasioned by municipal annexations and incorporations.
- 8/18/1959 Joint Resolution 94, S., creating among other things, an interim committee of legislative council on apportionment, was correctly enrolled, having been adopted and concurred in. The committee consisted of 4 Senators, 6 Assemblymen and 5 public members.
- 1/29/1960 Reapportionment Committee of Legislative Council held its first meeting. Other meetings were held 8/4/60, 9/22-23/60, 11/15-16/60, 1/18/61, 4/24/61 and 4/27/61.
- 1/19/1961 The first reapportionment measure of the 1961 session was Joint Resolution 11, S., a "second consideration" of the proposal to delete the words "Indians not taxed" from Section 3 of Article IV of the Constitution. The proposal was later adopted and ratified by the voters at the November 1962 election.
- 1/26/1961 Joint Resolution 13, A. was introduced, providing an alternative method of reapportioning if the Legislature failed to act. It was rejected June 5, 1961. A similar Senate proposal, Jt. Res. 38, S., was introduced February 23, 1961 and rejected March 28, 1961.
- 2/9/1961 Joint Resolution 24, S. was introduced, freezing the Senate apportionment of 1951 and eliminating the restriction that Assembly districts may not be divided in forming a Senate district. It was rejected on the last day before the January 1962 adjournment.
- 3/21/1961 Milwaukee's Common Council approved a 19-ward plan, each ward containing approximately 1% of Wisconsin's 1960 population, to go into effect when the State Legislature reapportions the Assembly (Ordinance 730). The contingency was later removed; Ordinance 730 will control the 1964 municipal elections in Milwaukee.
- 4/13/1961 First 1961 reapportionment bill (Bill 578, A.) introduced by Assemblyman Pommerening, to apportion the Senate and Assembly seats. The bill was returned to author in the mass killing at the end of the session on January 10, 1962.
- 4/18/61 Joint Resolution 85, A. was introduced, increasing the maximum number of members of the Assembly to 110. It was returned to the author on January 10, 1962, at the end of the session.
- 4/27/1961 Reapportionment Committee of Legislative Council ended its meetings. In its final meeting, the committee

- 4/27/1961
(Cont.) adopted proposals for Congressional, Senate and Assembly apportionment plans by a vote of 5 "for" and 3 "against" adoption, with 7 abstaining. The Legislative Council did not, however, act on the committee proposals, and they could therefore not be introduced as council bills.
- 5/9,10/1961 Bills 643, S. and 645, A., providing for the apportionment of the Senate and Assembly were introduced. These were identical versions of the bill that the Legislative Council committee approved, but the council did not endorse. They were then introduced in both houses by individual legislators. Bill 645, A., was indefinitely postponed July 25 but Bill 643, S., was not indefinitely postponed until January 12, 1962, the last day of the session before the January 1962 adjournment.
Bills 642, S. and 646, A., reapportioning Milwaukee City, were introduced as companion bills at the same time and were both killed just before the January 1962 adjournment.
Bill 647, A., providing for Congressional reapportionment was also introduced at this time. It was returned to the author on January 10, 1962.
- 6/5/1961 Joint Resolution 100, A. was introduced, relating to the apportionment of the Assembly. It would have given each county at least one Assemblyman, no county more than 10% of the total and no city or village more than 50% of the county representation. It was returned to the author prior to the January 1962 adjournment.
- 7/17/1961 Bill 734, S., the Leonard Bill, providing for reapportionment of the Senate and Assembly, was introduced. This was the third basic proposal. It was indefinitely postponed on January 12, 1962 just before adjournment.
- 11/7/1961 The Attorney General sent a letter to each member of the Wisconsin Legislature, advising the Senators and Assemblymen of their constitutional duty to reapportion. "If the 1961 Legislature shall fail to do so before its sine die adjournment, it is my duty to call this matter to the attention of our Supreme Court."
- 11/16/1961 Bill 778, S., which corrected existing apportionment statutes to incorporate the newly created Menominee County was introduced. It became Chap. 679, Laws of 1961, effective February 17, 1962. The act placed all of Menominee County into the Congressional, Senate and Assembly districts that contain Shawano County.
- 11/28/1961 Public hearing on apportionment bills before the Senate Governmental and Veterans Affairs Committee. Newspaper reports relate that "reporters, committee members, and onlooking legislators nearly outnumbered members of the public ... this probably indicated a general public apathy toward legislative reapportionment" (Wis. State Journal, 11/29/61), and that "the League of Women Voters was the only non-partisan organization to appear" (Cap. Times, 11/29/61).

