10-18-1968

City Club of Portland Bulletin vol. 49, no. 20 (1968-10-18)

City Club of Portland (Portland, Or.)

PORTLAND
City Club
BULLETIN

Crystal Room • Benson Hotel
Friday . . . 12:10 P.M.

PORTLAND, OREGON - Oct. 18, 1968 - Vol. 49, No. 20

Printed herein for presentation, discussion and action on Friday, October 18, 1968:

REPORTS

ON

GOVERNMENT CONSOLIDATION CITY–COUNTY OVER 300,000

(State Measure No. 5)

The Committee: George A. Casterline, DMD, Clyde H. Fahlman, Lee Irwin, L. Mason Janes, Burton W. Onstine, William A. Palmer, Lawrence A. Pierce, Jr., L. Kenneth Shumaker and Douglas Polivka, *Chairman.*

CONSTITUTIONAL AMENDMENT BROADENING VETERANS LOAN ELIGIBILITY

(State Measure No. 1)

The Committee: Andrew J. Brugger, William M. Keller, Adolph E. Landau, James K. Tsujimura, M.D., and John L. Searcy, *Chairman.*

CONSTITUTIONAL AMENDMENT FOR REMOVAL OF JUDGES

(State Measure No. 2)

The Committee: Robert Conklin, Jack G. Collins, Harold A. Mackin, Morris Malbin, M.D., Garry P. McMurry, Wm. T. C. Stevens, and Thomas H. Tongue, *Chairman.*

EMPOWERING LEGISLATURE TO EXTEND OCEAN BOUNDARIES

(State Measure No. 3)

The Committee: Frank A. Bauman, Dale Duvall, Nathan J. Heath, Michael C. Kaye, Joseph W. Nadal, M.D., John M. Swarthout, and Leigh D. Stephenson, *Chairman.*

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION (Act of October 23, 1962; Section 4369, Title 39, United States Code).

1. Date of Filing: September 25, 1968.
2. Title of Publication: Portland City Club Bulletin.
3. Frequency of Issue: Weekly.
4. Location of known offices of publication: 729 S.W. Alder, Rm. 420, Portland, Oregon 97205.
5. Location of the headquatrers or general business offices of the publishers: same.
6. Names and Addresses of publisher, editor, and managing editor: Publisher, The City Club of Portland, same address; Editor, Ellamae W. Naylor, same address; Managing Editor none.
7. Owner: The City Club of Portland, same address.
8. Known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: none.
9. The purpose, function and nonprofit status of this organization and the exempt status for Federal income tax purposes have not changed during preceding 12 months.
10. Extent and nature of circulation: (A) Total number copies printed: 1800; (B) Paid Circulation, 1. Sales through dealers and carriers, street vendors and counter sales: none; 2. Mail subscriptions (to dues-paying members): 1455; (C) Total paid circulation: 1455; (D) Free distribution by mail, carrier or other means: 183; (E) Total distribution: 1638; (F) Office use, left-over, unaccounted, spoiled after printing: 162; (G) Total: 1800.

I certify that the statements made by me above are correct and complete (signed) Ellamae W. Naylor, Editor.

PORTLAND CITY CLUB BULLETIN

Published each Friday by the

CITY CLUB OF PORTLAND

420 Park Building Portland, Oregon 97205
Phone 228-7231

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MORRIS S. ISSEKS, Archivist

Second Class Postage Paid at Portland, Oregon. Subscription rates $6.00 per year included in annual dues.

CITY CLUB DUES: **Senior,** members over 65 with 35 years membership, or over 70 with 15 years membership, $5.00 per year; **Regular,** age 28 and over, $30.00 per year; **Junior,** age 27 and under, $15.00 per year; **Non-Resident,** $6.00 per year; **Sustaining,** those who contribute $10.00 or more per year over and above the dues in their category for the Portland City Club Foundation, Inc. The regular FRIDAY LUNCHEON MEETINGS are held in the Mayfair Room of the Benson Hotel.

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DR. BOYD PATTERSON GIVEN SENIOR STATUS

Dr. J. Boyd Patterson, retired clergyman, was granted Senior Membership by the Board of Governors of The City Club at its meeting this week.

