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City Club of Portland (Portland, Or.)

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REPORT

on

**CONSTITUTIONAL SIX PERCENT
LIMITATION AMENDMENT****(State Measure No. 7)**

Purpose: Prevents loss of tax base. Fixes election date for exceeding six percent limitation. Exempts expenditures required by state from present \$5,000 county debt limitation.

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

Your Committee was authorized to study and report on the proposed amendment to Section 11, Article XI of the Constitution of the State of Oregon relating to the six percent tax limitation.

I. BACKGROUND INFORMATION

The proposed ballot measure was authorized by Senate Joint Resolution No. 33 which was adopted by the 1961 Legislature. This resolution provided for two separate ballot measures. The first measure was submitted to the voters at the time of the primary election in May, 1962, and failed to obtain a majority vote, in harmony with the City Club recommendation. The second measure, which is the one under review, was to be submitted at the November election if the first were defeated at the primary.

The only difference between the two is that the May measure contained three substantive changes, and the current measure contains only the first of the three substantive changes proposed in May. Because the first of the proposed changes appeared to be unopposed, the Legislature authorized the submission to the voters of that change alone in the event the ballot measure submitted in May failed.

Your Committee studied and reported on the May ballot measure¹ and has now incorporated the relevant data in this report. No further reference is made herein regarding the two substantive changes which were omitted from the current measure, as they have no relationship to the changes now being proposed.

II. ANALYSIS OF THE PROPOSED AMENDMENT

Although Section 11 is rewritten in its entirety by the amendment, there is only one substantive change. The other changes are made for increased clarity and precision. The key words making the substantive change are underlined in the excerpts from the measure quoted below.

"Subsection (2) The tax base of each taxing unit in a given year shall be one of the following:

- (a) The amount obtained by adding six percent to the total amount of tax lawfully levied by the taxing unit . . . in any one of the last three years *in which such a tax was levied by the unit . . .*"

The May report stated:

"Under present law, in order to retain a tax base, a levy must be made in one of the three years immediately preceding the year of the current levy. With the proposed change, a unit does not lose its established tax base."²

The ballot title states, in part: "exempts expenditures required by state from present \$5,000 county debt limitation". This refers to the omission of the entire Subsection 5 from the present Section 11.³

¹April 13, 1962 *City Club Bulletin* Vol. 42, No. 46.

²Ibid, p. 444.

³Subsection 5 of the present Section 11 of Article XI of the State Constitution, to be eliminated if this measure passes, reads: 5. The prohibition against the creation of debts by counties prescribed in Section 10 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 any taxing unit which shall exceed the limitations fixed hereby, shall be void.

The effect of the omission appears to be as stated in the ballot title. The legislative history of this and a companion bill (which did not obtain legislative approval) indicates that the omission of Subsection 5 may have been unintended. None of the authorities interviewed by the Committee believed that the omission of this provision would have any practical consequences on the amount of taxation levied by a taxing unit. This opinion appears to have been based on the fact that obligations referred to in Subsection 5 are limited to expenditures required of the counties by the state Legislature. Other changes resulting from the total revision of Section 11 are not of sufficient substance to warrant elaborations.

III. SCOPE OF COMMITTEE RESEARCH

Your Committee re-interviewed most of the sources listed in the May 1962 report, and, in addition, discussed the measure with Mr. George Baldwin, until recently School Clerk and Comptroller of School District No. 1, and now Assistant General Manager of the Port of Portland.

IV. ARGUMENTS IN FAVOR OF THE AMENDMENT

1. One argument in favor of the Measure No. 7, in reference to the substantive change contained therein, is identical to that cited in the May report:

"A tax levy should not have to be made every three years in order for a taxing unit to preserve its existing tax base. Some taxing units do not need tax revenues every year, due to receipt of funds from other sources, such as participation in proceeds of timber sales from Federal lands, and therefore do not levy a tax. In such cases the amendment will protect them from losing their tax base for failure to levy taxes, by allowing the taxing units to reach back any number of years for a tax base.

"Taxpayers in these units would thereby be spared the payment of taxes which the unit does not need when other funds are available."

2. The rewriting of the whole section will result in clarity of interpretation.

V. ARGUMENTS OPPOSED TO THE AMENDMENT

Your Committee has found no opposition to the amendment.

VI. CONCLUSIONS

Your Committee agrees with the argument in favor of this amendment. It will affect only a few taxing units. However, it will enable those units to keep their tax bases without making otherwise unnecessary levies. For this reason your Committee is in favor of the proposed ballot measure.

