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Authorizing City to Make Up to 5-Year Contracts

City Club of Portland (Portland, Or.)

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REPORT
on
**AUTHORIZING CITY TO MAKE UP TO
5-YEAR CONTRACTS**

AN ACT amending the City Charter so as to authorize the city to enter into contracts for a period of not to exceed five years, with a right to renewal or extension for not to exceed a like period.

TO THE BOARD OF GOVERNORS
THE CITY CLUB OF PORTLAND:

Your Committee was appointed to study and report on a proposed amendment to the Charter of the City of Portland which would amend sub-section 4 of Section 2-105 (a), (old section 73 of the 1903 Charter), so as to read:

"4. To provide for entering into contracts by the city for a period not exceeding five years and the extension or renewal thereof by option or otherwise, for not to exceed an additional five years, except as in this charter otherwise provided."

The proposed amendment was approved by the City Council and will be submitted to the people at the coming general election on November 2, 1954, as proposition 51.

HISTORY

Section 2-105 (a), Subsection 4, was originally a part of Section 73 of the Charter of the City of Portland granted by the legislature in 1903, and it now provides under Enumerated Powers that the City has authority to enter into contracts for a period of not to exceed two years. This was carried over in the Charter as amended by the initiative in 1913.

SOURCES OF INFORMATION

Your Committee has consulted Mr. Alexander G. Brown, City Attorney of Portland, has considered the editorial on this subject appearing in the September 15, 1954, issue of *The Oregonian*, and has carefully reviewed both Oregon and general law on this subject. Your Committee was unable to find any person or group opposed to the amendment.

LEGAL PRINCIPLES APPLICABLE

In the absence of any constitutional restrictions, the legislature may give to a city authority to make a contract for an unlimited period. In the absence of limitation either by Charter or by general statute, contracts have been sustained as valid when made for a reasonable term of years. In determining what was "reasonable" the Courts have sustained contracts extending for as long as 31 years. 63 *Corpus Juris Secundum* 533.

Of course, a specific limitation in the State Constitution or the City Charter would control the length of City contracts. No such limitation is imposed by the Oregon constitution. Thus, it is within the power of the city to fix in its Charter the duration of contracts with the city. The proposed amendment is constitutional and in proper legal form.

Section 2-105 (a), Subsection 4, relates to city contracts generally, and other sections of the Charter permit the City Council to enter into certain special contracts of more than two years' duration:

Subsection 10 of Section 2-105 permits leases of City-owned land for a period not to exceed five years.

Section 8-108 of the Charter permits contracts for lighting not to exceed five years.

Section 1-109 of the Charter permits leases of City-owned real property to new industries for a period of thirty years.

Section 1-108 provides for the leasing of City-owned property for a period not to exceed five years.

The last session of the legislature provided that notwithstanding contrary provisions in a city charter, a city could enter into a lease agreement or contract for the operation of off-street parking on city owned property up to 50 years. Oregon Laws P 153, Chapter 668, Section 11.

STATEMENT OF CITY ATTORNEY BROWN

City Attorney Alexander G. Brown has submitted the following argument in behalf of the proposed Charter Amendment:

"Under modern circumstances it (the two year contract limitation) has been a strait jacket and has hampered the city a great deal in its present operation.

"This limitation became particularly important in connection with the authority granted under the Charter amendment to provide for a sanitary sewage disposal system. The City has authority to contract with individuals and corporations outside the city limits for sanitary sewage disposal services. The city in establishing its standards provided that certain industries, such as stock yards, etc., should provide pre-treatment to the sewage before connecting with the city's disposal system. The State sanitary authority has been exercising repeated efforts to get these industries to provide proper sewage disposal and they are seeking contracts with the city but hesitate to invest up to \$200,000.00, or more, in a pre-treatment plant and then have only a two-year contract with the city. The amendment, as proposed, would permit the city to enter into five-year contracts with a right of renewal for a like period.

"While the sanitary sewage disposal problem was the immediate vehicle for this particular proposal, under modern business practices as participated in by the city, the longer period for contracts is almost mandatory.

"The proposal of a five-year general contract authority with right of renewal for a like period is, in my opinion, a reasonable extension of the presently very limited contract right and will, in a number of circumstances, I believe, result in saving to the city. There have been several instances where we have felt in contracting that the price has been rather high simply because we could only enter into a two-year agreement and the other party had no assurances of a new contract or extension, and therefore could not amortize investment over a longer period of time."

"THE OREGONIAN" ARGUMENT

"The Oregonian" editorial in endorsing the change of present two-year contract limitation states:

"This tight restriction is troublesome with the community's need for public works growing in volume and magnitude. Contractors on extensive municipal jobs have been required to seek renewal of contracts each two years, an unsatisfactory procedure both for city and for contractor. The charter amendment would extend the authorized period to five years and permit renewal for a second five-year period. It would make for efficiency without jeopardizing popular control of the city council's action."

COMMENTS

In 1903, when city functions were limited and city business small, a two-year contract limitation provision was no serious burden and afforded the city council a means of biennially reviewing the city's contracts. However, with the sharp increase in the business of the Council and with the ever-growing complexity of city functions, the city council must be given a wider discretion in fixing the duration of contracts with the city. Your Committee feels that the proposed amendment is both reasonable and necessary to keep Portland abreast of the times.

RECOMMENDATIONS

Your Committee therefore recommends that the City Club go on record as favoring the proposed amendment, Proposition 51.

Respectfully submitted,

MILTON E. KAHN

DON S. WILLNER

WILLIAM L. JOSSLIN, *Chairman*

Approved October 8, 1954, by the Research Board for transmittal to the Board of Governors. Received by the Board of Governors October 8, 1954, and ordered printed and submitted to the membership for discussion and action.