Dr. Patterson, who joined the Club October 6, 1950, was formerly Director of New Church Development for the United Presbyterian Synod.

Members are eligible for Senior status if (1) they are over 65 years of age and have belonged to the Club 35 years or more, or (2) if they are over 70 years of age and have belonged to the Club at least 15 years.

Members who feel they may be eligible for the special category may check on their records by phoning the staff at 228-7231. Individual application for transfer must be made by each member to the Board.

REINSTATEMENTS

The Board of Governors welcomes back to active membership the following former members:

Jan E. Bauer, Lumber Broker. Owner, United Lumber Co., Inc.

Thomas L. Scanlon, Director of Research and Education, Oregon AFL-CIO (Salem).

MRS. BRATTAIN RESIGNS

Mrs. James T. Brattain—"Virginia" to most members—has recently submitted her resignation to the Board of Governors, effective at the completion of her present vacation time.

Mrs. Brattain explained in her letter that she "planned to work four or five years, and that was eleven years ago." Her duties were general, as are all staff members', but since the addition of another full-time employee more than two years ago, Mrs. Brattain concentrated on membership matters.

Mrs. Brattain expressed "great pride in working with such a worthwhile organization and its conscientious and dedicated members." In addition to her part-time employment with the City Club, she is also secretary to the Pacific Northwest Personnel Management Association, and also has personal property management responsibilities. As President Bledsoe announced to the membership meeting of October 4th, "Virginia is going to help her husband enjoy his retirement."

REPORT
ON

CONSTITUTIONAL AMENDMENT BROADENING VETERANS LOAN ELIGIBILITY

(State Measure No. 1)

Purpose: Article XI-A amended authorizing farm and home loans to Oregon Veterans with 210 days of active duty service, part of which service occurred after January 31, 1955, or discharged for disability. Application to be made within 20 years after leaving service. World War II cutoff date changes from December 31, 1946 to July 25, 1947. World War II and Korean veterans qualify where part of 90 day service occur within war dates.

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

I. ASSIGNMENT

This Committee was given the assignment of studying and reporting on House Joint Resolution 9 of the 1967 Session of the State Legislature. This resolution is a proposal for a Constitutional Amendment and is referred to the electorate to be voted on at the general election, November 5, 1968. If adopted, it would broaden the eligibility for State Veterans' loans to include veterans with 210 days of active duty service, any part of which occurred after January 31, 1955, provided they were Oregon residents at the time of entry into active service. Application would have to be made within twenty years after leaving service. Additionally, the proposed amendment waives this 210-day service requirement with respect to any veteran honorably discharged on account of a service-connected injury or illness.

The World War II cut-off date for eligibility under the present law is changed from December 31, 1946 to July 25, 1947. Under the present law, only those veterans are eligible who served for at least 90 days during World War II or the Korean War. The period during which the required service may be performed is further extended by the proposed amendment, for both World War II and Korean War veterans by making eligible one who served any part of his required 90-day service within the war periods designated in the amendment.

COMPARISON OF VETERAN BENEFITS AND REQUIREMENTS

	WORLD WAR II		KOREA		post-KOREAN	
	Present	Proposed	Present	Proposed	Present	Proposed
COVERED?	yes	yes	yes	yes	no	yes
Eligibility Period	9-15-40 to 12-31-46	9-15-40 to 7-25-47	6-25-50 to 1-31-55	6-25-50 to 1-31-55	—	Subsequent to 1-31-55
Length of Service Required	90 days	90 days	90 days	90 days	—	210 days or service-connected disability
All of required length of service must be served within eligibility period	yes	no	yes	no	—	no
Must be residents of Oregon at time of loan application	yes	yes	yes	yes	—	yes
Two-year Oregon residency available as alternative to residency at time of enlistment (Period of eligible residency)	yes (from discharge to 12-31-50)	yes (from discharge to 12-31-50)	yes (from discharge to 12-31-60)	yes (from discharge to 12-31-60)	—	no —

II. SCOPE OF RESEARCH

Your Committee interviewed H. C. Saalfeld, Director, Ernest J. Smith, Loan Manager, and Larry Quinlin, Information Officer, of the Oregon Department of Veterans Affairs; Norman Howard, State Representative from Multnomah County; David Barrows, Attorney and Executive Secretary of Oregon Savings & Loan League; and Roger Martin, State Representative from Clackamas County. The Committee corresponded with the State Treasurer's office regarding the interest rate on bonds recently issued. It also reviewed past City Club reports on various veterans loan proposals, including particularly the reports dated October 31, 1958 and October 14, 1960.

