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City Club of Portland (Portland, Or.)

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## EFFECT OF 6% TAX LIMITATION ON TAX SUPPORTED AGENCIES OF MULTNOMAH COUNTY AND PORTLAND

To the Board of Governors of the City Club of Portland:

Your committee authorized to study the effect of the 6% tax limitation upon tax supported agencies within the city of Portland and the county of Multnomah submits the following report:

### I. SCOPE OF COMMITTEE RESEARCH

Your committee was organized in July, 1948, and has been carrying on its investigations since that date. To gain acquaintance with the problems of the limitation the members of the committee met or otherwise communicated with numerous persons who were reported to have knowledge or ideas on the subject. This included members of the state legislature, state, city, county and school officials, tax authorities, newspaper editors and writers, tax researchers, and officials of other states.

Members of your committee singly or in groups made special studies of various fields relating to the history and effect of the tax limitation. This report is thus truly the result of the work of all members of your committee.

### II. HISTORICAL BACKGROUND OF THE 6% LIMITATION

Oregon's 6% tax limitation, found in Article XI, Section 11, of the State Constitution, has developed from certain earlier limitations which should be considered in a discussion of the present situation. The constitution originally contained two provisions pertaining to taxation but neither of these placed any limit on appropriations: Article IX, Section 2, provided generally that the state legislature should raise revenue sufficient to defray expenses of the state for each year and to pay interest on the state debt if there should be any, and Section 6 of the same article stated that the legislative assembly might provide for deficiencies in the fiscal year if such occurred. Up until 1910 the only limitation on the incurring of debt by the legislature and local governments consisted of popular pressure against taxes.

#### *County Debt Limitations*

The first step in the direction of a tax limitation consisted of certain county debt limitations which were enacted by means of the initiative and referendum to limit the county debts of various counties throughout the state. These measures, first initiated in 1912 and later referred to the affected counties, provided that no county could create any debt liability exceeding the sum of \$5,000. There were certain exceptions, however, covering expenses of defense and expenses incurred in building and maintaining permanent roads within the county. In the matter of permanent roads it was provided that special elections could authorize the incurring of a total debt not exceeding 6% of the assessed valuation of the county. Eight counties were listed in the original initiative and by 1926 six counties, namely, Crook, Curry, Linn, Benton, Klamath, and Clackamas, had approved the limitations contained in this measure. It will be noted that Multnomah County was not within the provisions of this county debt limitation act.

#### *Bonding Act of 1912*

The next measure to be considered is the Bonding Act of 1912. This initiative amendment brought into existence the present Article XI, Section 7, of the Oregon constitution, which prohibited the legislature from lending the credit of the state or incurring an indebtedness of over \$50,000. It should be noted that this was a constitutional provision limiting the power of the state legislature to lend the credit of the state or to incur indebtedness and was not a limitation on the counties or other governmental agencies. This provision contained an exception in the case of permanent highways, permitting the legislature to lend the state's credit for the construction and maintenance of permanent highways provided that the total of all debts incurred by the state did not exceed 4% of the assessed valuation of property throughout the state.

### **Tax Limitation Act of 1915**

The Tax Limitation Act of 1915 (Chapter 159, Oregon Laws 1915) was the next development in the series of tax limitations and the purpose of this act was to limit the power of the legislature to appropriate funds. Under the provisions of this act the state legislature could not appropriate money for expenditures exceeding those of either 1913 or 1914 by more than 6% of the levy of the greater of those years, and thereafter the state could make appropriations calling for a 6% increase over the previous year. Although this was statutory and not a constitutional limitation, it did provide a 6% increase per year and apparently was a forerunner of the present constitutional limitation.

### **Present 6% Limitation, Article XI, Section 11**

In 1916, by initiative, the people amended the constitution by passing Article XI, Section 11. This section has remained unchanged except for a 1932 referendum extending the base period for the determination of the increase. Article XI, Section 11, affects the state and each "county, municipality, district or body" which has authority to levy a tax. With the two exceptions of appropriations for the payment of bonded indebtedness plus the interest thereon, and special levies voted by the people, no governmental agency may in any one year "levy a tax" which would exceed the base amount by more than 6%.

The 1916 amendment provided that the base from which the 6% allowable increase was to be determined would be the amount of taxes levied in the years "immediately preceding" the tax year. By the referendum amendment of 1932, this base period was changed from the year "immediately preceding" to "any one of the three years immediately preceding" the tax year.

The limitation does not operate upon expenditures, but rather, upon taxes levied. In a recent case the Oregon Supreme Court held that the only taxes upon which the limitation operates are property taxes. (*Garbade & Boynton v. Portland*, 50 Or. Adv. Sheets 173, 214 P. (2d) 1000.)

A series of articles by Henry E. Reed, the County Assessor of Multnomah County at the time of the original adoption of the amendment, contains an interesting discussion of the arguments for and against the limitation. These appeared in the August 26, 1916, and November 4, 1916, issues of the "Oregon Voter". Another is an article discussing the first two years of its operation which appeared in the "Oregon Voter" of December 18, 1920. The text of Article XI, Section 11, appears in the proposals set forth at the end of this report.

### **III. HISTORY OF THE TAX SUPERVISING AND CONSERVATION COMMISSION OF MULTNOMAH COUNTY**

The Tax Supervising and Conservation Commission of Multnomah County is so closely related to taxation and the application of the 6% limitation in Multnomah County that a discussion of it must be included in this report.

