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Municipal Officer-Employe Residence Requirement; Constitutional Amendments--How Proposed by People

City Club of Portland (Portland, Or.)

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REPORT

on

MUNICIPAL OFFICER-EMPLOYE RESIDENCE REQUIREMENT

AN ACT amending the City Charter providing officers and employees of the City shall be residents of City; providing officers and employees presently residing outside City shall become City residents within 30 years; providing certain exceptions; amending Section 2-505 so as to eliminate conflicting residence provisions.

SHALL THE CHARTER BE SO AMENDED?

Vote 54 Yes □  No □

TO THE BOARD OF GOVERNORS
CITY CLUB OF PORTLAND

The city charter, section 2-505, now reads in part “All municipal officials, except women, shall be registered voters of the City of Portland.” The proposed measure would repeal this part of Section 2-505 and substitute a new section, to be known as Section 2-511 providing that from and after the effective date of this amendment all city officers and employees must reside within the city limits during the period of their employment by the city, providing that when employees presently residing outside the city shall within ten years from such effective date reside within the city and providing for certain exceptions.

Under decisions of the Supreme Court and various statutes, the word “officials” has been interpreted to mean anyone who issues an order. The Supreme Court has also held that members of boards and commissions are also officials, which ruling has limited the appointment of highly qualified persons to such positions as members of the Planning Commission, for example. As the law now stands, practically anyone, except women, who works for the city in any capacity (except minor clerks and laborers), elective or appointive, in paid or unpaid positions, is required to live in the city. The fact is, however, that the restriction is very loosely enforced.

The desirability of such a restriction can be argued on philosophical grounds, but your committee feels that such argument is beside the point, in view of the immediate need for clarifying an existing confused situation. This study will concern itself with determining the effect of the proposed act on the present problem and whether or not it is to the best interests of the city and of its employes. To find the facts your committee has interviewed Alexander G. Brown, City Attorney, and Don Eva, attorney for the employes living outside the city.

ENFORCEMENT DIFFICULTIES OF PRESENT SECTION 2-505

The first break in the enforcement of the restriction came during the depression when many employees were laid off and had to move outside the city for economic reasons. Some were later reinstated in their jobs, but did not wish to sell their homes and return to a house in the city. Also, to cut living expenses, some were forced to live with their families who lived outside the city limits.

The next bad period was during and after World War II. During the war, wages in war industry jobs were much higher than those paid by the city. This induced many employes to leave their jobs with the city, but others, desiring to keep their seniority and civil service status, elected to keep their jobs but moved to the country in order to augment their income by growing much of their food. Further, during the war it was necessary to hire many temporary policemen and firemen, many of whom lived out of the city.

After the war many employees who had been in the Service returned to their old jobs. Since housing was scarce and overpriced, many of them took advantage of their “GI” loans as the only means of purchasing homes they could afford. Most of these were in housing developments outside the city limits.
Permission for such suburban residence was sometimes given by the Council, sometimes by the Commissioner in charge and sometimes not at all. Thus, enforcement was at the whim of the official in charge and, as some were lax and some strict, many inequities resulted. These permits put the officials in violation of the city charter, so as a result, any taxpayer can at any time file a taxpayer's suit to require one or all employees living outside the city to conform with the charter and require immediate compliance or loss of position with the possibility of severe hardship to him and his family.

CONDITIONS OF NEW SECTION 2-511

1. All officers and employees receiving salary or wages from the city must reside in the city of Portland.
2. Any officer or employee who at the time of his employment is not a resident of the city must move within the city limits by the end of his probationary period.
3. Any officer or employee who, at the time this section becomes effective, is not living in the city must within ten years from such date establish residence in the city.
4. Any officer or employee whose place of employment in the city service is outside the city limits may reside outside the city, but if he is transferred to work within the city he must establish residence in the city within one year.
5. Does not apply to consulting employees or unpaid members of boards or commissions.
6. Council may waive these provisions in future employment of persons to technical or professional positions for one year, but at the end of that time such employee must reside in the city.
7. City of Portland means the area within the boundaries as established from time to time and is not limited to the boundaries on the effective date of this Act.
8. Violation will be cause for discharge.