III. LEGISLATIVE HISTORY

The practice of permitting the State to make direct loans to veterans from a fund created by the issuance of bonds was first introduced to Oregon by the adoption of Article XI-C of the Oregon Constitution at a special election held June 7, 1921. This article combined a cash bonus program with a loan program for veterans of World War I who were residents of Oregon at their entry into the service; in 1930, the article was amended to extend eligibility to include veterans of the Spanish-American War and the Boxer Rebellion, and certain dependents of deceased veterans. Article XI-C was repealed by the electorate in 1952.

The present veterans loan program had its origin in new Article XI-A of the Oregon Constitution, which article was created in 1943 by House Joint Resolution No. 7 adopted by the vote of the people on November 7, 1944. This article covered veterans of World War II and limited the amount of indebtedness which could be incurred for creation of the loan fund to three per cent of the assessed valuation of all property in the state. The termination of eligibility was described as "the end of hostilities with the axis powers". (The City Club research committee reported unfavorably on this proposal, its main conclusion being that it was a useless duplication of Federal legislation; however, the Club membership rejected the report of the Committee.)

A constitutional amendment adopted by the electorate on November 7, 1950, modified the service requirements, and a two-year Oregon residence requirement at the time of application for the loan was added as an alternate available to an applicant not qualified as an Oregon resident at the time of entry into the service. This amendment also increased the limit of indebtedness from three per cent to four per cent of assessed valuation. (The majority of the City Club research committee reported favorably on this measure). A further constitutional amendment adopted by the people on November 4, 1952, extended the eligibility to veterans of the Korean conflict.

During the 1957 Legislative Assembly, ORS 407.040 was amended to increase the maximum amounts which could be loaned to a qualified veteran from $9,000 to $13,500 on homes, and from $15,000 to $30,000 on farms. In 1963 the limits were raised to $15,000 and $40,000; in 1965 to $16,500 and $40,000; and in 1967 to $18,500 and $50,000. Senate Joint Resolution No. 35, adopted by the 1957 Legislature, proposed a constitutional amendment to provide additional funds to carry out the expanded program under the higher loan limits then enacted and to make the date of termination of service for determining eligibility for veterans' loans uniform with that of other veterans' benefits. This measure was submitted to the electorate at the November 4, 1958 general election and was defeated. (The majority of the City Club research committee reported favorably on this measure. A motion to substitute the negative recommendation of the minority was defeated; however, the majority report then likewise failed of passage by the Club membership.)

Senate Joint Resolution No. 14, adopted by the 1959 Legislature and passed by the electorate on November 8, 1960, increased the constitutional bonding limits for the loan fund from four per cent of assessed valuation to three per cent of the true cash value of all property in the state. The amendment also provided that no loan shall be made to veterans of World War II after January 31, 1980, or to veterans of the Korean War after January 31, 1988. (The City Club Committee unanimously recommended opposition to this proposal on the primary basis that this activity is not a proper governmental function. The Club membership sustained this recommendation.)

House Joint Resolution No. 9 was adopted by the 1967 Legislature and is now referred to the voters at the November 5, 1968 general election as Measure No. 1 on the state ballot.

This proposed amendment to Article XI-A of the Constitution would make the following changes:

1. The now obsolete language referring to the mobilization for World War II and the end of actual hostilities with the axis powers is eliminated. The beginning date of the mobilization for World War II is left at September 15, 1940, but the termination date is changed from December 31, 1946 to July 25, 1947.

2. The eligibility requirements for veterans of World War II and the Korean conflict are changed to provide that any part of the required 90 days service (rather than all as now provided) must be served within the eligibility dates.