The law creating the Tax Supervising and Conservation Commission of Multnomah County was passed by the state legislature in 1919. From time to time amendments have been made and the law has been redrawn, but the Commission has had continuous existence. It is composed of three residents and taxpayers of Multnomah County appointed by the governor to serve three-year terms without compensation. The Commission employs a small permanent staff, including an executive secretary, and uses temporary help as needed.

Under the law, all municipal corporations in the county having a population of 300,000 inhabitants or more are under the jurisdiction of this Commission and must submit their budgets for public hearings. Municipal corporations falling in this category are the County of Multnomah, the City of Portland, the Port of Portland, and School District No. 1. (The Commission of Public Docks is a department of the City of Portland.) The other tax levying units in the county have the choice of holding their own public hearings or requesting this Commission to do so for them. From thirty to forty annually choose the latter course.

Generally the duties of the Commission as prescribed by law involve the holding of public hearings on budgets, the certification to the municipalities of recommendations and objections to the budgets, the compilation of financial information, the holding of investigations, and the preparation of an annual report. The commission has the power "to inquire into the management, books of account and systems employed of each municipal corporation and of each department thereof in Multnomah County."

In 1936 the Oregon Supreme Court held that "the statute creating the Tax Supervising and Conservation Commission, as revised in 1921, is unconstitutional insofar as it gives said Commission mandatory authority to levy taxes or to cut out or reduce items in cases where these items in the budget will not cause a tax in excess of the constitutional limitation for this is an unlawful delegation of legislative power. The Commission can act in an advisory capacity only." (*Portland v. Welch*, 154 Oregon Reports 286.) The law was redrawn in 1939.

The Commission is interested in serving as an agency of information and cooperates with any interested citizens or citizen groups, as well as official bodies, in securing and studying data concerning local government. This work has steadily increased in volume and is now one of its major functions.

As the only agency of local government concerned with the administration of all units of local government, the Commission is interested in the overall picture and seeks to develop a better understanding between units, a recognition of their common problems, and the elimination of undesirable practices, such as competition for tax revenue.

The Commission now has the power to review budgets and hold hearings on them. It certifies a letter of recommendations and objections concerning these budgets and suggests improvements to the taxing bodies. It records statistics and informs the public on tax questions. It enforces the constitutional 6% limitation.

#### IV. SURVEY OF TAX LIMITATIONS IN OTHER STATES

Your committee was hopeful that some of the other states might have developed tax limitations or controls which would furnish useful guides in working out a more effective and flexible limitation for Oregon. Accordingly your committee wrote to tax officials or agencies in the other 47 states, explaining the Oregon system and requesting information regarding comparable statutory or constitutional limitations in effect under their laws. Your committee also wrote to several national tax research organizations for information about limitations in force in other states.

Replies were received from all but six of the states to which inquiries were directed, and additional information was also obtained from the Commerce Clearing House and Prentice-Hall Tax Services. Some of the replies were too brief to furnish an adequate picture of the nature and scope of the applicable tax limitations, whereas others were quite detailed. For the most part your committee was disappointed in the results of this survey and was of the opinion that it produced no really worthwhile ideas or plans which could be recommended as a substitute for the Oregon limitation.

It appeared from this survey that approximately one fourth of the other states have no tax limitations or controls of any kind. The rest do have limitations although the majority are statutory rather than constitutional. In most cases the limitation is in the form of a maximum percentage rate or millage, leaving the way open to vary the dollar amount through changing the assessed valuation to which the percentage rate is applied. Many of the limitations are also subject to special exceptions for various governmental units or classes of service, permitting levies which in actual practice are frequently well above the statutory rate. Finally, in the majority of cases provision is made for exceeding the constitutional or statutory limitation through approval of the voters in the various taxing districts. In several states, such as Missouri, Michigan and West Virginia, the increase in rate so voted can continue without further voter approval for periods ranging from three to five years. While a number of the tax officials with whom your committee corresponded felt that the millage limitation had furnished an adequate control, others were frank in their criticisms, stating that as a result of the various statutory exceptions to the limitation, the opportunities for circumvention through increases in assessed valuation, and special levies or rate increases approved by the voters, the millage limitation statutes had not proved effective.

Your committee found no provision elsewhere comparable to the Oregon limitation. A few states have experimented with a provision prohibiting an increase of more than a certain per cent over the amount expended in the preceding year, but this type of restriction is rare. California, by constitutional provision, at one time prohibited any local government from expending (as distinguished from levying) more than 105% of the prior year's expenditures, unless authorized by the voters of the State Board of Equalization. This limitation was in effect from 1933 to 1937. In Kentucky, a bill to limit the budget of each local taxing district to 105% of the preceding year's budget was introduced in the 1949 legislature but was defeated. In New Mexico and Arizona, similar statutory limitations are apparently now in effect. These are the only instances found by your committee resembling the Oregon limitation.

In a few states authority to permit an increase in taxes beyond the statutory or constitutional limit appears to be vested in a special administrative agency or court. Thus in New Mexico we were advised that the statute prohibits an increase in local levies of more than 5% in any one year unless application is made to the State Tax Commission prior to the preparation of the county or city budget. In the legislation proposed in Kentucky in 1949, mentioned above, restricting each year's budget to 105% of the prior year's budget, provision was made for exceeding the limit in a particular district after petition to the Circuit Court by 51% of the voters if the court found that the limitation would "materially retard the prosperity of the district". In most cases, however, authority to approve an increase in excess of the applicable limitation is vested solely in the voters, either by special levy or by voting an increase in the tax limitation.

