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An Act to Provide for Fluoridation of Water Supply (City of Portland Measure 51); Qualifications for County Coroners and Surveyors (State Measure 4); Cigarette Tax (State Measure 6)

City Club of Portland (Portland, Or.)

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REPORT
ON
AN ACT TO PROVIDE
FOR FLUORIDATION OF WATER SUPPLY

AN ACT TO AMEND THE PORTLAND CITY CHARTER to authorize and direct Bureau of Water Works as part of its operation to add fluoride to the water in manner and amount according to rules and standards of the State Board of Health and approved by the City Bureau of Health.

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND:

Since the City Club in March, 1955, adopted the report of this Committee entitled "Fluoridation of the Public Water Supply," evidence continues to accumulate validating the recommendations of the Committee which the City Club as a whole approved.

In this interim, no valid evidence has appeared indicating that fluoride in the amount recommended ⁽¹⁾ was harmful. On the contrary, among the twenty-two million people now consuming fluoridated water, there is no report of any harmful effects.

The medical and dental associations maintain their endorsements; all scientific societies previously endorsing fluoridation continue to do so. Standard text books used in medical and dental schools continue to point out the value of fluoridation and emphasize freedom from hazard when fluoride is used in the amount recommended by the City Club report.

The charter amendment before the voters in November, 1956, is simple, direct and clear. The standards of the State Board of Health as approved by the City Bureau of Health are those previously approved by the scientific organization mentioned in the original report and as stated in the original report ⁽²⁾

RECOMMENDATION

Therefore, your Committee re-endorses its original stand in favor of fluoridation and recommends that the City Club go on record in favor of this charter amendment and urges a vote of 51 Yes.

Respectfully submitted,

Dr. Frank Queen

Dr. Guy Woods

Dr. Arthur Scott

R. Franklin Hart, Chairman

(1) One part fluoride per one million parts water.

(2) Oregon State Board of Health Fluoridation regulations.

When it has been determined that the public water supply of a community contains fluoride compounds in insufficient amounts to aid in prevention in dental caries in children, fluoride compounds may be added to the water supply in accordance with the regulations contained herein:

1. The fluoride ion level to be maintained in the water distributed shall be 1 ppm. with a maximum of 1.5 ppm. The feeding apparatus shall have an accuracy tolerance of not more than 5% and shall be of a type which has been proven to be satisfactory and for which spare parts and service are available.

2. Special precautions shall be taken to protect the operators from inhaling fluoride dust when charging the hoppers of the feeders. Each operator who handles fluoride shall be equipped with his individual respirator of a type approved by the U. S. Bureau of Mines for protection against toxic dust. Respiratory equipment and replacement units shall be stored in approved containers when not in use.

3. Prior to the beginning of the application of fluoride compounds to a water supply the city or other operating authority must first:

- a. Furnish the State Board of Health the written approval of the local health officer.
- b. Take appropriate official action authorizing the application of fluoride compounds to the water supply and make such action a matter of record, a certified copy of which shall be forwarded to the State Board of Health.
- c. Receive approval of the State Board of Health for plans and specifications for the equipment to be used, showing its location and housing, and including laboratory equipment and protective devices for the operating personnel.
- d. Prepare and submit for the approval of the State Board of Health, specifications for the chemical compound to be used.
- e. Submit the name, qualifications, and training record of the person in direct charge of the fluoridation process and receive approval of his qualifications.
- f. Submit a report of a recent chemical analysis of the water supply, if required by the State Board of Health.
- g. Receive approval of the equipment as installed.

4. While the equipment is in operation, the responsible operator shall:

- a. Maintain the feeding apparatus in good working order.
- b. Collect and make fluoride determinations by approved methods on:
 1. Sample of unfluoridated water as often as required by the State Board of Health.
 2. Daily samples of fluoridated water.
- c. Keep a daily record of amounts of fluoride application and results of fluoride determinations. A copy of this record shall be furnished to the State Board of Health monthly or oftener if requested.
- d. Submit a sample of water to the State Board of Health for analysis as often as the State Board of Health may require.
- e. Maintain and use an approved dust respirator while exposed to the dust of the dry fluoride compounds.

5. Failure to carry out thoroughly and effectively the requirements governing the application of compounds containing fluorine shall be sufficient cause for the withdrawal of the authorization granted by the State Board of Health for the addition of such chemicals to a public water supply.