1/10/1962 Attorney General ruled that Governor could call Legislature into special session although Legislature is in session but adjourned.

1/12/1962 Legislature adjourned until one hour prior to the convening of the 1963 Legislature (1/9/63) without making a general reapportionment of Congressional, Senate and Assembly districts. The Legislature adopted, prior to adjournment, 2 minor items concerning apportionment: (1) a constitutional amendment, to be submitted to the voters in the 1962 November election, to eliminate the obsolete "Indians not taxed" exclusion from the apportionment formula, and (2) a law to place all of the newly created Menominee County into the districts containing Shawano County.

The resolution of adjournment provided that the Legislature could reconvene itself before January 9, 1963 upon a petition of a majority of each house.

3/8/1962 The Wisconsin Supreme Court denied petitions by the Attorney General to assume original jurisdiction in suits to force reapportionment of Congressional, Senate and Assembly districts.

The Attorney General had petitioned for 2 separate law suits. The first cited as defendants the "Senate and Assembly of the Wisconsin Legislature." This petition was denied without further comment.

The second petition cited the Secretary of State as defendant, and petitioned for an injunction and mandamus regarding the calling of the 1962 general elections under the existing apportionment law. This petition was also denied; however, the Supreme Court added to its order the provision that "the State of Wisconsin upon the relation of the Attorney General may submit a new application after June 1, 1963."

3/26/1962 A landmark decision in the field of apportionment was handed down by the U.S. Supreme Court in the case of Baker v. Carr, 369 U.S. 186. A group of Tennessee residents had contended that they were denied equal protection of the laws, under the 14th Amendment to the U.S. Constitution, because the Tennessee General Assembly had not reapportioned since 1901. Petitioners argued that population changes since 1901 had made the existing apportionment unrepresentative in the 1960's, and that they had suffered injury "by virtue of the debasement of their votes."

The U.S. Supreme Court distinguished a series of decisions, headed by the 1945 decision of Colegrove v. Green (328 U.S. 549) which previously had held that apportionment was essentially a legislative function and that the courts would not attempt to penetrate into the "political thicket."

The Baker case held:

(1) Federal courts possess jurisdiction to hear apportionment cases.

(2) A justiciable or "proper" cause of action is present in apportionment cases, entitling petitioners to hearing and appropriate relief.

3/26/1962 (3) Aggrieved petitioners have standing to challenge
(Cont.) apportionment statutes in the courts.

(4) Upon complaint by aggrieved petitioners, federal courts stand ready to take action to protect individual rights guaranteed by the U.S. Constitution where state courts fail to give appropriate relief.

(5) In balancing the equities, "invidious discrimination" can be used as a standard upon which the necessity for relief shall be measured.

3/28/1962 The Attorney General sent letters to all Wisconsin legislators calling their attention to the Baker v. Carr decision. The Attorney General stated: "I suggest to you it is now appropriate to put the machinery in motion to recall the State Legislature so it can fulfill its constitutional mandate to make a new apportionment of the state in accordance with the 1960 decennial census and thereby avoid the necessity for the consideration of this subject by any other agency or tribunal, whether state or federal."

3/30/1962 The Wisconsin Supreme Court rejected a new motion by the Attorney General to force the Legislature to reapportion.

4/2/1962 The Governor, in a press release, announced: "I see no purpose to calling a special session unless the Republicans who control both houses of the legislature clearly demonstrate that they are ready to act ... If they are now willing to reapportion they should caucus and so advise me."