It seemed apparent from this survey that Oregon's tax limitation has furnished fewer opportunities for evasion and has come closer to accomplishing the basic purpose of such limitations than the limitations found in any other states. To this extent, Oregon's limitation can be said to be a success. The only way open to exceed the limitation in Oregon has been by way of special levies, requiring voter approval, and it has not been possible, as in most other states, to defeat the limitation through resort to numerous exceptions or by varying the assessed valuations.

#### V. STATISTICAL INFORMATION ON CERTAIN MUNICIPALITIES IN MULTNOMAH COUNTY FOR THE YEARS 1920, 1930, 1940 AND 1950

##### POPULATION

	1920	1930	1940	1950
City of Portland.....	258,288	301,815	305,394	371,011
School District No. 1...		316,473 (est.)	324,394 (est.)	
Multnomah County ....	275,898	338,241	355,099	467,760

##### ASSESSED VALUATION

City of Portland.....	\$314,127,565.00	\$349,718,800.00	\$265,944,570.00	\$518,938,420.00
School District No. 1..	317,519,055.00	359,217,815.00	274,107,885.00	544,142,045.00
Multnomah County ...	337,120,625.00	383,514,260.00	296,918,705.00	608,551,490.00
Port of Portland.....	329,413,470.00	373,609,770.00	288,601,830.00	587,029,770.00

##### TOTAL BONDED DEBT

	(12/31/21)	(12/31/29)	(12/31/39)	(6/30/50)
City of Portland.....	\$32,640,284.71	\$47,780,176.54	\$34,034,368.55	\$23,354,797.20
School District No. 1...	368,500.00	10,013,500.00	5,292,500.00	76,000.00
Multnomah County ....	2,050,000.00	10,010,000.00	10,983,000.00	3,918,000.00
Port of Portland.....	1,791,000.00	4,384,000.00	1,705,000.00	900,000.00
Other Districts .....	1,209,800.00	1,855,278.00	1,468,423.00	6,000,500.00
<b>Total .....</b>	<b>\$38,059,584.71</b>	<b>\$74,042,954.54</b>	<b>\$53,483,291.55</b>	<b>\$34,249,297.20</b>

##### TOTAL BUDGETS

	(1922)			(1950-51)
City of Portland.....	\$ 5,477,487.23	\$ 7,503,610.35	\$ 7,788,138.68	\$28,615,608.32
School District No. 1...	4,105,963.00	6,244,705.18	5,648,603.63	18,130,569.12
Multnomah County ....	2,662,360.80	3,627,912.60	5,176,622.00	12,319,100.30
Port of Portland.....	877,493.50	981,837.50	560,900.00	3,074,073.00
Other Districts .....	411,810.30	828,009.78	961,944.13	6,644,833.96
<b>Total .....</b>	<b>\$13,535,114.83</b>	<b>\$19,186,075.41</b>	<b>\$20,136,208.44</b>	<b>\$68,784,184.70</b>

##### PROPERTY TAX LEVIES (Actual)

				(1950-51)
City of Portland.....	\$ 4,774,738.98	\$ 6,749,572.84	\$ 6,834,775.45	\$ 9,288,997.72
School District No. 1...	3,111,686.74	4,669,831.60	4,248,599.13	11,046,083.51
Multnomah County ....	2,855,411.70	3,217,206.31	4,988,234.24	7,606,893.62
Port of Portland.....	461,178.86	934,024.43	548,343.48	469,623.82
Other Districts .....	220,019.84	477,206.71	583,292.48	3,795,580.35
<b>Sub Total .....</b>	<b>\$11,423,036.12</b>	<b>\$16,047,841.89</b>	<b>\$17,203,244.78</b>	<b>\$32,207,179.02</b>
State of Oregon.....	3,353,277.34	2,531,194.11	742,296.76	.....
<b>Total .....</b>	<b>\$14,776,313.46</b>	<b>\$18,579,036.00</b>	<b>\$17,945,541.54</b>	<b>\$32,207,179.02</b>

## VI. REVIEW OF THE EFFECT OF THE LIMITATION ON MULTNOMAH COUNTY'S MAJOR TAX BODIES

The limitation became part of the Oregon Constitution by vote of the people on November 7, 1916. Multnomah County appeared at that time a little wary of the measure for it passed in this county with a majority of less than 1600. The immediate effect in Multnomah county was negligible for two reasons. First, three of the taxing bodies had millage limitations which restricted the agencies' power to tax more than did the 6% limitation. The city had an eight mill charter limitation on levies for the General Fund, School District No. 1 had a limitation of six mills on levies for the General Fund, and the Port of Portland was limited to a three mill levy for its General Fund. Second, as these limitations were removed from the City of Portland and School District No. 1, there was still doubt as to the exact scope of the limitation and for several years tax levies were made that exceeded the limitation.

### *The Port of Portland*

The Port of Portland to date apparently has not been handicapped by the limitation, although it may encounter difficulty in the future. On November 5, 1918, two special levies for the Port were passed and since that time it has not asked for special levies. The Port has financed its improvements through bond issues and has paid them with debt levies which are exempt from the limitation. After building up a tax base of \$583,000 in 1930, the Port allowed it to drop to a low of \$220,000 in 1936 by not levying to the limit each year. At present, the tax base for the Port of Portland is \$284,000. This allows a levy of only .7 of one mill, which means that the 6% limitation is now more severe than was the original three mill limitation.