ARGUMENTS FOR

1. Is favored by both the city and the majority of the employees living outside the city for the reason that since they are now in violation of the city charter, there is danger of taxpayer suits being filed to require immediate conformity of all employees. If the act is defeated, the problem—with all of its inequities—will continue.
2. Of 3,200 employees, 900 live outside the city, but after the ten years' time for making the change as provided in the act, it is predicted that if present trend continues, 15% of the 900 will have retired and 70% will be in the city by annexation. Some of the remaining 15% will have paid for their property and the others will have had time to build up equities, so if they have to sell they will not suffer the losses they would have if their houses were sold earlier.
3. At the time of his employment the employee will understand the conditions under which he will work and will know they will not be changed.
4. Firemen and policemen will be close in for emergency duty, although Civil Defense takes an opposite view (see below).

ARGUMENTS AGAINST

1. The Civil Defense feels it would be advantageous to have firemen and policemen living outside the city, so in case of a disaster to the city, their expert services would be available outside of the city to help with rescue work. An axiom of Civil Defense is the dispersal of key personnel.
2. It would work a hardship on married women working for the city whose husbands are not municipal employees as they would have to continue living in the city regardless of the fact that residence outside the city might be to the decided advantage of the husband and other members of the family.

AMENDING SECTION 2-505

This Act also includes an amendment of that part of Section 2-505 concerning REQUIREMENTS FOR ALL OFFICIALS. The amendment deletes the sentence “All municipal officials, except women, shall be registered voters of the City of Portland.” There seems to be no arguments against this.
CONCLUSION AND RECOMMENDATION

Since the arguments for the Act far outweigh those against, your committee feels that the measure offers a realistic answer to a perplexing problem, and therefore unanimously recommends a "54 YES" vote.

Respectfully submitted,

ORMOND BINFORD
FRED BROAD, JR.
PHILIP L. FIELDS
JOHN R. SABIN
DAVID R. WILLIAMS
L. B. MACNAB, Chairman

Approved September 17, 1954 by the Research Board for transmittal to the Board of Governors. Received by the Board of Governors, September 20, 1954 and ordered printed and submitted to the membership for discussion and action.

REPORT

on

CONSTITUTIONAL AMENDMENTS — HOW PROPOSED BY PEOPLE

PURPOSE: To amend the Oregon Constitution by increasing from 8% to 10% the number of voters' signatures required to put a constitutional amendment on the ballot. Percentages are based on the number of legal voters who voted for justice of the Supreme Court at last regular election.

TO THE BOARD OF GOVERNORS
CITY CLUB OF PORTLAND

Your committee was asked to study the proposed amendment to the Oregon Constitution which would increase from 8% to 10% the number of voters' signatures required to put a constitutional amendment on the ballot.

In order to help gain a basis for the formation of an opinion, we interviewed representatives of the proponents of the measure and of opponents of whom we could learn; we studied records relating to the effect and operation of the present section of the Constitution during the fifty-two years since it was adopted and we compared Oregon's requirements with requirements in other states in which a constitutional amendment may be proposed by initiative petition.

The amendment is designed to make it more difficult to propose an amendment to the Constitution by initiative petition than to propose a statute, and thus tend to keep out of the Constitution, material which from a structural standpoint properly should be part of the statutory law. Your committee feels that the purposes of the amendment are desirable and that the amendment will make possible their achievement without making unduly difficult the proposal of constitutional amendment by the initiative process.

Based upon its investigation and for the reasons more fully set forth below, your committee recommends that the proposed amendment be adopted.

THE PRESENT SITUATION

The Oregon Constitution, subject only to the Constitution, statutes and treaties of the United States, is the highest law of Oregon. It may be amended only by a majority
of the electors voting on an amendment. It may not be amended in any way by the legislature and the legislature is powerless to enact any statute inconsistent therewith.