3. Veterans who have served not less than 210 days, any part of which occurred subsequent to January 31, 1955, or who were discharged for service-connected injury or illness, are made eligible for loan benefits. There is a further requirement that the applicant shall have been a resident of the State of Oregon at the time of his enlistment. There is no general termination date for the period covered by these new provisions but each veteran must apply for a loan within twenty years after his discharge.

IV. REVIEW OF LOAN PROGRAM

Since 1945, and through June 30, 1967, the Department of Veterans Affairs has issued $402,000,000 in bonds to obtain funds for farm and home loans. As of June 30, 1967, $33,000,000 of bonds were outstanding. The effective interest rate paid by the State on bonds outstanding on June 30, 1967, was 3.2191 per cent. However, bonds issued subsequent to June 30, 1967, have been at a higher rate. Bonds delivered on July 15, 1968 had a net interest cost to the state of slightly over 4.20 per cent.

Through June 30, 1967, veterans have obtained 57,777 loans totalling $526,-382,020. During the fiscal year 1966-67, 4,350 veterans borrowed $53,471,500. However, only 31 per cent of the eligible veterans of World War II and the Korean War used their loan privileges, leaving about 113,500 still eligible before the program expires in 1980 for World War II veterans and 1988 for Korean veterans.

The loan repayment record has been excellent and the program has been well administered. Losses upon default and foreclosure have been very slight and the program has returned substantial net profits to the state. The 1967 Legislative Assembly ordered $15,000,000 of accumulated profits from the program to be paid to the general fund by August 15, 1968; this transfer is now being challenged in the courts.

The maximum amount of each loan is fixed by statute (ORS 407.040). As indicated above, this is now $18,500 for a home and $50,000 for a farm. Loans may not exceed 85 per cent of the Department of Veterans Affairs appraisal of the property mortgaged. Maximum terms are now 25 years for homes and 30 years for farms. The interest rate, which is fixed by statute and not by the Constitution, is four per cent to veterans, but if the property is resold to a non-veteran, the loan can be transferred to an approved buyer at five per cent.

Mortgage cancellation life insurance is automatically provided, unless rejected by the veteran.

V. ARGUMENTS FOR

Arguments made to your Committee in support of the measure include:

1. The loan program should be extended to veterans of the Vietnam War who are as fully deserving of inclusion in the program as veterans of past wars.

2. The program is not only self-supporting, but profitable to the state.

3. The program is an aid to the economy in that large sums of mortgage money, at lower interest rates, are brought into the state from eastern sources.

4. The excellent record of payment on bonds, together with the large block of liquid assets (mortgages) held by the Department of Veterans Affairs aids the sale of other State of Oregon bonds in the market place.

5. The program has been exceptionally well run and is popular throughout the state.

VI. ARGUMENTS AGAINST

Arguments advanced in opposition to the measure include:

1. The present measure, as drafted, does not limit the loan program to war veterans; it contemplates a continued program for the benefit of those serving during peace time.

2. There is no termination date in the proposed amendment, which would therefore put the state in the loan business for the indefinite future.

3. There is no great need for continuation of the program with respect to present servicemen, as no great mass of veterans is returning at any one time.

4. Private enterprise is fully capable of providing both adequate housing and available financing.

5. The expansion of the program (originally designed to assist in the rehabilitation of returning combat veterans) to include large numbers of people who were never near any combat area, and to continue indefinitely, is not a proper governmental function.

6. The profits of the present program are illusory for the program is subsidized by the tax-free status of interest on the bonds, the facilities used, and the profits earned.

7. If the state is to be in the loan business, it should concentrate on hardship cases where private capital is difficult to obtain or unavailable.

8. The veterans loan fund is another "dedicated fund" beyond legislative or executive control; Oregon has too many such funds, and they should not be extended or expanded.

9. The statutory interest rate charged on loans is less than the present cost to the state upon the sale of new bonds. There is, therefore, an actual loss on any new loans which are made.

10. Veterans benefits are essentially a federal affair. Only two other states (California and Texas) have any veterans loan program and neither of them is as extensive as that of Oregon.