### *Multnomah County*

Until very recent years, Multnomah County experienced no trouble as a result of the limitation. However, the mandatory levy for welfare passed by the legislature in 1947 changed this picture. Prior to 1947, the County had found it necessary to ask for special levies only twice, in 1932 and 1938, and on both occasions the measures were defeated. Since 1947 the county has made five separate requests for levies in excess of the limitation, three of which have been approved and two denied. The three affirmative votes were at special elections, and the two negatives votes were when the levies were on the ballot at the regular May primary. In addition, two special levies for construction purposes passed in 1946.

Multnomah County, in effect a subdivision of the state government, has no legislative powers and all services must be authorized by the state legislature. Most of the services now furnished are done so on the legislature's mandatory orders and, within the limitation of available funds, the Board of County Commissioners must appropriate not less than minimum amounts for some functions. In 1947 the legislature made it mandatory that any request of the Public Welfare Commission, up to an amount equivalent to a 4½ mill levy, must be met. The demands of the Public Welfare Commission have increased so much that, with the appropriations for the County hospital and other local welfare services, expenditures for public welfare account for 51% of the county general fund budget and 60% of its tax levy. This situation required special supplementary tax levies in 1947, 1948, 1949 and 1950, and as reported above, the voters were very reluctant to approve such levies. On July 14, 1950, the voters approved a continuing levy for five years of not to exceed 4½ mills in any year and under this authority the county levied 3.4 mills in 1950. In the absence of more legislative mandates and further sharp increases in cost of services, this authorization should eliminate the need for elections in respect of the county's general fund for the next four years. In 1946 the voters approved special levies of 3 mills for 1947 and 2 mills for 1948 for the Juvenile Home Building fund and the Hospital Building fund.

### *School District No. 1*

School District No. 1 has on twenty-four occasions asked for funds in excess of the limitation. Only five times have these requests been denied by the voters. One of these defeats had far reaching effects. It is impossible to measure the depreciation in our school plants and system due to curtailed funds during this period. After the levy in 1932 was defeated the School Board did not again ask for a special levy until 1944. In 1948 the constitutional restriction against school levies being voted upon by others than property owners was repealed. The exact effect of this change is not yet apparent.

Beginning with the fiscal year 1947-48 the District has annually obtained voter

approval of special levies for operating purposes. However, the increased receipts from the state basic school fund as provided by the November 7, 1950 election may eliminate the necessity for special levies at least for a few years beginning with the 1951-52 fiscal year.

On May 19, 1944, the voters authorized a special five year annual levy of \$1,000,000 for post war construction, and on May 21, 1948 authorized a special ten year annual building levy of \$2,500,000, a total of \$30,000,000 to improve and increase the school plants and equipment.

### **City of Portland**

Before 1950, the city of Portland had not asked for a special levy for operating expenses since 1936. Previously, the voters had approved six such special levies and defeated one. In 1950 a five mill levy for the General Fund was defeated. Special levies outside the limitation for other purposes have been put on the ballot twenty-three times. Ten of these passed and thirteen were defeated. The millage on these varied from .1 of a mill for a city band in 1932 to 2.5 mills for firemen's and policemen's retirement and disability pensions. Four of the defeated measures offered tax relief to the traction company.

The general fund is the city's principal operating fund and during the past few years its expenditures have increased more rapidly than its revenues. The city has been attempting to develop business and professional licenses into a major source of revenue but has not yet succeeded in closing the gap between rapidly increasing costs of services and slowly increasing property tax revenue. The city's sole request for a special levy to meet this situation (5 mills) was rejected by the voters in 1950, although they approved a ten years continuing levy of .4 mill for parks. The city's share of total property tax levies has decreased from 46.4% five years ago to 34.8% currently.

## **VII. SUMMARY OF OPINIONS**

Most of the arguments and opinions with respect to the 6% limitation fall into the following three classifications:

- A. The limitation should be retained.
- B. The limitation should be repealed.
- C. The limitation should be liberalized.

The arguments in support of each of these positions are summarized below.

### **A. Arguments in Support of Retention**

Historically Oregon's public finances have been based on the property tax. Even the corporation excise tax was originally intended to equalize property taxes. Oregon's constitution originally placed no limit on the tax levying power, but the growth of government and its entry into new and varied fields aroused the fears of property owners and resulted in numerous efforts at tax limitation in 1910-1915, culminating in the 1916 constitutional amendment which is the subject of this study.

Despite the large revenues from personal income taxes, which have obviated state property taxes in recent years, the state's tax structure, particularly as it applies to cities, counties, schools and other local districts, is still based on property, and the present ramifications of government clearly prove that the fears of 1910-1915 property owners were not groundless. The taxpayers' usual protection, in a representative form of government, is the election of representatives whom they trust, but our government is one of checks and balances, and faith in elected representatives is not inconsistent with limiting their power to destroy; for the power to tax is the power to destroy.

In Oregon this limiting of power is the so-called 6% tax limitation amendment to the constitution. The purpose of the limitation is two-fold: (1) to limit the power to destroy and (2) to give the public administrator reasonable freedom within the limits of the taxpayers' consent.

In three fourths of the other states, as shown in the survey reported in this study, tax limitations or controls of some kind exist, none being exactly like Oregon's and most being objectionable because of ineffectiveness. It is submitted that Oregon is the only state with an effective, reasonable and workable limitation on the power to destroy.

