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"Harmony in  
Diversity"

# PORTLAND CITY CLUB BULLETIN

"Active  
Citizenship"

VOLUME XIII

PORTLAND, OREGON, SEPTEMBER 2, 1932

NUMBER 18

**FRIDAY, SEPTEMBER 26**

**HOTEL BENSON; 12:10**

## JOINT MEETING WITH THE PORTLAND REALTY BOARD

SPEAKER

**DR. HARLEY L. LUTZ**

*Professor of Public Finance, Princeton University  
Director, New Jersey Commission to Investigate County and Municipal  
Taxation and Government*

SUBJECT

### **"Reducing and Controlling the Cost of Government"**

"No satisfactory solution can be found to the tax problem which does not embrace an inquiry into the facts relative to public expenditures. Unless ways can be found to render government, and especially local government, more efficient, there can be little hope of substantial tax reduction."

Acceptance of this simple principle was the basis of the recent searching study of local government taxation and expenditures in New Jersey. The revelations of this survey are of great significance to those who would reduce taxes in Oregon.

In addition to directing the New Jersey survey, Dr. Lutz has served as tax advisor to the legislatures of Washington, Ohio and Utah, and has served as a member of the commissions of financial advisors to Chile and Poland, having been decorated by the former nation for his services.

AND ALSO

HOMER D. ANGELL . . . . . "REPORT ON THE PORT OF PORTLAND"  
*Chairman, Port of Portland Committee.*

The committee report, printed in last week's *Bulletin*, will be presented for action by the Club.

## WAIVER OF JURY TRIAL AMENDMENT

### MAJORITY REPORT

To the Board of Governors of the City Club:

Your committee on Judicial Procedure, to which was referred the proposed amendment to the Constitution of the State of Oregon, allowing the accused in criminal proceedings to waive his right to be tried by a jury, submits herewith its report.

The Legislature, at its last session, submitted to the voters of the State the question of amending Section 11 of Article I of the Constitution, so that it shall read:

"In all criminal prosecutions, the accused

*Continued on Page 2*

### MINORITY REPORT

To the Board of Governors of the City Club:

I am unable to join the other members of the committee in their recommendation that the proposed amendment to the Constitution of Oregon be adopted.

The amendment as presented by the Legislature to the people for acceptance or rejection adds to Section 11 of Article 1, the following clause:

"provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive

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# PORTLAND CITY CLUB BULLETIN

Published Weekly by

## THE CITY CLUB

OF PORTLAND

Office of the Club . . . . . 606 Oregon Building

Telephone ATwater 6593

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Entered as Second Class Matter, October 29, 1920, at the postoffice at Portland, Oregon, under act of March 3, 1879.

City Club dues are \$1.00 per month, payable semi-annually on May 1st, and November 1st. There is no initiation fee.

The regular Friday luncheon meetings are held in the Crystal Room of the Benson Hotel.

### CITY CLUB PURPOSE

*"To inform its members and the community in public matters and to arouse them to a realization of the obligations of citizenship."*

### THE CITY CLUB BOARD OF GOVERNORS

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8. TAXATION  
James J. Sayer . . . . . *Chairman*  
1005 Spalding Building ATwater 5809

### MINORITY REPORT

*Continued from Page 1*

trial by jury and consent to be tried by the judge of the court alone, such election to be in writing."

Even though the right to trial by jury be primarily a right of the accused, I believe it is also a right of the people. There have been in other states, and there may be in this, cases where, on account of bias or prejudice on the part of the Court, it would be against public policy to allow waiver of jury trial without the consent of the prosecuting attorney, who is the representative of the people of the state. If the amendment is adopted in the language proposed, there is slight possibility of its further amendment at any future time. I believe that it is the wrong policy to recommend the adoption of the amendment as proposed, in the hope that we will receive its benefits, and that its defects will either never appear or will be overcome. I believe that the amendment should be rejected in order that it may be again submitted with the changes necessary to protect the public interest, and should then be adopted. In the amendment as proposed, one defect is patent before us, and this defect is one which might be most dangerous at the very time when it is least possible to correct it.

### *Sutherland Proposes Rule*

I believe any change in respect to trial by jury should conform to the rule laid down by the U. S. Supreme Court in Patton vs. U. S. (referred to in the committee report) where Mr. Justice Sutherland says:

"\* \* \* \* \* Not only must the right of the accused to a trial by a constitutional jury be jealously preserved, but the maintenance of the jury as a fact-finding body in criminal cases is of such importance and has such a place in our traditions, that, before any waiver can become effective, the consent of the government counsel and the sanction of the court must be had, in addition to the express and intelligent consent of the defendant. \* \* \* \* \*"

### RECOMMENDATION

I, therefore, must recommend that the City Club oppose the amendment as submitted.