VII. DISCUSSION AND CONCLUSIONS

There is no question but that the present program is well run and is popular. Even those opposed in principle to expansion of the program have high praise for the manner of administration of the present program. There is likewise little dispute with respect to the proposition that veterans of the Vietnam War should receive just as much consideration from the people of Oregon as veterans of prior wars. The veterans loan program is the traditional and popular method in Oregon of giving a helping hand to veterans. Your Committee is impressed with the argument that loan benefits should be restricted to recipients of the Armed Forces Expeditionary Medal. However, such restriction of benefits to those who were in combat or at least in the combat zone, has not been imposed with respect to veterans of prior wars and it is probably impractical to impose the restriction at this time.

Your Committee is unimpressed with the argument that the veterans loan program is a great aid to the economy. Other states, without such a program, seem to obtain adequate mortgage financing and sustain healthy economies. Furthermore, your Committee is convinced that the profits from the program are a direct result of the substantial subsidy the public pays to support the program in the form of its tax-free status. Your Committee is likewise convinced that the growth of the savings and loan industry in Oregon has been slowed by the substantial competition offered by the veterans loan program.

The proposed amendment, in effect, extends World War II — for loan eligibility purposes — by more than a year and extends the Korean War for such purpose by almost six months. For eligibility purposes, the termination of World War II would be extended from December 31, 1946 to July 25, 1947. (Your Committee is advised that this latter date was chosen to coincide with the date used by the Federal government for various veterans benefits.) An extension of almost six months for both World War II and Korean War veterans is achieved by eliminating the provision that the entire 90 days of required service must be served within the eligibility dates and substituting the provision that any part thereof must be within such dates. Your Committee sees little or no reason for this extension of eligibility with respect to veterans long since discharged from the service.

The primary purpose of HJR 9 is to include veterans of the Vietnam conflict. This is the argument which sold it to the Legislature and which has caused little or no opposition to develop. However the provisions of the proposed amendment, which would include the Vietnam veteran, cover, in fact, a great deal more. These provisions, in effect, would make any person who served in the military after the commencement of the Korean War (June 25, 1950), to the indefinite future eligible for loans. An estimated 60,000 additional veterans would initially become qualified for entitlement to veterans loans, and approximately 9,000 veterans would become qualified each year thereafter. True, for service after January 31, 1955, the veteran must have been a resident of Oregon at the time of his entry into the service. However, such requirement was also present in Article XI-A as originally enacted, for both World War II veterans and Korean War veterans, and was subsequently relaxed by amendment. Those who have historically advocated expansion of the program frankly admit that they expect a similar attempt to relax the provisions of HJR 9 if the same is enacted. They further state that they will enthusiastically support any such attempt.

Under this proposal, the only termination date with respect to those serving after January 31, 1955 relates to the individual. He must apply for his loan within twenty years after the date of discharge. However, the program itself would, assuming continuation of legislation to support it, continue indefinitely. Your Committee feels that this is a rather serious defect made only somewhat more palatable by the fact that the Legislature could terminate the program even though the Constitution did not expressly limit it.

Having carefully weighed all of the arguments against this proposal and being persuaded that many of them are valid, your Committee nevertheless concludes that the failure to extend this popular program to the veterans of the Vietnam War would be an injustice. Your Committee confesses to being greatly influenced by the extensive criticism of this war, and, without discussing such criticism, feels very strongly that the men who have been and are fighting the war should not be penalized and discriminated against by failure to enact a Constitutional Amendment which would extend veterans loan benefits to them. Neither your Committee nor the electorate will have an opportunity to rewrite HJR 9. It must either be accepted as presently passed by the Legislature or rejected in its entirety. Despite the measure's defects, your Committee is unwilling to recommend disapproval and therefore recommends passage of the proposed amendment to the Constitution.

VIII. RECOMMENDATION

Therefore, your Committee recommends that the City Club go on record in favor of State Measure No. 1 (HJR-9) and urges a vote of "Yes" thereon.

Respectfully submitted,
Andrew J. Brugger
William M. Keller
Adolph E. Landau
James K. Tsujimura, M.D. *and*
John L. Searcy, *Chairman*

Approved by the Research Board September 19, 1968 and submitted to the Board of Governors.