Millage limitations applicable to the City, School District No. 1, and Port of Portland between 1915 and 1923 curtailed public spending more than the constitutional limitation and demonstrated the impracticability of the millage type of limitation on taxes. Public administrators then found that the control of the County Tax Supervising and Conserva-

tion Commission (created in 1919) was unduly burdensome, and in 1936 a Supreme Court decision effectively limited the Commission to enforcement of the 6% limitation and to advisory service.

Our experience with the constitutional 6% limitation extends from the booming 20's through the depression of the early 30's, the recovery of the late 30's, the population and industrial growth of the war years, and the post-war inflation, a period of 30 years reflecting most of the economic cycles. During this time the limitation has effectively accomplished its purpose—to give the public administrator reasonable freedom within the limits of the taxpayers' consent. Except for the depression years the steady growth of the Oregon country precluded the efficient administrator from reducing the tax base, and when additional money was required for particular purposes, it could be obtained if the voters were convinced of its necessity. The fact that a special levy might be disapproved by the voters, when we personally believed it should be approved, does not alter the principle. We have the best informed electorate in the world, and we abide by the votes of the majority.

It is protested that growth and need cannot be measured by an arbitrary 6% factor, and of course that is true. The annual 6% increase permitted by the limitation amendment was never intended to be a measuring stick—it is a limitation of power. "This much you may take but no more without my consent," says the taxpayer. The 6% factor is arbitrary but is not unreasonable. So long as there are economic cycles there will be fluctuations in governmental revenue requirements, and our limitation amendment is eminently practical—when the cycle is downward, governmental budgets are reduced and tax levies decreased; when the cycle is upward, the tax levies can be increased automatically at the rate of 6% compounded (doubled in 12 years, tripled in 19 years, quadrupled in 24 years and quintupled in 28 years) with the voter specifying any extra amounts that may be required because of very abrupt and sharp upward swings in the cycle.

On the other hand it is argued that public administrators budget the full amount of money allowed by the limitation, whether needed or not, in order to maintain their tax base under the amendment. If this is a fact, it is not susceptible of proof and there are examples to the contrary, particularly the Port of Portland, which sound management has made largely self-sustaining and whose tax base has decreased to a relatively nominal amount.

The most recent objections to the 6% limitation are based (1) on the cost of the annual elections required in recent years to authorize special levies necessitated in large part by economic inflation, and (2) on the "impediment" to orderly government resulting from the voters' failure to approve some special levy. The cost of honest elections is the price of democracy, and freedom at such a price is a bargain. It seems presumptuous but customary for the minority to tell the majority "you're wrong". As a matter of fact, the three principal taxing bodies in Multnomah County have a varied experience with recent special levies: the School District convinced the voters of a need for additional money and got it in almost overwhelming amount; the County, faced with a mandatory levy for public welfare, found voters very reluctant to pay out additional money for this purpose (the "impediment" here was the voters' objection to the amount of the welfare expenditures, not the 6% limitation); the City is raising the additional revenues required for expanded services largely from the persons and businesses benefitting from such services. In Multnomah County, in addition to the four principal tax levying bodies, the County, City of Portland, School District 1, and the Port of Portland, there are 3 small cities, 33 small school districts, 22 water districts, 14 fire protection districts, 6 drainage districts, 1 sanitary district and 1 water control district, or 80 tax levying organizations and in 1950, 37 of them voted special levies other than debt levies. In many of these districts, the entire tax levy is voted, either because of a constitutionally questionable tax base, local budget law or another reason. Voting tax levies in these districts is a customary and usual procedure and seems not to have given rise to any objections of "impediment to orderly government".

The handicap of voter irritation arising from repeated requests year after year for money, necessitating annually a well organized and financed campaign of public education on the merits of the request, has the offsetting advantage of increased public knowledge of public affairs. This particular problem can be avoided in part, and the expense of repeated annual elections reduced, by obtaining voter approval of a continuing levy outside the 6% limitation, as was done by Multnomah County in 1950 when such a continuing levy was authorized for the next five years.

The limitation of powers inherent in our form of government is an accepted and basic principle. The power to tax, being one of the more drastic of governmental powers,



is susceptible of practical limitation and such limitation is the free citizens' protection against confiscation. Oregon's constitutional limitation on property taxes has been a practical and reasonable application of a sound principle. Most of the objections to the limitation arise from its very effectiveness in restraining the arbitrary power to tax. The voters have accepted only one amendment to the limitation to make it more workable, and by rejecting all proposals that seemed to nullify the limitation, they have clearly demonstrated that they understand the protection afforded and intend to retain the right reserved in the constitution.

### **B. Arguments in Support of Repeal**

Fundamentally, and in this most students of government are agreed, constitutions should not contain numerous limitations and restrictions. People who write them usually are unable to foresee the exigencies of the future. Constitutions should set forth fundamentals with reference to the form of government and stop at a point somewhere near there. When numerous restrictions and limitations are placed in such a document, which can be changed only at a general election, it becomes so inelastic that proper functioning of government under it often becomes difficult. Accumulation of limitations often results in conventions to frame new constitutions that will for a time get away from the inelasticity which has been created. A contrast to involved state constitutions is the federal constitution. The original constitution and the bill of rights are so short that they can be read in a few minutes. Nevertheless, the people have felt it necessary to add only thirteen amendments in the last 163 years, and one of them was repealed.

In a representative form of government the people should place considerable faith in those they elect to represent them. If by experience they find their elected representatives are not doing a good job for them it is high time that the electorate becomes more awake to its duties and elects better representatives. Citizens might find government more responsive to their desires if they would take time to understand and improve it, rather than placing their faith in many restrictive constitutional provisions which in the long run may be more damaging than helpful to the common interests. The Oregon limitation is simply an evidence of this inclination to place reliance upon such restrictive constitutional provisions.