Approved October 4, 1956, by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 8, 1956, and ordered printed and submitted to the membership for discussion and action.

REPORT
ON
QUALIFICATIONS FOR
COUNTY CORONERS AND SURVEYORS

PURPOSE: To amend Oregon Constitution by authorizing legislature to prescribe qualifications for office of county coroner and county surveyor. No. 4 Yes..... No.....

TO THE BOARD OF GOVERNORS
THE CITY CLUB OF PORTLAND:

Your Committee has been assigned the task of investigating and reporting on the state ballot measure that would permit the state legislature to set up qualifications for the offices of county coroners and county surveyors, and, according to the full text of the proposed amendment your Committee has studied, permit the legislature to make these offices appointive rather than elective.

HISTORY

In Oregon, the offices of coroner and surveyor as well as those of sheriff, county clerk and treasurer, are required by the State Constitution to be elected in each county. The only requirement found in the Constitution relative to the qualification of holders of these offices is that they be electors of the county in which they are elected. In 1949 the legislature passed a law requiring that eligibility for the office of county surveyor be limited to registered engineers and registered surveyors.

This law was held to be unconstitutional by the Oregon Supreme Court in the case of *Powers v. Welch*, (1953). Peter Welch who did not have the qualifications required by the 1949 law was elected as Multnomah County Surveyor in 1952 and Claude Powers, the former surveyor, brought action to oust him. The Supreme Court held that the qualifications set by the Constitution were the only qualifications that could be imposed and upheld Welch's position. Thus, it became necessary for the organized engineers, the prime supporters of the qualifications for surveyors, to sponsor a constitutional amendment.

During the 1955 legislative session, the legislature was persuaded, by persons who alleged that some funeral directors had abused the office of coroner, to include the coroners in the proposed amendment, with the object in mind of limiting the holders of this office to members of the healing arts, if not solely to medical doctors.

The proposed amendment, when read in context, apparently gives the legislature the right to make these offices appointive should it desire to do so. Your Committee notes that the ballot title under which this measure will appear before the electorate indicates only that the constitution will be amended to provide for the legislature to set the qualifications for these two offices. Nothing is stated in the ballot title about the fact that this amendment would permit the legislature to make these offices appointive. Your Committee has studied the records of the House Judiciary Committee which reported this bill out favorably, and it appears that numerous witness referred—without the dissent from any

of the other witnesses or the legislators involved—to the fact that the legislature would have this power in the event that this amendment did pass.

Under these circumstances, your Committee is satisfied that the Constitution after amendment can and should be interpreted as permitting the legislature to make these positions appointive.

The effect of not including this additional power in the ballot title leaves some question as to the legislature's right to make these offices appointive under applicable case law. Your Committee feels that the impropriety of the ballot title is a very serious omission and casts a cloud over the possibility of the legislature effectuating its obvious intent.

SURVEYOR

SOURCES OF INFORMATION

Your Committee received material from and discussed this matter with the Oregon State Board of Engineering Examiners, its Secretary, Elmer Buckhorn, and Arthur Prag, attorney for Peter Welch, Multnomah County Surveyor. Your Committee also had available a report from the Oregon State Bar Association on the amendment.

ARGUMENTS ADVANCED IN FAVOR OF AMENDMENT *re: Surveyor*

1) A County Surveyor who is not a registered surveyor can not do much of the work which the law requires the surveyor's office to perform, and he would have to hire a deputy who was registered, although in many counties the job is a part-time one. This would create a double expense for such county.

2) The fact that a candidate for office had passed the examinations and met the qualifications required for registration would be some indication that he was in fact qualified.

3) The matter is a proper one for the determination of the legislature, which should have the power to set the qualifications for this office.

4) The office is primarily professional rather than policy-making and professional qualifications are thus of increased importance to the public.

5) The most qualified people for the jobs will not run in a partisan political contest for the jobs but might accept appointments.

6) The office does not require considerations of policy to such an extent that it should be continued as an elective office on an already overcrowded ballot.

7) The passage of the amendment will permit the legislature properly to investigate the matter.

ARGUMENTS ADVANCED AGAINST THE AMENDMENT *re: Surveyor*

1) The surveyor in some counties is primarily an administrator who can and does hire such professional help or labor as he needs, either as full-time deputies or on a fee basis with private registered surveyors.

2) Surveying work does not require such skill as to justify registration or licensing.

3) There should be no tampering with the Constitution for minor changes.