Received by the Board of Governors September 30, 1968 and ordered printed and submitted to the membership for discussion and action.

REPORT
ON
GOVERNMENT CONSOLIDATION CITY-COUNTY OVER 300,000
(State Measure No. 5)

Purpose: Amends Section 2a, Article XI of the Oregon Constitution. This amendment would provide for the consolidation of city-county governments in counties having a city with more than 300,000 inhabitants. The Legislative Assembly is to provide by law the manner of consolidating the government so that it may function under one set of officers. Incorporation to be made under general laws providing for municipalities. Noninconsistent provisions of constitution are still applicable to cities and counties.

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

I. ASSIGNMENT

The charge to your Committee was to bring to the membership a recommendation on the proposed constitutional amendment enabling consolidation of city and county government under certain circumstances. State Ballot Measure No. 5, as Senate Joint Resolution 29, was referred by the regular session of the 1967 Legislature for vote at the next general election.

The essential provision of the resolution amending Article XI, Section 2a of the Oregon Constitution is as follows:

> (2) In all counties having a city therein containing over 300,000 inhabitants, the county and the city government thereof may be consolidated in such manner as may be provided by law with one set of officers. The consolidated county and city may be incorporated under general laws providing for incorporation for municipal purposes. The provisions of this Constitution applicable to cities and also those applicable to counties so far as not inconsistent or prohibited to cities, shall be applicable to such consolidated government.

II. SCOPE OF RESEARCH

Primary concern from the outset, was with the nature and provision of the amendment itself, and whether its adoption would contribute to effective government. The amendment is permissive in nature — an enabling act only.

Discussions were held with the following persons, either in committee sessions or in individual interviews:

Robert S. Baldwin, Planning Director, Multnomah County

William A. Bowes, Commissioner, City Council, and then Acting Mayor, City of Portland.

Homer Chandler, Executive Director, Columbia Region Association of Governments (CRAG)

M. James Gleason, Chairman, Board of County Commissioners, Multnomah County

Lloyd T. Keefe, Director of Planning, City of Portland

Frank L. Roberts, Representative, 6th District, Oregon Legislature, and member, Local Government Committee of Oregon Legislature which considered this measure

Numerous individual contacts were explored for additional information.

Senator Thomas Mahoney, Sponsor of SJR 29, was invited to meet with the Committee but declined.

The Committee examined various reports and documents which bear on this issue. Among these were: The Attorney General's opinions requested by Representatives Robert Packwood and Frank L. Roberts; the opinion of Orval Etter, legal counsel of the Metropolitan Study Commission; an analysis by the City Attorney's office, City of Portland, and a comprehensive study conducted in March, 1968 as a joint effort of the League of Women Voters organizations of Clackamas, Multnomah and Washington counties.

The deliberations of the Metropolitan Study Commission relative to this ballot measure have been noted as has its decision to take no position on it.

The Committee was unable to find any active proponents of the measure to testify for it.

III. HISTORY AND BACKGROUND

State Ballot Measure No. 5 (SJR 29) is by no means the first measure of its kind. In 1913, the first city-county consolidation proposal was defeated in a statewide election. In 1927, a City Club recommendation supported a constitutional amendment which would have permitted city-county consolidation, but that measure was also defeated by the voters.[1]

There have been many City Club studies which have dealt with this question directly or indirectly. One of the more recent is the extensive *Report on Portland City Government,* published May 1, 1961.[2] The Club's 1966 reports on County Home Rule and on City Government also are relevant.[3]

SJR 29 was introduced by Senator Thomas Mahoney on February 24, 1967. It was recommended out of the Senate's Constitutional Revision Committee and passed the Senate at the end of May, 1967. In the House of Representatives, it was referred to the House Local Government Committee, brought to the floor and passed on the 9th of June without public hearing.

IV. ARGUMENTS FOR

As has been previously noted, no proponents of Ballot Measure No. 5 were found to give information to the Committee. The following arguments were suggested:

1. As enabling legislation it might serve as a "first step" in encouraging an area wide approach to local government problems.
2. It affords the people of the state the opportunity to instruct the Legislature.