Although approximately three-fourths of the states have tax limitations, a large proportion of these are statutory rather than constitutional. If Oregon's limitation were statutory, it would be much more amendable to amendment, and would probably already have been amended to allow for increased population and assessed valuations and higher cost of services. Those who support the limitation as it is "submit" in their argument that Oregon is the only state with an effective, reasonable and workable limitation. With this statement some others of the committee disagree. One quarter of the states rely on no limitation at all, constitutional or statutory, placing their dependence in their elected representatives. It is impossible to show that local taxes, or even local real property taxes, in those states are any higher than in Oregon, and the supporters of the limitation have not attempted to do so. What proof is there, then, that the Oregon limitation is more effective, reasonable or workable than that afforded by true representative government?

Comparisons of what the taxpayers in various governmental units pay without also comparing what they receive for their tax dollars is incomplete analysis. However, Bureau of the Census figures illustrate that the comparative tax bill and public expenditures per capita in Oregon are considerably lower than those of our neighbors to the north and south and are not out of line with those in the northern and middle western states. (Tables available at the time of this study relate to city governments. As examples, reference is made to tables 2, 3, 4 and 5 in bulletin G-CF49 — No. 3 of the Bureau of the Census for September, 1950. It is known that the city averages are not greatly different from state averages.)

They also indicate that the local governments of Oregon are more dependent upon real property taxes than the local governments of the average of other states. (Reference is made again to table 4 of the above mentioned bulletin; to tables V, VI and VII of "Basic Factors Relating to the Financial Problems of Portland" and supplement, Bureau of Municipal Research, University of Oregon, 1946; and "Tax Rates of American Cities" in January, 1951, National Municipal Review). Although these figures relate to cities, it is a recognized fact that Oregon cities have been able to diversify away from property taxes more than other local governments in Oregon. Inasmuch as the Oregon tax limitation traditionally and legally operates only upon real property taxes, these facts illustrate that any conclusion that the limitation has had its desired effect is unwarranted. Rather they illustrate that in Oregon there has been an abnormal relative increase in real property taxes levied by local governments, with a proportionate benefit to other tax fields.

Public officials, through the very existence of the limitation, have probably been encouraged to take the full tax increase allowed each year. Others interested in taxation seem to have concentrated much time and attention to operation of the limitation. If both groups had devoted more time and interest during the last 35 years to broadening the field from which tax dollars are taken, we might today have a more satisfactory tax structure.

Administration of public affairs in recent years has been hampered by the limitation to such an extent that in many instances it has borne little resemblance to good business practices simply because administrators have been unable to anticipate what revenue they might be able to depend upon.

### **C. Arguments in Support of Liberalization**

The opinion that the limitation should be liberalized is held by two groups. One consists of those who believe the limitation principle is sound, but that the present limitation would work better if a new tax base could be established when no tax base exists or when the existent base is inadequate. The other is made up of those who believe the limitation should be abolished, but that its elimination cannot be achieved, and therefore its workability should be improved.

The obvious population and industrial growth in Multnomah County during the last ten years, coupled with the current economic inflation, has substantially increased the budgets of the larger taxing districts, necessitating elections in each of the last few years to approve special tax levies in excess of the amount permitted by the 6% limitation. Some of these special levies were not approved by the voters, for various reasons, and the resulting financial difficulty of the taxing districts has brought about a definite campaign to repeal or amend the constitutional limitation.

With budgets increasing at the rate of the inflationary spiral and the tax base increasing at its staid 6% compounded, budgets are so far ahead of the base that it will be many years before the two will be brought into balance (in the absence of substantial deflation). This situation will require special levy elections every year, and the very natural reaction of the voters to repeated and continuous requests for more money is to vote "no".

Considering the purchasing power of the dollar, property taxes in Portland are lower now than 10 years ago. Assessed values have increased in total from \$263,376,090 to \$518,938,420, but most of this increase represents new values added by growth and only a relatively small percentage is attributable to inflation of values. The tax rate has been reduced from 62 mills to 51.5 mills. The net result is that the individual dollar amount of property taxes paid has remained approximately the same while the cost of living (inflation) has increased from an index of 101.8 to 183.4 or 80%; thus taxes are billed at the 1940 model 100-cent dollar, and paid in 1950 model 55-cent dollars.

Public administrators are faced with real difficulties in planning for the future when they have to speculate upon the results of special elections each year for a substantial part of the revenue of their governmental units. This is particularly true with the school districts whose teachers' contracts are customarily renewed in the spring of each year before such elections are held.

There have been several proposals to alleviate the restriction without eliminating the limitation. Special levies every year are not the answer because many voters consider them as additional taxes rather than a continuation of a previously established level of taxation, and their passage becomes more difficult as the years go by. Some of the other proposals are:

- (1) Allow the voters to change the tax base.
- (2) Place certain budget items such as the mandatory public welfare outside the 6% limitation.
- (3) Allow a special levy in excess of the limitation to continue for 3 to 5 years when approved by the voters.
- (4) Allow the tax base to be increased by court action.