Respectfully submitted,

JOHN C. FAILING.

Accepted by the Board of Governors and ordered printed and submitted to the membership of the City Club for consideration and action on September 9, 1932.

### MAJORITY REPORT

*Continued on Page 3*

shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases,

and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing. \* \* \* \*"

The only change proposed is to add to the Section, as it has stood as part of the "Bill of Rights" since our Constitution was first adopted, the following provision:

"provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing."

*Plan Is In Use*

The rights given the accused by our constitution are in general accord with the rights given an accused under the Federal Constitution, and the constitutions of most of our sister states. Seven states, Arkansas, California, Maryland, Minnesota, North Carolina, Oklahoma, and Wisconsin, have by constitutional amendment allowed the accused to waive trial by jury. In Connecticut, Indiana, Michigan and Washington, statutes allowing the accused to waive trial by jury have been held constitutional. In Kentucky and Missouri such statutory provisions have been held to be unconstitutional. The United States Supreme Court has held, in the recent case of Patton vs. U. S. (281 U. S. 276; 50 S. Ct. 253), that in the federal courts the accused may waive trial by jury, with the consent of government counsel and the sanction of the court.

The members of your committee do not believe that it is either necessary or proper for them to attempt to determine at this time whether an accused in this state can waive a trial by jury without a statutory provision or constitutional amendment. The question before us is whether it is advisable that the Constitution should be amended so that the right to waive trial by jury, with the consent of the court, is given the accused in as solemn a manner as his existing right to demand trial by jury.

*Would Relieve Congestion and Cost*

We understand that the resolution to amend this Section of the Constitution was introduced in the Legislature at the request of a committee of the Oregon State Bar Association, and that the primary reason for its introduction was the belief that it would help relieve congestion in the courts, secure an early trial in criminal cases, and reduce the expense of criminal trials. We believe that the passage of the amendment would have a tendency to bring about these desired results.

It would be difficult, if not impossible, to make any determination of the actual saving of time to be expected, even if it were possible to estimate the number of cases in which a jury would be waived. To the time saved by the more speedy trial of cases by a judge, sitting without a jury, must be added a certain saving in time caused by the greater ease in arranging the court calendar, and fewer postponements of trials because juries are not available. Much time would also be saved in retrial of cases in which the jury is dismissed because of a mistrial or when a case has to be tried two or more times

because of failure of the jury to bring in a verdict.

We have attempted to ascertain the actual cost per case tried by jury in Multnomah County, but find that the cost records do not segregate civil and criminal cases. We have learned, however, that 637 cases, 119 of these being criminal cases, were tried by juries in the Circuit and District Courts in 1931, at a total cost for juries' fees and meals of \$59,887.44, or an average cost per case of \$94.01. It is impossible to say definitely whether the cost of a criminal case is more or less than the cost of the above average case.

*Waiver Shows Increase*

We realize that at first the number of cases in which a jury would be waived would be small, and the saving of time and money correspondingly small. We believe, however, that the proportion of cases tried by the court alone would increase, as has been true in the other states where waiver of jury trial has been introduced, and that the ultimate saving would be large.

The other principal reason for our endorsement of the amendment is the belief that in many cases, from the standpoint of the accused, a compulsory jury trial may be an objection rather than a safeguard. A judge is more able than the untrained members of a jury to give proper consideration to a technical defense, and is less apt to be swayed by popular hysteria or newspaper publicity. If a person accused of crime may plead guilty and trust to the discretion of a judge to fix the penalty, there would seem to be no reason why the same man should not be allowed to waive the privilege of being tried by a jury and submit to the same judge the question of his guilt or innocence.

*Objections Are Answered*

The objection is urged that the amendment as proposed does not require the consent of the State by the District Attorney. It does, however, provide that the consent of the court must be obtained, and we believe that the court would in a proper case refuse to consent, upon objections being presented by the State's Attorney.

It may also be argued that waiver may become so universal that insistence of a trial by jury will be taken as an admission of guilt; also that the present proposal is the first step in doing away entirely with the time-honored jury system. This has not proved true in civil cases where either side may waive trial by jury.

RECOMMENDATION

Believing that any defects of the proposed change in procedure are far outweighed by the anticipated benefits, we recommend a favorable vote on the proposed constitutional amendment.

Respectfully submitted,  
 ERNEST FARNAND,  
 B. V. WRIGHT,  
 WM. B. LAYTON,  
 E. M. HEACOCK,  
 LELAND B. SHAW,  
 W. K. ROYAL, *Chairman.*

Accepted by the Board of Governors and ordered printed and submitted to the membership of the City Club for consideration and action on September 9, 1932.