VII. RECOMMENDATION

Your Committee recommends that the City Club approve the adoption of the amendment to Section 11 of Article XI of the Constitution of the State of Oregon and urges a "yes" vote on State Measure No. 7.

Respectfully submitted,

William L. Brewster

James H. Bruce

Clifford N. Carlsen, Jr.

Volney Pratt

Timothy F. Maginnis, *Chairman*

Approved by the Research Board September 18, 1962, for transmittal to the Board of Governors.

Received by the Board of Governors September 24, 1962, and ordered printed and submitted to the membership for discussion and action.

APPENDIX

SENATE JOINT RESOLUTION NO. 33

(Referred to Voters of Oregon by 1961 Legislature)

MEASURE NO. 7

Ballot Title:

CONSTITUTIONAL SIX PERCENT LIMITATION AMENDMENT

Purpose: Prevents loss of tax base. Fixes election date for exceeding six percent limitation. Exempts expenditures required by state from present \$5,000 county debt limitation.

Be It Resolved by the Senate of the State of Oregon, the House of Representatives jointly concurring:

Section 11, Article XI of the Constitution of the State of Oregon, is repealed, and the following section is enacted in lieu thereof:

Section 11. (1) Except as provided in subsection (3) of this section, no taxing unit whether it be the state, any county, municipality, district or other body to which the power to levy a tax has been delegated, shall in any year so exercise that power to raise a greater amount of revenue than its tax base as defined in subsection (2) of this section. The portion of any tax levied in excess of any limitation imposed by this section shall be void.

(2) The tax base of each taxing unit in a given year shall be one of the following:

(a) The amount obtained by adding six percent to the total amount of tax lawfully levied by the taxing unit, exclusive of amounts described in paragraphs (a) and (b) of subsection (3) of this section, in any one of the last three years in which such a tax was levied by the unit; or

(b) An amount approved as a new tax base by a majority of the legal voters of the taxing unit voting on the question submitted to them in a form specifying in dollars and cents the amount of the tax base in effect and the amount of the tax base submitted for approval. The new tax base, if approved, shall first apply to the levy for the fiscal year next following its approval.

(3) The limitation provided in subsection (1) of this section shall not apply to:

(a) That portion of any tax levied which is for the payment of bonded indebtedness or interest thereon.

(b) That portion of any tax levied which is specifically voted outside the limitation imposed by subsection (1) of this section by a majority of the legal voters of the taxing unit voting on the question.

(4) Notwithstanding the provisions of subsections (1) to (3) of this section, the following special rules shall apply during the periods indicated:

(a) During the fiscal year following the creation of a new taxing unit which includes property previously included in a similar taxing unit, the new taxing unit and the old taxing unit may not levy amounts on the portions of property received or retained greater than the amount obtained by adding six per cent to the total amount of tax lawfully levied by the old taxing unit on the portion received or retained, exclusive of amounts described in paragraphs (a) and (b) of subsection (3) of this section, in any one of the last three years in which such a tax was levied.

(b) During the fiscal year following the annexation of additional property to an existing taxing unit, the tax base of the annexing unit established under subsection (2) of this section shall be increased by an amount equal to the equalized assessed valuation of the taxable property in the annexed territory for the fiscal year of annexation multiplied by the millage rate within the tax base of the annexing unit for the fiscal year of annexation, plus six percent of such amount.

(5) The Legislative Assembly may provide for the time and manner of calling and holding elections authorized under this section. However, the question of establishing a new tax base by a taxing unit other than the state shall be submitted at a regular statewide general or primary election.

Readopted by Senate May 9, 1961

Adopted by Senate April 4, 1961

Filed with Secretary of State May 19, 1961.

Adopted by House May 5, 1961

REPORT ON STATE COURTS: CREATION AND JURISDICTION

(State Measure No. 5)

Purpose: To amend Constitution by authorizing legislature to pass special laws as well as general laws creating lower State courts and defining and regulating their jurisdiction.

To the Board of Governors,

The City Club of Portland:

Your Committee, composed entirely of lawyers, was directed to study and report on Ballot Measure No. 5 which will be before the people in the November, 1962 general election. This ballot measure would amend the Oregon Constitution and reads as follows:

"The Constitution of the State of Oregon is amended by creating a new section to be added to and made a part of Article XII (Amended) and to read:

"Section 2b. Notwithstanding the provisions of section 23, Article IV of this Constitution, laws creating courts inferior to the Supreme Court or prescribing and defining the jurisdiction of such courts or the manner in which such jurisdiction may be exercised, may be made applicable:

"(1) To all judicial districts or other subdivisions of this state; or

"(2) To designated classes of judicial districts or other subdivisions;
or

"(3) To particular judicial districts or other subdivisions."