Proposal (1) would permit the tax base of any taxing unit to be increased or decreased at any election by clearly stating in the measure, in dollars and cents, the amount of the existent tax base and the amount of the proposed new tax base. A proposal of the 1947 legislature to allow such increases only after three successive special levies had been favorably voted was defeated, possibly because the language of that proposal was extremely confusing. The present proposal is recommended by the 1949 legislature's Interim Tax Study Committee and is now presented in House Joint Resolution No. 9 before the 1951 state legislature. This proposal is in line with the tax limitation principle now

embodied in the constitution and simply empowers the voters to fix a new tax base when they think changing circumstances require it.

Proposal (2) is presented in House Joint Resolution No. 1 now before the 1951 legislature. This, also a proposed constitutional amendment, provides that the revenue a county is required by statute to raise for public assistance shall not be subject to the 6% limitation nor considered in computing the tax base under the limitation. Funds for public assistance are contributed by the federal, state and county governments and administered by the state. The budget is prepared by the state and allocated to the counties. If the county share does not exceed a 4½-mill levy, it must be collected and paid to the state. Although they have no hand in determining the budget nor in spending the money, county officials are nevertheless required to trim their local budgets to provide welfare money or ask the voters for a special levy which the voters are very reluctant to grant in view of the heavy increase in welfare expenditures (143% in the last seven years for the state as a whole and 215% in Multnomah county). Welfare costs in Multnomah county account for approximately 51% of the county budget and 60% of the tax levy. Under the circumstances, this proposal is an obvious attempt to place public assistance another step away from voter control. However meritorious the program may be, it must give due regard to the wishes of the people whose money is being spent. Furthermore, this proposal might well be the entering wedge of exceptions and exemptions which has wrecked most tax limitation and control devices, and would directly violate the principle of tax limitation which the voters have insisted on retaining in their constitution. It also

Proposal (3) is to empower the voters to authorize a special levy in excess of the 6% limitation to be continued for a stated number of years. Continuing levies for construction purposes are now specifically authorized and although there is some legal opinion to the contrary, it appears that a continuing levy for general operating purposes is permissible under present laws. The 1951 legislature has specifically authorized a 2-year continuing levy by School District No. 1. Multnomah County received voter approval in 1950 for a special five-year continuing levy not to exceed 4½ mills outside the 6% limitation for its general fund. Proposal (3) contemplates no change in the constitutional 6% limitation and only proposes that doubts as to the legal propriety of continuing levies should be resolved. In general this type of proposal does not violate our principle of tax limitation; it merely permits the voters at one election to authorize the levy of a fixed sum for a stated period.

Proposal (4) is one developed by your committee in examining all possible ways of improving the workability of the tax limitation principle. This proposal would empower the circuit courts to fix a new tax base, upon petition of a taxing district and after a public hearing, if the court found that an increased base was warranted by such circumstances as changes in population or assessed values, additional services required, increase in cost of services, and annexations or other additions to the taxing district. The purpose here is to substitute the informed judgment of the court for the sometimes ill-informed and emotional judgment of the voters.

Alternatively, it was proposed to substitute the judgment of either the State Tax Commission, the County Tax Supervising and Conservation Commission, or perhaps a special commission appointed or elected for this sole purpose. Your committee gave considerable thought and attention to this proposal and even prepared the text of a constitutional amendment covering this method of effecting an increase in the tax base. In the end, however, your committee abandoned this proposal in favor of the recommendations set forth below in its conclusions, and the proposal is mentioned in this report merely as a possible alternative in the event it should become necessary to seek other solutions. A copy of the committee's proposed constitutional amendment providing for an increase through court action is available in the City Club office to anyone interested in persuading that alternative further.

## VIII. CONCLUSIONS

The members of your committee, although they have arrived at their conclusions by differing paths, are unanimous in their opinion that some practical and workable solution to the problem of constantly recurring special levies is both necessary and desirable and that the 6% limitation should be liberalized. In other words, the members of your committee have found that they fall into one or the other of the two groups classified together under Section VII (C) of this report, and that they favor improvement in the application of the 6% limitation rather than outright retention or outright repeal.

After careful consideration of the various alternative proposals designed to liberalize the limitation, it is your committee's conclusion that the financial problems of the various

tax levying bodies can be adequately met, without loss of the safeguards which the constitutional limitation affords, by (1) permitting the voters to increase or decrease the tax base itself by majority vote at any primary or general election, and (2) strengthening the work of the Tax Supervising and Conservation Commission.

Your committee recognized that as a result of the exceptionally large population growth in recent years, the rapid industrial development, and the inflationary increases in the cost of public services, the major tax levying bodies in Multnomah County have experienced difficulty in raising the revenue necessary to meet their requirements, but it believes that for most of these bodies the immediate need is for a "one shot" increase in their tax base. Your committee feels that the voters should be given the opportunity to increase the tax base itself, if they so desire, and to avoid the expense and uncertainty of resorting annually to special levies.

Your committee also feels that much could be accomplished toward improving the application of the 6% limitation through changes in the legislation creating and defining the functions of the Tax Supervising and Conservation Commission. Expansion of its responsibilities and provision for its active participation in the problems of the tax levying bodies would help to alleviate some of their budgeting problems and would strengthen public confidence in their fiscal needs. This commission should not, your committee believes, be a super governmental body, but it could furnish a worthwhile public service through research and advice and educating the public in matters of public finance.

Your committee therefore submits the following two proposals to effectuate the conclusions stated above:

*Proposal No. 1:* Early in 1950 your committee worked out a proposed amendment of the constitutional 6% limitation which provided that the amount of any increase in levy specifically authorized by the legal voters of a taxing district could be added to and made a part of the tax base itself upon which the tax limitation would thereafter be figured provided it was clearly stated by the terms of the measure authorizing the levy that such addition to the tax base was to be made. It will be recalled that a proposal of the 1947 legislature authorizing such an increase following approval of three successive special levies was rejected by the voters, but that proposal was confusing in its language and possessed other objectionable features which your committee felt were not present in its proposal.