V. ARGUMENTS AGAINST

1. It is the opinion of the Attorney General[4 & 5], concurred in by the counsel to the Metropolitan Study Commission[6], and agreed to in an analysis by the Portland City Attorney's office[7], that the proposed amendment is not necessary.

Such consolidation is not prohibited by existing provisions of the Oregon Constitution. The general legislation requisite to give structure to this amendment would be equally necessary whether or not the amendment passes.[8]

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(1) City Club Bulletin Vol. VII, No. 27, Apr. 1, 1927 "Report on Government Simplification Amendment".

(2) City Club Bulletin Vol. 41, No. 51, May 19, 1961, "Portland City Government".

(3) City Club Bulletin Vol. 46, No. 50, May 13, 1966, "Changing Form of City Government"; Vol. 46, No. 51, May 20, 1966, "Multnomah County Home Rule Charter".

(4) Attorney General Opinion No. 6448, 26 Feb 68.

(5) Attorney General Opinion No. 6518, 25 June 68.

(6) Orval Etter, Memorandum to City County Consolidation Committee, Metropolitan Study Commission, 30 Oct 67.

(7) Analysis of SJR 29, Office of Portland City Attorney, 17 July 68.

(8) Etter, op.cit. The proposed amendment is patterned almost directly on Article XI, Section 7 of the California Constitution. However, in the 88 years since its adoption in California, there has been no successful implementation of its provision, based on the California Supreme Court's ruling.

2. It would appear that such an enabling amendment might preclude other metropolitan areas of the state from qualifying for a similar consolidation because of the specific population restrictions. Also, the exclusive method of consolidation prescribed by this constitutional amendment might well prove so restrictive as to preclude other preferable methods of consolidation.

3. The boundaries of the City of Portland extend into both Clackamas and Washington counties. By the Attorney General's opinion they cannot be said to have a city "therein" qualifying them under this proposal.[9]

4. There is a legal question involved as to the relationship that other existing cities in the county such as Gresham or Maywood Park might assume to the new entity. From the use of the singular form, "city" in the proposed amendment, "the county and city government thereof may be consolidated", it can be argued that the existing cities would be forced to remain as islands with no legal possibility of joining the new entity.[10]

5. Reconciling of responsibilities and powers when a "home rule" situation exists in both the City and the County involved "especially when provisions relating to counties may appear to conflict with city home rule authority"[11] is not clear in the proposed amendment.

6. The stipulation requiring "one set of officers" might be unduly restrictive in organizing an effective governmental structure. Strictly interpreted, its concepts could be at variance with meeting the specific needs of local areas.

VI. CONCLUSIONS

It is the unanimous conclusion of your Committee that this proposed amendment, because of technical shortcomings, is ill-designed to accomplish a constructive purpose in achieving consolidation of governmental units in a metropolitan community and is unnecessary.

VII. RECOMMENDATION

While this report should not be construed as opposing the principle of proposals fostering greater coordination of governmental units or seeking solutions to metropolitan problems based on an areawide approach, it is the unanimous recommendation of this Committee that the City Club go on record as opposing this proposed constitutional amendment on city-county consolidation, and urging a "'No" vote on State Ballot Measure No. 5.

Respectfully submitted,

George A. Casterline, DMD
Clyde H. Fahlman
Lee Irwin
L. Mason Janes
Burton W. Onstine
William A. Palmer
Lawrence A. Pierce, Jr.
Lawrence K. Shumaker *and*
Douglas Polivka, *Chairman*

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(9)Opinion No. 6448, page 8.

(10)Etter op.cit.

(11)Opinion No. 6518, p. 13.

REPORT

ON

CONSTITUTIONAL AMENDMENT FOR REMOVAL OF JUDGES

(State Measure No. 2)

Purpose: Empowers legislature to provide procedure for Supreme Court to remove judge of any court from office for:

(a) Conviction in any state or federal court of a crime punishable as felony or which involves moral turpitude; or

(b) Wilful misconduct in a judicial office, involving moral turpitude; or

(c) Wilful or persistent failures to perform judicial duties; or

(d) Habitual drunkenness or illegal use of narcotic drugs.