4/13/1962 The Attorney General filed suit in federal court to force apportionment.
The complaint alleged that the Wisconsin Legislature adjourned on January 12, 1962 without fulfilling its constitutional mandate to apportion and district the Legislature. The complaint asked the court to restrain the defendant, Secretary of State, from conducting elections under the existing apportionment. (Civil Action No. 3540, Western District of Wisconsin, State of Wisconsin et al. v. Robert C. Zimmerman)

4/17/1962 Assemblyman Nowakowski of Milwaukee, who had circularized all members of the Legislature on April 6, 1962, to reconvene the Legislature under the provisions of 1961 AJR 147, announced that he received only 38 replies. Of the 38 replies, 35 favored reconvening and 3 were opposed to it.

4/17/1962 The Chief Justice of the Federal Court of Appeals at Chicago named a panel of 3 judges to hear the suit brought by the Attorney General to force Wisconsin apportionment.

5/11/1962 Two of the 3 Federal Judges questioned the right of their court to entertain the suit brought by the Attorney General, since the Baker v. Carr ruling appears to require that suit be brought by individuals whose rights under the U.S. Constitution have been infringed.

5/23/1962

The 3-judge Federal Court held that it does have jurisdiction in the apportionment suit before it: "A Federal Court is and should be most reluctant to enter order or directives in a case of this kind, but the United States Supreme Court has held that we have jurisdiction of such matter and if the Legislature fails to carry out its constitutional obligations we conceive it to be our clear duty to proceed."

5/24/1962

The Attorney General amended his reapportionment suit, naming 5 Waukesha County taxpayers as co-petitioners.

6/4/1962

The Wisconsin Legislative Council appointed a 19-member apportionment committee to report to the 1963 Legislature. The first meeting of the committee was scheduled to be held June 21, 1962 at Stevens Point, but was later cancelled because the Legislature had gone back into session.

6/5/1962

Attorney General advised Governor by letter that a special session called by Governor could consider only the subject specified in the call.

6/13/1962

On June 12 the Secretary of State moved that in the suit before the Federal Court the state be dropped as plaintiff, Attorney General dropped as attorney of record and that appointment of a master was beyond the scope of the court's power. All denied.

Court requested that Legislature convene within 10 days to enact fair and constitutional apportionment law.

6/15/1962

Governor Nelson called a special session to begin June 18 "to consider and act upon the apportioning and districting anew of members of the senate and assembly according to the number of inhabitants ..." and "to consider and act upon the redivision of the ten congressional districts according to the number of inhabitants within the purview of the equal protection clause of the 14th Amendment to the U.S. Constitution as set forth in Baker v. Carr, 82 S. Ct. 691 (1962)."

6/18/1962

Special session of the Legislature, scheduled to convene at 11 a.m.

Petitions to reconvene pursuant to 1961 AJR 147 were circulated among the Senators and Assemblymen and received the required number of signatures. The Legislature reconvened accordingly; the time of reconvening coincided with the time set by the Governor for the convening of the special session on apportionment.

6/19/1962

Joint Resolution 115, S., introduced, authorizing the Legislature to appoint counsel to represent its interest in the reapportionment suit. It was concurred in. On June 20, Bill 816, S., was introduced providing a sum sufficient to compensate such counsel. It became Chap. 689, Laws of 1961.

6/19/1962
(Cont.)

Bills 770, A.; 771, A.; 772, A., relating to apportionment of the Assembly and Senate districts and Bill 773, A., relating to Congressional reapportionment and Bill 774, A., relating to the dates involved in the nomination of candidates, were introduced in the Assembly. Bills 771, A. and 773, A. were adversely disposed of by returning to author before July 31, 1962; Bills 770, A., 772, A., 774, A. were adversely disposed of on December 28, 1962.

Also introduced on this day were: Jt. Res. 152, A., providing for area and population apportionment of the Senate, Jt. Res. 153, A., removing the county line restriction on the Assembly districts, Jt. Res. 154, A. doing the same thing. Joint Resolution 155, A., prohibiting any county from having more than 20% of the total Assemblymen and Jt. Res. 156, A., prohibiting any county from having more than 20% of the total number of Senators. All 5 joint resolutions were ultimately rejected.