In order to relate the proposed amendment to the present constitution, we quote Section 23, Article IV of the Oregon Constitution, to wit:

"Section 23. *Certain Local and Special Laws Prohibited.*

The Legislative Assembly, shall not pass special or local laws in any of the following enumerated cases, that is to say:

"Regulating the jurisdiction, and duties of justices of the peace, and of constables;

"For the punishment of Crimes, and Misdemeanors;

"Regulating the practice in Courts of Justice;

"Providing for changing the venue in civil, and Criminal cases;

"Granting divorces;

"Changing the names of persons;

"For laying, opening and working on highways, and for the election, or appointment of supervisors;

"Vacating roads, Town plats, Streets, Alleys, and Public squares;

"Summoning and empanneling (sic) grand, and petit jurors;

"For the assessment and collection of Taxes, for State, County, Township, or road purposes;

"Providing for supporting Common schools, and for the preservation of school funds;

"In relation to interest on money;

"Providing for opening, and conducting the elections of State, County, and Township officers, and designating the places of voting;

"Providing for the sale of real estate, belonging to minors, or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.—"

The purpose of the proposed amendment is to permit the legislature to enact

*The proposed amendment would not affect all of the prohibition of Article IV, Section 23,

laws which apply only to courts in a particular judicial district or county *by name*, as well as by some general classification such as minimum or maximum population figures.

At present the legislature can and does enact legislation intended to affect only the courts of a particular judicial district or county. This result is accomplished by the enactment of legislation applicable to all judicial districts or counties of a certain class, but with special definitions of classes to include only the county or judicial districts intended to be affected.

This awkward method is used because Article IV, Section 23 of the Oregon Constitution prohibits "special or local laws" regulating the practice in courts of justice or the jurisdiction and duties of justices of the peace. In 1913, the Legislature passed an act which purported to transfer probate jurisdiction from the County Court to the Circuit Court in Multnomah County only, referring to Multnomah County by name. The Act was held invalid as "special legislation" in *In re McCormick's Estate*, 72 Or. 608 (1914).

Today, as a result, all legislation designed to affect only Multnomah County refers to "each judicial district consisting of one county having a population of 500,000 or more, according to the latest federal census . . ." (ORS 3.310). This method of enacting "special legislation" indirectly has been upheld by the Supreme Court, most recently in *Thompson v. Dickson*, 202 Or. 394 (1954).

However, the minimum and maximum population approach sometimes results in undesired and unintended effects. For example, in 1959 the Legislature, intending to change the number of Circuit Court judges in Marion County from three to four, and to provide that one of the judges should preside over the Department of Domestic Relations, resorted to a population classification describing judicial districts consisting of one county and having a population of 90,000 to 125,000. As a result, after the 1960 federal census, Clackamas County unexpectedly found itself with two additional Circuit Court judgeships which were not then needed.

It is possible that the additional judges could have been given to Marion County without any necessity for resorting to population classifications, but the example illustrates the difficulties and hazards of using the classification method.

The present amendment, which would permit the Legislature to create Circuit or District Courts and transfer certain judicial functions and powers to certain courts in specifically-named counties, would correct the present difficult situation which makes it necessary, for example, in order to determine the jurisdiction of a District Court, not only to know the name of the district, but the population of the County and the history of the migrations of the offices of the court. Thus, for the purpose of transferring the probate jurisdiction in Washington County from the County Court to the District Court, without changing the probate jurisdiction in Yamhill County, the Legislature provided that all judicial functions and powers, including probate, be transferred to the District Courts in all counties where the District Court offices and courtrooms were located in the County Court House (ORS 46.092). In Yamhill County, the District Court office and courtroom is not located in the County Court house, and therefore in that county probate jurisdiction was not transferred.

The difficulty of determining the effect of this type of legislation is illustrated by the fact that even the Legislative Counsel's note to ORS 46.092 in the official publication of the Oregon Revised Statutes goes no further than to say that: ". . . probate jurisdiction *appears* to have been transferred from the county court to the district court in the following counties: . . ." (and) "ORS 46.092 to 46.098 will *probably* apply in Josephine, Lincoln and Wasco Counties. . . ." (emphasis ours).

Another extreme classification established district courts in every city which is a county seat, and the most populous city of a county with a population of between 42,000 and 50,000.²

The proposed constitutional amendment is intended to permit the Legislature to call a spade a spade and to do directly what is now done deviously.