Amendments to the Constitution may be proposed in two ways:

(1) An amendment may be proposed by the legislature and referred to the people for their approval or rejection,1 or

(2) An amendment may be proposed by petition of 8% of the "legal voters"2. The "legal voters" are defined as those who cast ballots for the office of justice of the supreme court at the last regular election.3

Statutes are laws of the state which must be consistent with and adopted in accordance with the procedures outlined in the Constitution. They may be adopted or amended either by the legislature or by the voters. Generally it is possible to refer a statute adopted by the legislature to the voters by filing a referendum petition signed by 5% of the "legal voters."4 Or a statute may be originated in the first instance and submitted to the voters by the filing of an initiative petition signed by 8% of the "legal voters."5

From the foregoing it will be seen that at the present time exactly the same number of signatures is required to propose a statute by initiative petition as to propose a constitutional amendment by this method.

THE PROPOSED CHANGE

The proposed amendment would increase from not more than 8% to not more than 10% the number of "legal voters" required to propose a constitutional amendment by initiative petition. The number of signatures required to propose a statute by initiative petition would not be affected, nor would there be any other changes whatever in the present procedures relating to initiative petitions. Furthermore, the present power of the legislature to refer a proposed amendment to the people would not be in any way affected.

THE PROPONENTS AND THE OPPONENTS

The amendment was proposed by the Oregon legislature. Since 1949 in every session of the legislature attempts have been made to refer to the voters some change in the procedure for amending the Constitution. The earliest attempt was to require that all initiative petitions, statutory and constitutional alike, bear signatures of 8% of the "legal voters" in each of the four congressional districts in Oregon. A later proposal would have required this percentage in three out of four of the congressional districts. These forms of proposal were never adopted by the legislature. The present proposal, unlike earlier proposals, does not make any more difficult the proposal of statutes by initiative petition nor does it require the solicitation of signatures outside of population centers. Legislative leaders interviewed pointed out that the present proposal is quite different in effect from earlier proposals and is not subject to the criticisms leveled at earlier proposals.

The Oregon State Grange was the only organization which, so far as we could ascertain, formally opposed the amendment at the time of our investigation. The Grange opposes the measure because it would make the job of getting enough signatures to propose an amendment to the Constitution more difficult. Leaders of organized labor interviewed opposed the amendment on the same ground and it is likely that their unions will take formal stands opposing the amendment. Some opponents of the amendment agree that it should be more difficult for the people to amend the Constitution than to enact a statute, but feel that a differential could be better obtained by increasing the percentage of favorable votes necessary to pass an amendment than by making the petition circulator's job more difficult.

ADVANTAGES OF A DIFFERENTIAL

Ideally a constitution should contain only two types of material: (a) a specification of the basic structure of government; and (b) a statement of certain limitations on the

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1. Constitution of Oregon; Article XVII, Section 1.
2. Constitution of Oregon, Article IV, Section 1.
3. Ibid. (Whenever the term "legal voters" is used here, it is used in the special sense as defined above.
4. Ibid.
5. Ibid.
The power of government designed to protect the basic rights of the people which the state may not infringe. The “freezing” of other types of material into a constitution is contrary to the theory of representative government. An important function of the legislature is to make changes in the statutory law when changes are desirable because of changed conditions, unworkability of a statute, unforeseen adverse effects of a statute, and the like. If material which properly should constitute a statute is made a part of the constitution, the legislature is powerless to change it no matter how desirable a change may be.

The Constitution of the United States of America is an example of a constitution which is almost entirely devoid of legislative material. The Oregon Constitution, on the other hand, contains a great deal of material which we feel should be contained in statutes rather than in the Constitution. The following are examples:

1. The provisions relating to the penalties for murder in the first degree;
2. The provisions relating to the sale of liquor by the drink;
3. The requirements having to do with the purchase of stationery;
4. The provisions limiting the liability of stockholders of private corporations;
5. The provisions for veterans’ loans;
6. The provisions for payment of a veterans’ bonus;
7. The provisions setting forth the qualifications for appointment as state printer;
8. The provisions outlawing lotteries.