4) There is more danger adding an office to the patronage system than in leaving it up to the people's choice.

CORONER

SOURCES OF INFORMATION

Your Committee has interviewed the following persons: Edith Dailey, Executive Secretary, Oregon Funeral Directors Association; Earl Shea, Chief Deputy Coroner, Multnomah County; Dr. Warren C. Hunter and Dr. Samuel Niles, Pathologists, University of Oregon Medical School; Patrick Dooley, member of Judiciary Committee of the 1955 legislature; Raymond Carskadon, former Chief Criminal Deputy District Attorney of Multnomah County, and Frank A. Bauman, Oregon State Bar Committee on Uniform Post-Mortem Act.

It has considered material on the subject from the American Medical Association, American Bar Association, National Civil Service League, National Municipal League, American Academy of Forensic Sciences, Oregon State Bar Association, National Association of Coroners and Oregon Funeral Directors Association.

DISCUSSION

The function of the coroner in most jurisdictions in the United States is to investigate deaths from violence or obscure causes. The primary purposes are to ascertain whether the death was from natural causes or otherwise, and to expose murder, accidental death, and public health or industrial hazards, as well as the compilation of evidence in the subsequent criminal or civil court proceedings. In Oregon, an autopsy cannot be ordered by the coroner, unless the district attorney's permission is first obtained, and it can be ordered only in those cases where there is reasonable grounds to suspect death by homicide or suicide.

The layman and most physicians are not qualified in many cases to establish the true cause of death. This can be done only by a pathologist equipped with an adequate laboratory and experienced in the performance of autopsies and in recognition of deaths by violence not readily apparent.

There are qualified pathologists presently available to all portions of the state except the central Oregon area. The use made of these pathologists by coroners in Oregon appears to be limited, partially by finances but also because of the lack of a legal and organizational framework under which the authority for the ordering of autopsies in a wide variety of cases is clearly established and encouraged. The many coroners in this state who are performing the job to the best of their abilities are hampered by lack of such legislative authority.

Another problem which exists arises from the fact that the only persons in the county who may have a special financial interest in holding the office are funeral directors, and thus it is not surprising that in 30 of our 36 counties, the coroner is a funeral director.

The problem in this connection has been noted in "Mortuary Management," a trade journal, for March, 1955, which states:

"There are coroners who make every legitimate attempt to play fair with their competitors, but even they hold certain advantages that cannot be successfully denied. Even though it were possible to divorce competitive instinct from the job, there would be a sufficiency of black sheep to make the matter an unseemly one. The abuse of political power cannot be prevented."

In some counties the coroners have adopted a rotation system for referrals to funeral directors of cases coming under their jurisdiction. This is the case in Multnomah County.

We should note that in 1955 the Multnomah County Coroner's office handled 3,169 deaths on a budget of \$76,130.00. Approximately \$15,000 was spent for pathologists and \$2,500 was spent for a toxicologist. While the coroner of Multnomah County is a doctor, he does not, nor is he expected, either to perform autopsies or devote his full time

to the position. Mr. Earl Shea, Chief Deputy Coroner of Multnomah County, has been with the office for 27 years and your Committee was particularly impressed with his knowledge of the office and its work.

In the opinion of many national professional organizations which have studied the office of coroner and its functions, the system is outmoded and should be replaced by a State Medical Examiner having regional deputies, appointed rather than elected, and with broad authority to perform autopsies.

In response to these investigations a Model Post-Mortem Examinations Act has been drafted by the National Conference of Commissioners of Uniform State Laws. The Medical Examiner system as suggested therein, has been adopted in some jurisdictions and is working well, according to reliable sources. Your Committee believes that a Medical Examiner system, should it ultimately be found desirable, could be instituted by the legislature whether or not this measure passes, but that the enactment of this amendment would make such a change less awkward.