## CINCINNATI BECOMES "BEST GOVERNED CITY" UNDER THE CITY MANAGER PLAN

At least two important improvements in the city government of Portland were made through the adoption of the commission form of government some twenty years ago, declared George H. Hallett, Jr., associate secretary of the National Municipal League, in addressing the City Club last Friday noon, but additional improvements might now be made through the adoption of the city manager plan. The two improvements were the result of the short ballot and the elimination of the ward system elections. Mr. Hallett spoke chiefly of the great strides made in the city government of Cincinnati since the city manager plan has been in effect, and commented generally on the success of this plan in 430 other American cities.

"Cincinnati was ruled by political bosses until 1926," said Mr. Hallett. "Boss Cox, who was in charge for many years, was almost as well known for his gang rule as are Thompson of Chicago, Vare of Philadelphia, and various Tammany chieftains. City jobs were given to those who could deliver the most votes and contracts were given to those who would pay the biggest 'rakeoff'. Cox kept the tax rate down by borrowing money each year. He was in close touch with the underworld and the police department collected graft money without fear. Shortly before the manager plan was adopted, however, a reform movement resulted in 70 policemen being sent to Atlanta for these activities.

"These streets were for years in terrible condition. There were holes in all of them, even those on the busiest business thoroughfares of the city. A person driving over them had to go slow and use great caution on account of these holes. No matter how much money was collected, the streets were never improved, in fact they were growing worse.

"Then a stranger driving about the city never knew where he was. There were very few street signs, almost none, and a visitor driving about the place had to stop and ask names of streets. It was a terrible state of affairs, and the good citizens of the place at last determined to put a stop to it. Ohio, like Oregon, has a law that permits cities to vote for new charters without much trouble.

"In 1924, the year Mr. Coolidge was elected president, it was decided to vote for a new charter that would completely change the form of municipal government. This included the city manager plan. The old machine that had run the city so long was republican, and both city and gang always rolled up a big majority for the republican ticket. But to show you that the citizens knew what they wanted and who they wanted to vote for, Cincinnati went 2 to 1 for Coolidge, and also passed the new charter by a 2-to-1 vote.

"Under the new system partisan politics do not have the vogue in the city elections that they did. Each group is able to get representation in the council. The city manager is chosen without any reference to his politics whatever. When Colonel Sherrill came from Washington,

D. C., to be the first city manager of Cincinnati, he didn't begin by turning everyone out of office. Whenever one turns out all the workers it takes months to train a new crew. What was done was this:

"The city employes were told that so long as they gave good, efficient service, they would be retained. If they could not give this service, out they would go. Then, they were also told this: If anyone attempted to use what they thought was influence in order to get by, they would also be put out at once. There was a very sharp warning on graft. Just to show how the police department stood in with the underworld, 70 Cincinnati policemen were sent to the Atlanta penitentiary on conspiracy charges.

"It wasn't long until the new city manager had everything going along smoothly. Even those who were the closest to the old machine in most cases did good work. A few had to be let go in order to make the others know they had to obey orders. But only a few were discharged.

"One of the very first things Colonel Sherrill did was to take up the matter of the improvement of Kellogg street. This street led to a racetrack at the end of the city, the track being owned by the ex-boss. The contract for the street work had been let, but it was seen that a great deal of graft was connected with it. So the city manager had the council pass an ordinance cancelling the contract and paying the contractor damages. This was done, and after these damages had been paid the street work was done in a much better way than had been proposed and at a saving of \$700,000 over the first contract.

"The next big order by the city manager was one to clean out the city hall. This was an old-fashioned housecleaning with soap and lye and water, also mops and paints and such. The hall was very dirty. For years it had been collecting filth and grime. One startling discovery made by this city hall cleaning was that on one of the ceilings was discovered a very creditable painting that no one knew was there, it had been covered with dirt so many years.

Today's joint meeting with the Portland Realty Board offers Club members an opportunity to hear one of America's greatest authorities on public finance discuss a subject which is of great interest in these times. The study recently completed in New Jersey under Dr. Lutz's direction is the best study of its kind ever made. The details of local government organization and administration throughout the state have been subjected to analysis as never before. Local debts, police costs, fire costs, highway finances, special assessments, educational finances, etc., have all received close attention. The high volume of public expenditures in New Jersey is reported to be the result of, first, the expanding range of governmental services, second, an extravagant or unnecessarily liberal scale of public living, and, third, a low level of administrative efficiency.