6/19/1962

Attorney General held Legislature cannot call itself back into (general) session during special session because: "The calling of itself back into session is not within the special purposes for which the legislature was convened by the Governor."

6/20/1962

Bill 814, S., relating to Congressional apportionment and Bill 815, S., relating to apportionment of the Senate and Assembly, introduced. On the same day Bills 809, S.; 810, S.; 811, S.; 812, S. and 813, S., also relating to apportionment, were introduced and referred to the Senate Judiciary Committee. Joint Resolution 116, S., providing for apportionment of Senate on "60% population, 40% area" basis introduced. The Senate adopted the proposal but the Assembly nonconcurred on December 28, 1962. Another joint resolution, 117, S., freezing the Senate apportionment, was refused engrossment.

6/25/1962

Milwaukee City Council took action to put into effect at once the 19-ward plan of Ordinance 730 which had received preliminary approval, contingent upon a reapportionment by the Legislature in March 1961.

6/25/1962

Public hearings on Bill 814, S, relating to Congressional apportionment, and Bill 815, S., relating to legislative apportionment, held this day and June 26.

6/27/1962

Assembly killed or tabled several proposed constitutional amendments to introduce "area" as an apportionment factor (AJR 152), or to limit the maximum Senate (AJR 156) or Assembly (AJR 155) seats which a county may be apportioned to 20% of the total seats in that house.

The 3-judge federal district court announced that unless the Legislature passes "a fair and constitutional" apportionment law by 5 p.m., July 2, 1962, it would appoint a "special master" to start work on apportionment.

6/28/1962

Legislature completed action on Bill 814, S., to reapportion Congressional districts.

- 6/29/1962 Legislature completed action on Bill 815, S., to reapportion state Senate and Assembly districts.
- 6/29/1962 Senate requested the Attorney General for an opinion regarding the legality of a senatorial district in which the component counties touch only at a corner, like 2 black squares on a chess board.
- 7/2/1962 The Attorney General replied to the Senate inquiry that 2 counties touching only at a corner could not be considered contiguous for the purpose of legislative apportionment.
- 7/2/1962 The Governor vetoed Bills 814, S. and 815, S., of 1961, passed by the reconvened Legislature to apportion the Congressional districts of Wisconsin, and the Senate and Assembly, respectively
- 7/2/1962 Senate passed Bills 814, S. and 815, S., by 19 to 8 votes over Governor's veto after the 5 p.m. deadline given the Legislature by the 3-judge federal court.
- 7/3/1962 The Assembly failed to overrule either of the 2 vetoes. A two-thirds vote is required to pass bills over the Governor's veto. The Assembly voted 52 to 39 for passage of vetoed Bill 814, S., and 53 to 39 for passage of vetoed Bill 815, S.
- 7/3/1962 Bill 817, S., introduced to provide a new plan of Congressional apportionment.
- 7/3/1962 The 3-judge federal court appointed former Wisconsin Supreme Court Justice Emmert L. Wingert as special fact-finding master. At the same time, the court directed plaintiffs to deposit \$3,500 within 5 days to be used for master's and court reporter's fees and other costs.
- 7/3/1962 Attorney Francis J. Wilcox of Eau Claire retained by Legislature to represent Legislature's interest in the apportionment controversy.
- 7/5/1962 Federal Master Wingert conferred with Attorney General and attorney for defendant Secretary of State. Public hearing scheduled for July 10.
- 7/8/1962 In a television interview, Senator Leonard questioned the constitutionality, under the Wisconsin Constitution, of the Governor's participation in the apportionment process.
- 7/9/1962 State Treasurer Dena Smith refused to countersign \$3,500 check payable to federal court for reapportionment case fees, on the grounds that "she understood the federal court had ruled that the state had no protectable interest in the reapportionment case" (Milw. Jour. 7/9). Mrs. Smith asked the Governor to appoint an attorney to defend her against the Attorney General.