ARGUMENTS ADVANCED IN FAVOR OF AMENDMENTS *re: Coroners*

1. Many coroners are not qualified to ascertain or investigate the cause of death or to know when an autopsy should be performed, thus missing possible homicides.
2. The nature of the business of the funeral director is such that he obtains an advantage over his competitors where he is coroner, in that he receives certain bodies for disposition which he would not otherwise obtain and has the opportunity to direct the disposition of others to his own establishment.
3. The funeral director may be hesitant to order an autopsy in an appropriate case, because of fear of alienating the family and losing the particular contract.
4. If this amendment passes, the legislature will be spurred into giving consideration to the problems surrounding the coroner's office and into investigating the feasibility of a Medical Examiner System.
5. The most qualified people for the jobs will not run in a partisan political contest for the jobs but might accept appointments.
6. The office does not require considerations of policy to such an extent that it should be continued as an elective office on an already overcrowded ballot.
7. The problem is a proper one for legislative determination and the passage of the amendment will permit the legislature properly to investigate the matter.
8. If this amendment is defeated the legislature may believe that the people are satisfied with our present outmoded system and be deterred from making the drastic changes required for proper medico-legal investigations.

ARGUMENTS ADVANCED AGAINST THE AMENDMENT *re: Coroner*

1. It will be impossible to persuade doctors to run for the office or accept appointment to it.
2. In some small counties there are no persons qualified for the office in the event qualifications were limited to medical doctors.
3. Most doctors do not consider themselves experts at ascertaining the cause of death and do not perform autopsies in any event.
4. Funeral directors do have qualifications and facilities for the handling of the office and because they gain by virtue of being coroner, devote more time and effort to the job than would a doctor.
5. There is more danger in adding an office to the patronage system than in leaving it up to the people's choice.

6. If the legislature merely sets qualifications and/or makes the office appointive, it may not believe it necessary to make other needed changes in the law.

7. Under the present laws, the mere setting of qualifications would not improve the functioning of the office.

CONCLUSIONS *re: Surveyor*

Your Committee believes that the qualifications set by the registration and licensing procedures under Oregon law are desirable safeguards to insure the competent conduct of the office of Surveyor.

While it may be true that in some of the larger counties little surveying is done by the Surveyor himself, the knowledge possessed by a technically qualified man is nonetheless an important asset in evaluating the skill and directing the work of his subordinates.

In the smaller counties it seems wasteful to permit the office, which does not require full-time attention, to be held by a person who could not perform all of the work of the office.

The Committee does not believe that the legislature will have as much reason to remove the Surveyor from the ballot as the Coroner, because of the apparent availability of qualified men for the position of surveyor.

CONCLUSIONS *re: Coroner*

Your Committee believes that this amendment does not solve many of the problems with respect to the coroner's office and that unless other changes are made as indicated above, there will be little benefit accruing from passage insofar as coroners are concerned.

Your Committee believes, however, that this whole question is a proper one for legislative determination which should not continue to be unduly restricted by the present Constitution.

The Committee also believes that passage of this amendment will be some justification for the legislature to give consideration to a Medical Examiner System appropriate for Oregon's needs.

GENERAL CONCLUSIONS

Your Committee believes that it is poor practice on the part of the legislature to submit two important matters (upon which differing considerations of policy may obtain) in one package to be accepted or rejected *in toto* by the voters.

Although there is some concern over the effect of the incomplete ballot title, such concern did not seem to be of sufficient importance to affect the recommendations of the committee.

In this instance your Committee believed that the arguments in favor of the amendment with respect to surveyors made the proposed change much more clearly desirable than with respect to the coroners. The Committee's recommendation in favor of passage of the amendment is to some extent—on the part of some members of the Committee—governed by balancing the clear desirability of setting qualifications for surveyor against the relatively minor detriments and possible benefits which will result from passage with respect to coroners.

RECOMMENDATION

Your Committee recommends that the City Club go on record in favor of the measure and vote No. 4 Yes.

Respectfully submitted,

Wm. F. Caldwell

E. H. Crosby

Dr. Robert Fischer

Philip A. Levin

Sidney Lezak, chairman

REPORT ON CIGARETTE TAX

PURPOSE: To provide for a sales tax of 3 cents a package on cigarettes.

TO THE BOARD OF GOVERNORS
THE CITY CLUB OF PORTLAND

Your Committee was appointed to report on a referendum which if passed would provide revenue for the General Fund by imposing a tax of 3 cents a package on the sale, use, consumption, handling or distribution of cigarettes. This tax would be collected by the first seller or distributor and would be under the administration of the State Tax Commission which would be empowered to license distributors and enforce liens and penalties.

INTRODUCTION

Since the end of World War II, proposals to levy a cigarette tax in Oregon have been made repeatedly. Such a tax was voted by the 1945, 1947, and 1951 legislatures and referred to the voters. In each case the measure was disapproved.

A similar measure was passed by the 1955 legislature and referred to the people for decision in the November election. It is this latter measure that is subject of this report.