A constitutional amendment similar to the one favored by your committee was also developed and recommended by the Interim Tax Study Committee appointed by the 1949 legislature and has since been presented to the 1951 legislature and embodied in House Joint Resolution No. 9. Since the amendment proposed by House Joint Resolution No. 9 is essentially the same as the one favored by your committee, the committee wishes to go on record as endorsing House Joint Resolution No. 9 and hereby recommends it as Proposal No. 1 of this report. This amendment provides in substance that the property tax base for any taxing district can be established or changed by majority vote of the voters in that district at any primary or general election and that to insure clarification of the issue before the voters every such measure shall specify in dollars and cents the amount of the base to be displaced and the new amount sought to be established. For convenient reference, House Joint Resolution No. 9 is set forth below, containing the wording of Article XI, Section 11 of the constitution as it now exists and showing, in italics, the proposed new matter herein recommended by your committee:

*Be it Resolved by the House of Representatives of the State of Oregon, the Senate Jointly concurring:*

That section 11, article XI of the Constitution of the State of Oregon be amended to read as follows:

Sec. 11. Unless specifically authorized by a majority of the legal voters voting upon the question neither the state nor any county, municipality, district or body to which the power to levy a tax shall have been delegated shall in any year so exercise that power as to raise a greater amount of revenue for purposes other than the payment of bonded indebtedness or interest thereon than [the total amount levied by it in any one of the three years immediately preceding for purposes other than the payment of bonded indebtedness or interest thereon plus 6 per centum thereof; provided, whenever] *its tax base, as hereinafter defined, plus six per centum thereof. The Tax base for any given year shall be: (1) the greatest amount of tax levied in any one of the three years immediately preceding for purposes other than the payment of bonded indebtedness or the interest thereon and exclusive of any levy specifically authorized by a vote of the people in excess of the tax base; or, (2) an amount approved by a majority of the legal voters voting upon the question of establishing a tax base submitted at any regular primary or general election.*

Matter within brackets [ ], above, to be deleted.

*Every such measure shall specify in dollars and cents the amount of the tax base sought to be established, and the new tax base shall first apply to the year next following its adoption. Whenever any new county, municipality or other taxing district shall be created and shall include in whole or in any part property theretofore included in another county, like municipality or other taxing district, no greater amount of taxes shall be levied in the first year by either the old or the new county, municipality or other taxing district upon any property included therein than the amount levied thereon in any one of the three years[,] immediately preceding, by the county, municipality or district in which it was then included plus 6 percentum thereof [; provided further, that the amount of any increase in levy specifically authorized by the legal voters of the state, or of the county, municipality, or other district, shall be excluded in determining the amount of taxes which may be levied in any subsequent year]. The prohibition against the creation of debts by counties prescribed in section 10 [or] of article XI of this constitution shall apply and extend to debts hereafter created in the performance of any duties or obligations imposed upon counties by the constitution or laws of the state, and any indebtedness created by any county in violation of such prohibition and any warrants for or other evidences of any such indebtedness and any part of any levy of taxes made by the state or any county, municipality or other taxing district or body which shall exceed the limitations fixed hereby shall be void.*

Be It Further Resolved, That the proposed amendment be submitted to the people for their approval or rejection at the next regular general biennial election held throughout the state: . . .

*Proposal No. 2:* Your committee also recommends legislation to improve the functioning of the Tax Supervising and Conservation Commission of Multnomah County and to set up a procedure covering requests for special levies in excess of the 6% limitation, as follows:

1. The Commission should be required to study and hold hearings on the budget of any taxing body within its jurisdiction which contemplates a special levy in excess of the 6% limitation before it can be placed on the ballot, and to state publicly the amount which it believes the taxing unit is justified in requesting. This would furnish the taxing unit with an excellent foundation for presenting its request to the voters.

2. The taxing unit should be allowed to include on the ballot a special levy measure which is at variance with that approved by the Commission.

3. In order to allow sufficient time for the Commission to study and hold hearings on such budgets before the election is called, the budget of a taxing unit requiring a special levy should be submitted to the Commission at least seventy-five days before the contemplated election date.

4. The Commission should be required to write or approve the ballot title of any special levy measure. When the amount requested is the same as the amount publicly announced by the Commission as justified, the ballot title should include a statement to that effect.

5. The state local budget law should be amended to require preparation of budgets early enough to permit the procedure outlined above.

6. The Commission should be increased to five men, with particular attention to representation of the entire county.

7. The staff and duties of the Commission should be expanded so that its activities will embrace small taxing districts as well as the larger governmental units.

## IX. RECOMMENDATIONS

Your committee recommends that the City Club go on record as favoring an amendment of Article XI, Section 11, of the Constitution of the State of Oregon in the manner set forth in this report under Proposal No. 1, and as supporting legislation to improve the work of the Tax Supervising and Conservation Commission as outlined in Proposal No. 2.

Respectfully submitted,

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VOLNEY PRATT, *Chairman*

Approved March 12, 1951, by Waldo B. Taylor, *Section Chairman*, Taxation and Public Finance, for submittal to the Board of Governors. Received by the Board of Governors March 19, 1951, and ordered printed and submitted to the membership for discussion and action.

Matter within brackets [ ], above, to be deleted.