- 7/9/1962 Senate passed Bill 817, S., for Congressional apportionment.
- 7/10/1962 Assembly rejected Jt. Res. 153, A., which proposed a constitutional amendment to delete the words "county" and "precinct", thus permitting the drawing of Assembly districts along "town" and "ward" lines.
- 7/10/1962 Assembly introduced, and adopted, Jt. Res. 162, A., to provide for apportionment at the 2nd session (rather than the 1st) after the Federal Census. The Senate later concurred and the proposal was recommended to the 1963 Legislature for second consideration.
- 7/10/1962 Federal master held first hearing with Attorney General and attorney for defendant Secretary of State. Noting that the \$3,500 had not been deposited, he was assured by Attorney General that action would be started against State Treasurer to mandamus payment.
- 7/10/1962 Five p.m. was deadline for filing nomination papers for Congress, state executive and legislative offices.
- 7/11/1962 Assembly concurred in Bill 817, S., to provide for Congressional reapportionment.
- 7/11/1962 Bill 818, S., advancing the filing deadline for Congressional candidates, introduced and passed by both houses of the Legislature.
- 7/11/1962 Assembly refused to order to a 3rd reading, and laid aside, Jt. Res. 116, S., providing for Senate apportionment according to a "60% population, 40% area" formula. This joint resolution was killed on December 28, 1962.
- 7/11/1962 Legislature adjourned until July 18, 1962.
- 7/13/1962 Federal master held 2nd public hearing; stated that he failed to find in Wisconsin a "crazy quilt" of apportionment, comparable to that of Tennessee, which had been at issue in Baker v. Carr.
- 7/17/1962 Governor vetoed Bills 817, S., providing for Congressional apportionment, and Bill 818, S., extending the filing deadline for Congressional candidates.
- 7/18/1962 Legislature returned. Governor sent special message telling legislators to go home; both houses refused to have the message read.
- 7/18/1962 Senate overruled Governor's veto of Congressional apportionment Bill 817, S., by a vote of 19 to 9. The Assembly, voting 47 to 37 to overrule the veto, failed to obtain the necessary two-thirds majority and the measure died. The veto of Bill 818, S., relating to the filing deadlines for Congressional candidates taken up on December 28, 1962, and sustained.

7/19/1962 Senate introduced, and passed 19 to 10, Jt. Res. 125, S., apportioning Senate and Assembly districts by resolution rather than by bill. A joint resolution is not subject to review by the Governor. The Assembly nonconcurred on December 28, 1962.

7/19/1962 Senate concurred in Jt. Res. 162, A., to provide for legislative apportionment at the 2nd session (rather than the 1st) following the federal census. The proposal was recommended to the 1963 Legislature for 2nd consideration.

7/19/1962 Federal master held 3rd public hearing.

7/20/1962 Federal master concluded public hearings.

7/25/1962 Federal Master Wingert filed his preliminary report, stating:
"I have come to the conclusion (1) that the existing apportionment of congressional and legislative seats in Wisconsin, viewed in the light of the pertinent circumstance disclosed by the record, does not presently deny to plaintiffs any rights guaranteed to them by the Constitution of the United States; and (2) be that as it may, in the circumstances now existing, including the difficulties which would be involved in effectuating relief at the 1962 primary and general election, the plaintiffs have not made a case for equitable relief at this time."

The master then recommended dismissal of the action "without prejudice" for a similar suit to be commenced after 11/1/63 should the 1963 Legislature fail to reapportion according to the 1960 census.

7/25/1962 Assembly sustained the Governor's veto of Congressional apportionment Bill 817, S. Legislature adjourned until July 31, 1962.

7/31/1962 Legislature returned, provided for the appointment of a new interim committee on apportionment, and adjourned until January 9, 1963. (The adjournment resolution provided that the Legislature may be reconvened on a petition of a majority of the members in each of the 2 houses.) The President of the Senate appointed to the Joint Interim Committee on Reapportionment Senators Busby, Donnelly, Hollander, Knowles, Krueger, Leverich, McParland and Morton. (See entry of August 29 for Assembly appointees).

