Constitutional Law—Referendum on Act Calling Conventions to Ratify Amendments to the Federal Constitution—[Ohio].—An action in prohibition and mandamus was brought to prevent the Ohio Secretary of State from submitting to a referendum an act of the Ohio General Assembly providing for the calling of conventions to pass on amendments to the Federal Constitution. *Held*, one justice dissenting, the act setting up machinery for the assembling of a convention was not within the referendum provision of the Ohio constitution. *State ex rel. Donnelly v. Myers, Secretary of State*, 186 N.E. 918 (Ohio 1933).

In *Hawke v. Smith*, 253 U.S. 221, 40 Sup. Ct. 495, 64 L. Ed. 871 (1919) approved in *Nat. Prohibition Cases*, 253 U.S. 350, 40 Sup. Ct. 486, 64 L. Ed. 946 (1919); *Leser v. Garnett*, 258 U.S. 130, 42 Sup. Ct. 217, 66 L. Ed. 499 (1921), upon which the Ohio court relied, it was decided that there could be no referendum on a state legislature's ratification of an amendment to the Federal Constitution. Since *Hawke v. Smith*, such statements as "ratifying a proposed amendment to the Federal Constitution . . . . is a federal function derived from the Federal Constitution and it transcends any limitation sought to be imposed by the people of a state" have been made by the courts suggesting that by necessity the state constitutional provisions cannot control in the federal amending process. *Leser v. Garnett*, 258 U.S. 130, 137, 42 Sup. Ct. 217, 66 L. Ed. 505 (1921). But the court in the *Hawke* case in holding that ratification is a federal function recognized that it is a federal function delegated to the state for performance. See Dodd, Amending the Federal Constitution, 30 Yale 321, 344 (1921); Frierson, Amending the Constitution of the U.S., 33 Harv. L. Rev. 659 (1920). The decisive point in the *Hawke* case was the court's interpretation that "legislatures" in Art. V meant the "ordinary" legislative body of the states and not the law-making power, thus excluding the people acting through the referendum. See Wm. H. Taft, Can Ratification of an Amendment Be Made to Depend on a Referendum?, 29 Yale L. Jour. 821, 822 (1920); 33 Harv. L. Rev. 287 (1919). But "legislature" as used in Art. I, § 4, is held to mean the law-making power so as to include the referendum and participation of the governor, provided for by the state constitution, as to acts redistricting a state for congressional purposes. *Davis v. Hildebrandt*, 241 U.S. 565, 569, 38 Sup. Ct. 708, 60 L. Ed. 1172 (1916); *Smiley v. Holm*, 285 U.S. 355, 52 Sup. Ct. 397, 76 L. Ed. 795 (1932); *State ex rel. Schrader v. Polley*, 26 S.D. 5, 127 N.W. 848 (1910). Also, as to a more liberal interpretation of "legislature" than that given in the *Hawke* case, see 2 Farrand, Records of the Federal Constitution (1911), 152, 159, 467, 558, for the possible intent of the framers of the Constitution.

The decision in the present case rests on the court's analysis that since according to *Hawke v. Smith* the legislative ratification of a federal amendment is not subject to the referendum provision of the state constitution, then by analogy there can be no referendum on ratification by a convention, and that "by a parity of reasoning" there can be no referendum on an act providing the method of electing the convention. But the analogy provides a strong argument for a result contrary to the present case, for the method of electing representatives to the General Assembly is subject to referendum, as the dissenting judge pointed out. The answer that the convention, unlike the legislature, is called to consider a particular question and then adjourns, and thus should be treated differently, is not entirely satisfactory and indicates the analogy is somewhat defective. Moreover it is not clear that by a "parity of reasoning" the mode of calling a convention must be treated in the same manner as ratification by the convention itself, since the calling of the convention is not limited by any express pro-

vision of Article V. Furthermore, calling a constitutional convention has always been regarded as a type of fundamental legislation and since 1850, with comparatively few exceptions, has been submitted to the people, *Bennett v. Jackson*, 186 Ind. 533, 116 N.E. 921 (1917); 27 Yale L. Jour. 132 (1917), and in the absence of contrary provision, it would seem that policy should prevail.