²Chapter 526, Oregon Laws, 1951.

COMMITTEE STUDY AND SCOPE OF STUDY

Your Committee interviewed Mr. Roy Shields, Chairman of the Subcommittee of the Oregon State Bar Committee on Judicial Administration, which—independent of the Legislature—had proposed a modification of Article IV, Section 23 of the Constitution to broaden legislative powers regarding state courts.

The Committee also interviewed the authors of Ballot Measure No. 5, Mr. Sam Haley and Mr. Robert W. Lundy of the Legislative Counsel's office.

There was but one dissenting vote in the Legislature on this ballot measure; your committee made inquiry of the sole member voting "No" on the resolution in the House of Representatives and is advised that he is not now opposed to the adoption of Ballot Measure No. 5.

We have also addressed inquiries to the League of Women Voters which has studied the measure and explained it, but has made no recommendation beyond noting the fact that the Oregon State Bar suggested the principle of Ballot Measure No. 5.

We have also inquired of the following associations: Circuit Judges Association, District Judges Association, Justices of Peace Association, District Attorneys' Association, and Association of Oregon Counties. The District Judges Association has considered this ballot measure and has gone on record in favor of Ballot Measure No. 5. None of the other associations has considered or taken a position either pro or con on the measure.

The Committee has also corresponded with Professor Hans Linde of the University of Oregon Law School, Chairman of the Subcommittee of the Constitution Revision Commission, which has recommended the deletion of all of Section 23, Article IV of the Constitution.

Your Committee finds there is no current pressure on behalf of the ballot measure, except for expression of approval by the Bar Association's Committee on Judicial Administration, and no articulate or organized resistance to it whatever.

ARGUMENTS IN FAVOR OF THE MEASURE

(1) The hodgepodge of existing legislation is such that no person can readily ascertain the court system or judicial powers within a judicial district or county without knowing such items as the following:

- a. County population.
- b. Population of the county seat.
- c. Whether the county seat is the most populous city in the county.
- d. Whether a District Court has its office in the court house.
- e. Whether a District Court was ever housed in the court house.

(2) Needs and desires of various counties and judicial districts vary from place to place and this variance is not necessarily correlated with population or other readily classifiable factors.

(3) The indirect nature of past legislation requires a modification of classification with each census and if the modifications are not carefully and promptly enacted, undesired and probably undesirable changes in the court system may result with either an increase or decrease in population.

(4) Attempts by the Legislature to create special legislation have proceeded despite the provisions of Section 23, Article IV of the Constitution and created legislation of such doubtful validity as, for example, that enacted in 1951³ creating a District Court in every city which is a county seat and the most populous city of a county with a population of over 42,000 and less than 50,000.

ARGUMENTS AGAINST THE MEASURE

(1) The Legislature should be encouraged to legislate on a statewide basis rather than the county-by-county basis.

(2) Population classifications have been approved as reasonable by the Supreme Court and can meet the special needs of variously situated judicial districts throughout the state.

³Chapter 526 Oregon Laws of 1951 applying to Klamath County and not to Coos County.

(3) Constitutional amendment would not be necessary to clean up the "hodge-podge of present legislation" if the Legislature were to abide by the spirit of Section 23, Article IV.

(4) A more rather than less uniform court system is desirable in Oregon and adoption of the proposed amendment would increase the tendency to have the form and jurisdiction of courts vary from county to county throughout the state.

(5) This proposed amendment would further encumber an oft-amended Constitution with another ungainly provision.

MAJORITY DISCUSSION

The above explanation and listing of arguments for and against the measure make any extended discussion almost unnecessary. Your Committee was concerned with the basic question of whether uniformity or flexibility is paramount in this field of legislation, but finally limited itself to the question of whether special needs in counties which are now met indirectly would be better met by legislation which makes it easier rather than more difficult to do what is intended to be done. The proposed amendment would clearly give better notice to the public what the Legislature is about to do or has done in a particular case.

The majority of your Committee does not intend to approve this ballot measure as necessarily the best means of curing the problems springing from Section 23, Article IV of the Oregon Constitution.

It should be noted that the judicial article contained in the new constitution proposed by the Constitution Revision Commission rejects such details as Section 23, Article IV of the present Constitution, and limits itself to the basic, general structure of government. However, until such a constitution is adopted, — if ever —, this ballot measure is an improvement.

MAJORITY CONCLUSION

The majority of your Committee concludes that adoption of the proposed amendment would represent an improvement, and is persuaded by the arguments in favor of the measure.

MAJORITY RECOMMENDATION

The majority of your Committee recommends approval of Ballot Measure No. 5.