When it adjourned, the Legislature had not taken final action on a number of measures relating to apportionment, including proposals to apportion within the present constitutional requirements, and proposals to change the apportionment provisions of the Constitution (all were killed on December 28, 1962).

Proposals to apportion within the present constitutional requirements were:

809, S. Relating to dates involved in nominations for Congress, state Senate and Assembly.
(In Senate Judiciary)

7/31/1962
(Cont.)

- 810,S. Relating to identification of Milwaukee wards to be used in reapportionment. (In Senate Judiciary)
- 811,S. Relating to apportionment of Congressional districts. (In Senate Judiciary)
- 812,S. Relating to apportionment of state Senate and Assembly districts. (In Senate Judiciary)
- 813,S. Relating to apportionment of state Senate and Assembly districts. (In Senate Judiciary)
- 770,A. Relating to apportionment of Assembly and Senate districts. (On Engrossing Committee report. Not yet read)
- 772,A. Relating to apportionment of Assembly and Senate districts. (Laid on table in Assembly)
- 774,A. Relating to dates involved in nominations for candidates for Congress, state Senate and Assembly. (Laid on table in Assembly)

Constitutional amendments on which final action was not taken could nevertheless be presumed "dead" because the Constitution requires 3-months publication preceding the election of the next Legislature of amendments adopted on "first consideration"; these measures were:

- Jt. Res. 116,S. Amending Constitution to apportion Senate on area and population basis. (In Assembly)
- Jt. Res. 125,S. Apportionment of Senate and Assembly by joint resolution. (In Assembly)
- Jt. Res. 127,S. Adjournment. (Laid aside in Senate)
- Jt. Res. 152,A. Amend Constitution to district Senate on area and population and Assembly on population basis. (Laid on table)
- Jt. Res. 154,A. Amend Constitution to eliminate requirement that Assembly districts follow county or "precinct" lines. (Laid on table) (Jt.Res. 153,A. on same subject was rejected)
- Jt. Res. 156,A. Amend Constitution to prevent one county from having more than 20% of all senators. (Laid on table)

In addition, the Legislature could still act on the Governor's veto of Bill 818, S., of 1961, relating to the dates involved in the nomination of candidates for Congress. This measure had been an integral part of the proposal for Congressional reapportionment on which the veto was sustained (see entry of July 25, 1962).

8/1/1962

Federal Master Emmert L. Wingert filed the detailed report on his "findings of fact and conclusions of law." Noting certain inequalities in districting in Wisconsin, Special Master Wingert said:

"The inequalities of population of the senatorial, assembly and congressional districts in Wisconsin do not give rise to invidious discrimination against the plaintiffs or others to similarly situated ...

"Such inequalities in population are not the result of arbitrary or capricious action, nor are they without rational justification."

8/1/1962
(Cont.)

Wingert then recommended that Attorney General John Reynolds' suit be dismissed without prejudice and that the plaintiffs be allowed to commence the suit again after November 1, 1963 if the Legislature failed to reapportion.

8/2/1962

The 3-judge federal court warned the Attorney General that, unless the \$3,500 was deposited, they would not take any action on the findings of the special master, or on the motions made by both parties to the suit.

8/3/1962

The Attorney General filed suit in the state circuit court in Madison mandamusing the State Treasurer to sign the \$3,500 check to cover court costs.

8/6/1962

Federal Master Emmert L. Wingert filed a summary of his findings, stating that the Attorney General should look "primarily to Wisconsin courts" to force legislative apportionment.

8/9/1962

Federal master submitted bills, for the costs of the hearings conducted by him, totaling \$5,237.

8/14/1962

Circuit court upheld State Treasurer in refusing to sign \$3,500 check issued by Attorney General to cover costs of proceedings before federal court.