Your committee reviewed discussions of this type of tax in tax and business publications, analyzed a previous City Club report made in 1952 and interviewed Mr. Robert A. Bradlee, Secretary of the Oregon Tobacco Distributors Association and Senator Rudie Wilhelm, Jr., chairman of the Legislative Interim Committee on Taxation.

This tax has numerous advantages and disadvantages of varying moment. For convenience and ready reference in analyzing the measure, these are tabulated below:

ADVANTAGES

1. However common their use, cigarettes are not a necessity. A tax upon them is a luxury, or at least a non-essential. It can be avoided by abstaining from smoking.
2. Experience in other states having cigarette taxes, now 46 in number, indicates that it is a simple tax to administer and collect. The revenue derived, unlike that from other sources, has proved stable during periods of deflation.
3. The tax, while it will not in itself solve the financial problems of the state, should reduce the total revenue requirements from other sources by some \$5,500,000 annually.
4. Tourists and transients in Oregon, unlike those in states having sales taxes, contribute little if anything to general state revenue. Part of the receipts from the cigarette tax would come from these non-residents.

OBJECTIONS

1. Tobacco industry claims the taxes on cigarettes are proportionately higher than those on any other product. The proposed 3c tax added to the existing Federal 8c tax would aggravate the situation.
2. It is regressive; falling most heavily on the lower income groups.
3. The record in other states shows that once established, it is easily increased.
4. A proposal to tax cigarettes has been refused by the voters of Oregon at least 4 times since 1941.
5. It is inequitable because it is borne by a selected group (the smokers).

SUMMARY

That such a tax has been proposed regularly is no doubt largely due to the widespread use and acceptance of the cigarette tax as an effective, easily administered, and stable source of public revenue. With the exception of Oregon, Virginia is the only state in which cigarettes are not subject to taxation in some form or other.

Despite such widespread acceptance and desirable *fiscal* characteristics, a cigarette tax falls short of the ideals by which we judge a tax in terms of its *social* impact and equality of burden. In short, it cannot be gainsaid that a cigarette tax of the type proposed is a tax on a special commodity to be paid by some of the people for the benefit of all. As such it is an excise tax unrelated to benefit and unique in the Oregon tax structure, having no counterpart in any other form of existing taxation.

On the other hand, although the burden may be unjust, the individual impact does not appear excessive. For example, a person smoking a pack each day would only pay about \$11.00 per year in taxes.

It should be recognized that many persons in public life in Oregon who previously opposed the tax for social reasons have gradually dropped their opposition. They have done this for reasons of expediency, because the state has needed the money and the cigarette tax is a source that is easily tapped and predictable in amount.

Your committee feels that the issue is as simple as that. The low magnitude of burden takes away much of the substance that might otherwise attach to the philosophical considerations inherent in the tax. Accordingly, if it is felt that the pressing fiscal demands of the state will be served without undue unfairness to any person or group of persons, the measure should be passed.

In this regard, however, we must also recognize that the cigarette tax would raise less than 5% of all revenue and will not begin to solve the state's budgetary problems. We must recognize that this cigarette tax was to some extent born as a budget-balancer for the biennium that is now drawing to a close. We must recognize that recent predictions of income have been wrong. Although a surplus instead of a deficit is in the immediate offing, the state's budget will increase substantially in the years ahead. This means that the people of Oregon face some fundamental decisions as to the type of tax structure they want to employ.

Thus, the other side of the expediency coin is this: It may be expedient to utilize a cigarette tax to lend some stability to the tax structure of the state, but until that structure is evolved on a comprehensive, long-term basis, approval of this cigarette tax only complicates and confuses the major task ahead.

CONCLUSION

The committee was unanimous in acknowledging that the proposed tax measure is basically well-drafted and is not objectionable from this standpoint.

Your committee is of the opinion that fundamental issues of tax and fiscal policy, of sales tax, income tax, excise tax and corporate tax, of the level of governmental expenditures must be resolved before any proper consideration can be given to the necessity or expedience of a cigarette tax. Accordingly, the committee is unanimously opposed to passage of this measure.

RECOMMENDATION

Your Committee therefore unanimously recommends that the City Club go on record as opposing the passage of this measure and urge a vote of "No, I vote against the proposed law."

Respectfully submitted,

R. G. Alberger

Bruce A. Bishop

Robert L. Weiss, chairman