Quite certainly the reason that much of the material which should be in statutes is in the Constitution is that it is as easy for a group which wishes to propose a measure to secure enough signatures to propose it as a constitutional amendment as to propose it as a statute. The proponents of any particular measure are likely to prefer to incorporate their measure into the Constitution where the legislature cannot tamper with it if no greater effort is required.

A number of the provisions referred to above were proposed by initiative petition. In addition, constitutional amendments have been proposed by initiative petition, but not passed by the voters, which would have frozen into the constitution provisions authorizing certain gambling and gaming devices and certain lotteries, prohibiting parimutuel betting on animal races, prohibiting the imposition of a ton-mile tax on trucking concerns, limiting hours of work to eight, providing a homemakers loan fund, providing for a single tax, outlawing compulsory vaccination, fixing the legal rate of interest, outlawing the sale of cigarettes and preventing the regulation of advertising, if truthful. Regardless of its merits, we feel that none of these proposals should have been incorporated into the Constitution.

It seems quite probable that the proponents of most of the “legislative” measures to which we have referred would not have attempted to have their measures made a part of the Constitution if it had been more difficult to propose an amendment to the Constitution by initiative petition than to propose a statute.

The only argument against the proposed amendment which has been suggested to us is that the increase in the percentage of signatures needed would make it too difficult to propose a constitutional amendment by initiative petition.

The amendment is designed to make it enough more difficult to propose a constitutional amendment that only rarely would a group attempt to obtain signatures to initiate a constitutional amendment when its purpose could be accomplished by the initiation of a statute. We feel that the percentage has not been increased so much as to preclude a group with a meritorious cause from obtaining enough signatures to propose a constitutional amendment with a reasonable amount of effort.

As already stated, under the proposed amendment not more than 10% of the “legal voters” will be required to propose a constitutional amendment. The “legal voters” comprise the persons who voted for justice of the Supreme Court at the last regular election. Only rarely are there contests for this position. Thus, the number of persons casting votes for justice of the Supreme Court ordinarily is far less than the number who cast votes for some contested office. Further, there ordinarily is a considerable variation between the number of votes cast in years in which there is a presidential election and in “off” election years. Persons wishing to propose a constitutional amendment can accomplish their purpose with relative ease by waiting until after an “off” election year.
The number of signatures required since 1940 on an initiative petition to amend the Constitution under the present constitutional provision as compared with those that would have been required had the proposed amendment been in effect are set forth in the table below:

<table>
<thead>
<tr>
<th>Election Year*</th>
<th>Under Present Provision Signatures Required</th>
<th>Under Proposed Amendment Signatures Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1940</td>
<td>21,135</td>
<td>26,418</td>
</tr>
<tr>
<td>1942</td>
<td>25,385</td>
<td>31,731</td>
</tr>
<tr>
<td>1944</td>
<td>15,052</td>
<td>18,815</td>
</tr>
<tr>
<td>1946</td>
<td>23,108</td>
<td>28,884</td>
</tr>
<tr>
<td>1948</td>
<td>18,968</td>
<td>23,710</td>
</tr>
<tr>
<td>1950</td>
<td>25,481</td>
<td>31,851</td>
</tr>
<tr>
<td>1952</td>
<td>26,279</td>
<td>32,849</td>
</tr>
<tr>
<td>1954</td>
<td>37,404</td>
<td>46,755</td>
</tr>
</tbody>
</table>

*Votes cast for justice in the election two years preceding.

The requirements of other states with provisions for proposing constitutional amendments by initiative petition with respect to the number of signatures required for an initiative petition appear to be much more difficult than those of Oregon. Even under the proposed amendment the requirements in Oregon will be easier than in almost any other state. The requirements in other states in which it is possible to propose a constitutional amendment by initiative petition are set forth below:

<table>
<thead>
<tr>
<th>State</th>
<th>Signature Requirement for Proposal of Constitutional Amendment by Initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARIZONA</td>
<td>15% of total votes for governor at last election.</td>
</tr>
<tr>
<td>ARKANSAS</td>
<td>10% of total votes for governor at last election, including 5% in each of 15 counties.</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>8% of total votes for governor at last election.</td>
</tr>
<tr>
<td>COLORADO</td>
<td>8% of total votes for governor at last election.</td>
</tr>
<tr>
<td>IDAHO</td>
<td>8% of total votes for governor at last election.</td>
</tr>
<tr>
<td>MASSACHUSETTS</td>
<td>At least 25,000 voters. Also vote of 1/4 of all members of two successive joint-sessions of the General Court. (To ratify requires 30% of total voters at each election and a majority vote on the amendment.)</td>
</tr>
<tr>
<td>MICHIGAN</td>
<td>10% of legal voters for governor at last election.</td>
</tr>
<tr>
<td>MISSOURI</td>
<td>Not more than 8% of legal voters at last election of justices of Supreme Court in each of at least 2/3 of the congressional districts.</td>
</tr>
<tr>
<td>NORTH DAKOTA</td>
<td>20,000 electors.</td>
</tr>
<tr>
<td>OHIO</td>
<td>10% of electors for governor at last election, including 5% of electors in each of 2/5 counties.</td>
</tr>
<tr>
<td>OKLAHOMA</td>
<td>15% of legal voters in last election for office receiving highest vote.</td>
</tr>
</tbody>
</table>

Considering that one of the principal purposes of a constitution is to protect the basic rights of individuals—individuals who at a particular moment may be members of an unpopular minority—it seems quite proper that it be fairly difficult to amend the Constitution. A constitution subject to change according to the whims of the moment would afford us but slender protection against abuse of our basic liberties.

One unsolved legal problem inherent in both the present constitutional provision and in the proposed amendment deserves mention. The present provision stipulates that "not more" than 8% of the "legal voters" shall be required to propose a constitutional amendment (or statute) by initiative petition. The proposed amendment stipulates that "not more" than 10% shall be required for a constitutional amendment (8% for a statute). The plain inference from the language used in both the present provision and in the proposed amendment is that the legislature might provide that some percentage less than 8% or 10% as the case may be, shall be sufficient to propose a constitutional amendment. Yet the language in some decisions of the Oregon Supreme Court leaves at least some doubt as to whether the legislature would have the power to reduce the percentages. The legislature has never attempted to lower the percentage. Unless it does, the required percentage of signatures will be the maximums stated in the Constitution. It seems very doubtful that the legislature will attempt to lower these percentages.
CONCLUSION

It is highly desirable that there be a differential between the number of signatures required to propose a statute by initiative petition and the number required to propose a constitutional amendment. The present proposal will provide this differential without increasing the signature requirements to such an extent that it will be impractical to obtain enough signatures to put a constitutional amendment on the ballot when the purpose of the proponents of the measure cannot be accomplished by means of a statute.

RECOMMENDATION

Your committee therefore recommends that the City Club go on record as favoring the proposed constitutional amendment requiring an increase in the number of voters' signatures to put a constitutional amendment on the ballot.

Respectfully submitted,

DR. U. G. DUBACH
HANS A. LINDE
PAUL NEILS
DR. WILLIAM C. SCOTT
FREDERIC G. WESSINGER
WILLIAM W. WYSE, Chairman.

Approved September 17, 1954, by the Research Board for transmittal to the Board of Governors. Received by the Board of Governors September 20, 1954, and ordered printed and submitted to the membership for discussion and action.

PROPOSED FOR MEMBERSHIP
AND APPROVED BY THE
BOARD OF GOVERNORS

If no objections are received by the Executive Secretary prior to October 8th, the following applicants will be accepted:


MORE RAINCOATS LOST:

No word has yet been received on the whereabouts of Leon Jourolman's navy blue raincoat, picked up by mistake at the September 3rd meeting, and on September 17th, a Macintosh belonging to Leo Samuel disappeared also.

In both instances, coats identical or very similar were worn away from the meeting, in lieu of the owner's actual apparel.

If members wearing either navy blue raincoats or Macintoshes will check their rain gear and find they have one not quite their own, please contact the City Club office.