8/15/1962

The 3-judge federal court concurred in the opinion of the special master that redistricting could no longer be accomplished this year because of the imminence of the September primaries. The suit was dismissed with costs--to be assessed against plaintiffs--but without prejudice to a similar suit seeking relief after August 1, 1963, if the state has not been redistricted by that time in accordance with the 1960 census. The decision was summarized in the National Civic Review of Oct. 1962 (pp. 502-503):

"A three-judge federal court in Wisconsin in the case of State of Wisconsin v. Zimmerman ruled on August 14 that legislative redistricting could not be accomplished this year; but that if the legislature neglects or refuses to reapportion within a reasonable time after convening in 1963, an appeal to the courts will be permissible.

"A special master appointed by the court to report on the reapportionment problem had recommended no action and said invidious discrimination had not been proven. The court did not pass upon this point. It called attention to districts in Milwaukee and Waukesha Counties where the population varied from 176 to 221 per cent of the ideal district figure of 39,528; but noted that, on the whole, legislative districting in Wisconsin is not as discriminatory as it was in Tennessee, as brought out in the historic case of Baker v. Carr this year. The court said, with reference to the decision in that case, 'The Supreme Court gave us very little guidance as to just what constitutes invidious discrimination in a apportionment suit!'"

- 8/18/1962 Attorney General filed notice of appeal to Wisconsin Supreme Court from ruling of circuit court on nonpayment of the \$3,500 check.
- 8/23/1962 The 3-judge federal court announced that the 5 Waukesha County co-plaintiffs, and the Attorney General, must pay the costs of the reapportionment suit. The court denied the Secretary of State's motion to dismiss the state as a plaintiff, and held that any one of the 6 plaintiffs (the state or one of the 5 Waukesha citizens) could assume the entire cost of the proceedings.
- 8/25/1962 Total costs of the apportionment controversy before the courts were estimated by the "Wisconsin State Journal" to be in excess of \$16,000, including the bills submitted by the special master (\$5,237), by the attorney for the Secretary of State (\$9,240), and by the attorney defending the State Treasurer in the \$3,500 check controversy (\$1,084).
- 8/29/1962 The Speaker appointed 11 Assemblymen to the Joint Interim Committee on Reapportionment created by Jt. Res. 165, A. to report at the final session of the 1961 Legislature on January 9, 1963. The appointees were Assemblymen Alfonsi, Barland, Bidwell, Clemens, Haase, Huber, Hutnik, Molinaro, Pommerening, Steiger and Ward. (See entry of July 31 for Senate appointees)
- 9/26/1962 State Treasurer Dena Smith refused signature of a second check issued by the Attorney General's office in connection with the proceedings before the 3-judge federal court. This check, for \$507, was to pay the court reporter for a transcript of the hearings before the special master.
- 11/6/1962 Constitutional amendment, to remove "Indians not taxed" exclusion from population apportionment formula, ratified by a vote of 631,296 "YES" to 259,557 "NO".
- 11/30/1962 Assembly Republicans, caucusing in Madison, chose their leaders for the 1963 Session. It was decided to circulate petitions to reconvene the 1961 Legislature on December 27, 1962 for a brief session to wind up pending business.
- 12/3/1962 Senate Republicans, caucusing in Wisconsin Rapids, chose their leaders for the 1963 Session. The meeting agreed to the proposed session date of December 27, 1962.
- 12/4/1962 Lieutenant Governor Warren Knowles announced that a petition with the necessary number of signatures, to call the Legislature back into session on December 27, 1962, had been filed with the Senate Chief Clerk.
- 12/10/1962 Assembly Speaker David Blanchard announced that a majority of the members of the Assembly had petitioned to reconvene the Legislature December 27, 1962.

12/23/1962

Assembly Speaker David Blanchard died. His burial being scheduled for December 27, only a small number of legislators attended the legislative session called for that day, and all business was postponed until December 28, 1962.

12/28/1962

1961 Legislature reconvened, adversely disposed of all pending measures (see entry of July 31, 1962, for pending measures relating to apportionment) and adjourned until January 9, 1963.

12/31/1962

No meetings have been held, or scheduled, by the Joint Interim Committee on Reapportionment appointed July 31, 1962 (Senate) and August 29, 1962 (Assembly).