JOSEPH T. ZOLINE

Libel and Slander—Intra-corporate Communication as Privileged Publication or as No Publication—[Federal].—The assistant general manager of the defendant corporation communicated to defendant's general manager and superintendent an alleged libel. Defendant demurred to the complaint asserting there had been no publication. The district court sustained the demurrer. *Held*, judgment affirmed, the court pointing out that lack of publication foreclosed any issue of privilege and malice. *Briggs v. Atlantic Coast R. Co.*, 66 F. (2d) 87 (C.C.A. 5th 1933).

Dictation by an individual to a stenographer and typing by the stenographer is now generally considered to be publication of a libel. *Nelson v. Whittier*, 272 Fed. 135 (1921); *Ferdon v. Dickens*, 161 Ala. 181, 49 So. 888 (1909); *Gambill v. Schooley*, 93 Md. 48, 48 Atl. 730, 52 L.R.A. 87 (1909); *Ostrowe v. Lee*, 256 N.Y. 36, 175 N.E. 505 (1931). But dictation by a corporate employee to a fellow-employee is not a publication, the process of writing the letter being but "one act" of the corporation. *Cartwright-Caps Co. v. Fischel & Kaufman*, 113 Miss. 359, 74 So. 278 (1917); *Owen v. Ogilvie*, 32 App. Div. 465, 53 N.Y.S. 1033 (1898); *Wells v. Belstrat Hotel Corp.*, 212 App. Div. 366, 208 N.Y.S. 625 (1925); *Freeman v. Dayton Scale Co.*, 159 Tenn. 413, 19 S.W. (2d) 255 (1929); *Chalkey v. Great Atlantic Coast Line R. Co.*, 150 Va. 301, 143 S.E. 631 (1928); *contra*, *Berry v. City of N.Y. Ins. Co.*, 210 Ala. 369, 98 So. 290 (1928); *Edmondson v. Birch & Co.*, [1907] 1 K.B. 371; *Osborn v. Thomas Boulter & Son*, [1930] 2 K.B. 226. When the communication is not a part of "one act," as when the letter is sent from one officer of the corporation to another, the dictum in the New York case of *Owen v. Ogilvie*, 32 App. Div. 465, 53 N.Y.S. 1033 (1898) that such *is* publication, may be followed as was done by the highest court of New York. *Kennedy v. James Butler Inc.*, 245 N.Y. 204, 156 N.E. 666 (1927). Other cases hold that even here there is no publication. *Central of Ga. R. Co. v. Jones*, 18 Ga. App. 414, 89 S.E. 426 (1916); *George v. Ga. Power Co.*, 43 Ga. App. 596, 159 S.E. 756 (1931); *Prins v. Holland-N.A. Mortgage Co.*, 117 Wash. 206, 181 Pac. 680, 5 A.L.R. 451 (1919). These cases *contra* to the *Kennedy* case apply the more consistent theory and deny that any communication between corporate employees constitutes a publication, whether considered "one act" or not, for since a corporation can act only through agents, no third party is involved, it being analogous to a person uttering a libel to himself. See *Prins v. Holland-N.A. Mortgage Co.*, 107 Wash. 206, 181 Pa. 680, 5 A.L.R. 451 (1919). Such a theory supports the present case. But upon this corporate fiction notion, the unsatisfactory but logical result might well be reached that as against the corporate employee sued as an individual there might be a publication, but not as against the corporation as defendant.

A more satisfactory and equally consistent theory is that of considering all intra-corporate communications, whether deemed to be "one act" or not, as published, thus introducing the privilege issue. The principle has been applied in the telegraph company cases. *Western U. Tel. Co. v. Brown*, 294 Fed. 167 (C.C.A. 8th 1923); *Peterson v.*