Respectfully submitted,

Walter H. Evans, Jr.

Wendell Gray

Harry J. Hogan

Charles N. Isaak

Kenneth Kraemer

Milton C. Lankton

Stanley R. Loeb

Ernest Bonyhadi, *Chairman for the majority*

MINORITY DISCUSSION

Ballot Measure No. 5 is designed to permit the Legislature to do directly what it is now doing indirectly. It is not intended to make any substantive changes in the law. At present, the Constitution prohibits the Legislature from enacting "special" judicial legislation. However, it has been doing so indirectly. By setting up artificially narrow classifications, it has been, in effect, creating courts or changing court jurisdiction in individual counties. This is theoretically for the purpose of meeting the special needs of those individual counties, but is just as likely to be simply the result of heavy lobbying pressure on behalf of important interests in such counties. If such county-by-county legislation is wise, Ballot Measure No. 5 should be adopted. If it is unwise, it should be defeated, as it would tend to make the Legislature more vulnerable to the pressures of such special interests.

Under present legislation, probate jurisdiction is, in some counties, under the County Judge, who need have no legal training or background. In other counties it is under the District Court, while in yet other counties it is under the Circuit Court. In most counties the County Judge retains some judicial functions, including

jurisdiction over juvenile matters, even though his probate jurisdiction has been transferred to a District Court.

District Courts, which are courts of limited jurisdiction, have been established or authorized in 20 Oregon counties, with populations ranging from 13,344 (Hood River County) to 521,112 (Multnomah County). However, no District Court exists or has been authorized in the counties of Baker (17,180), Columbia (22,295), Malheur (22,689), Tillamook (18,969), or Union (18,092). (ORS 46.010 - .025.) The remaining eleven counties with small populations also lack District Courts.

Justices of the Peace, who need have no legal training or background, have jurisdiction similar to that of the District Court. In many cases a J. P. is replaced by a District Court, but concurrent jurisdiction exists in a number of counties. Many readers will recall that the Multnomah County Sheriff's office, following a dispute with the District Court, referred the bulk of its traffic citations to the Justice of the Peace in Gresham.

Under the present statutes, it is extremely difficult to determine quickly which court has sole or concurrent jurisdiction of a matter. However, the determination can be made by reference to sources which are in most cases readily available to attorneys. Although it could conceivably occur, this committee has not heard of any instances in which any person's rights or remedies have been lost or jeopardized by reason of the present state of the statutes.

If Ballot Measure No. 5 is adopted, the Legislature will presumably adopt legislation setting forth by name the counties in which the County Court exercises judicial functions; the counties, and cities within them in which District Courts will sit, and the District Courts which do and do not have probate jurisdiction. However, it will probably still be necessary to refer to as many as four or five chapters of the statutes, just as at present, in order to determine the appropriate court to hear a given matter in a particular county. The resulting advantage will be considerable, as pointed out by the majority of the committee, but in the opinion of the undersigned they will not be sufficiently significant to override possible disadvantages.

The time has long since passed when we can justify the retention of any judicial authority by persons untrained in the law. If it is possible for the Legislature to set up a District Court in an individual county, as a result of pressures within that county, to replace a J. P. and to take some judicial functions from a legally untrained County Judge, the Legislature may be less willing to enact legislation abolishing J. P.'s, or placing probate and juvenile jurisdiction in the Circuit Courts, on a statewide basis.

Jurisdiction of the various District Courts within the state is now—with the exception of Probate jurisdiction—substantially uniform. This is one bright spot in an otherwise murky picture of judicial and jurisdictional diversity. Without adoption of Ballot Measure No. 5, it is unlikely that the Legislature will be tempted to change this. With adoption of the measure, the Legislature may well be tempted to vary the jurisdiction of an existing or newly created District Court, increasing or decreasing its authority and influence, if political expediency so dictates, or even if an individual Judge should incur the special displeasure or approbation of the Legislature or of local political powers.

MINORITY CONCLUSIONS AND RECOMMENDATION

In summation, adoption of Ballot Measure No. 5, while permitting an immediate improvement of the clarity of the statutes dealing with creation and jurisdiction of the courts, would tend to delay or foreclose the achievement of judicial and jurisdictional uniformity throughout the state, would encourage the Legislature to further fractionalize the state's judicial system, and could conceivably result in a decrease in judicial independence. For the above reasons, the undersigned respectfully dissents from the recommendation of the majority, and recommends against the adoption of Ballot Measure No. 5.

Respectfully submitted,

John A. Reuling, *for the Minority*