Amendment's removal procedures and Article II, Section 18, recall provision, made exclusive."[1]

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

I. ASSIGNMENT

This Committee was assigned to study and report on the proposed amendment to the Constitution of the State of Oregon which would permit the legislature to provide by statute a procedure under which a judge of any court may be removed by the Oregon Supreme Court on any of the grounds listed above. The scope of the research conducted by the Committee and the sources of information relied upon by it are set forth in a footnote on this page.[2]

This state has been fortunate in that the integrity of its judiciary has rarely been questioned. In the past there have been a very few isolated instances of judges who, usually by reason of age or illness, have been unable to properly perform their judicial duties. At the present time, however, the personnel of the Oregon judiciary is probably more vigorous and hard-working than at any time in the past.

Therefore, it has been suggested that "the time is especially ripe to review in a dispassionate atmosphere the methods of dealing with judicial misconduct with

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(1) From official Ballot Title.

(2) Since this measure appears to be non-controversial, the scope of research by the Committee was limited to:

a. Personal contacts with:
   (1) Hon. William C. Perry, Chief Justice of the Supreme Court of the State of Oregon;
   (2) Hon. Wendell H. Tompkins, President of the Circuit Judges Association of the State Oregon;
   (3 Mr. Walter H. Evans III, Assistant Executive Secretary, Judicial Council of Oregon.

b. Correspondence with:
   (1) American Bar Foundation, Chicago, Ill.
   (2) State Bar Associations of states which have adopted similar procedures.

c. Study of the following literature on the subject:
   (1) Report of the Judicial Council of Oregon December, 1966;
   (2) Report of the Committee on Judicial Administration of the Oregon State Bar, 1966;
   (3) Text of Senate Joint Resolution 9, and of related Senate Bill 124 (1967);
   (4) Minutes of Senate Judiciary Committee, 1967, on Senate Joint Resolution 9 and Senate Bill 124;
   (5) "The California Commission Story," by Louis H. Burke, reprinted from the Journal of the American Judicature Society;
   (6) "The Case for Judicial Disciplinary Measures," by Jack E. Frankel, 49 A.B.A.J. No. 11, p. 218;
   (7) 1966 and 1967 Reports of the Commission on Judicial Qualifications of California;
   (8) "Conference on Judicial Ethics," University of Chicago Law School Conference Series, No. 19;
   (9) Statements to appear in 1968 Oregon Voters' Pamphlet Ballot Measure No. 2.

a view to avoiding possible future difficulties."[3] As more recently stated by a member of the Oregon judiciary, "This proposal*** is in keeping with the deepening concern which has developed over recent years over the lack of any realistic method of dealing with judicial misconduct."[4]

II. BACKGROUND INFORMATION

At present, the only means available for the removal of either a dishonest or an incompetent judge are by recall,[5] impeachment proceedings in the legislature[6] or by trial "in the same manner as criminal offenses," a procedure available for removal of "public officer."[7] While, to the knowledge of the Committee, no judge in Oregon has been the subject of any of these procedures, experience in other states has proved them to be both cumbersome, costly and ineffective.[8]

The establishment of a practical system for the removal and retirement of judges was advocated in New York in 1947 by the Citizens Committee on the Courts, Inc., a high level group in that state, which proposed a "Court on the Judiciary."[9] By November, 1959, the dimensions of the problem were so well recognized that it was the subject of study and recommendation resulting from a national conference on court administration jointly sponsored by the American Bar Association and the American Judicature Society. These organizations, as well as the American Bar Foundation, have continued to study the problem.[10]

The first comprehensive new program for judicial discipline and removal was adopted in California in 1960, as the result of a recommendation of its State Judicial Council and State Bar. The California constitution was amended to provide for a Commission on Judicial Qualifications, to include judges, lawyers and laymen with power to investigate complaints of judicial misconduct and to recommend removal, involuntary retirement or other discipline.[11]

Since then, similar commissions have been established in Texas, Colorado, Iowa, Ohio, Nebraska, Maryland, Florida and New Mexico and more recently in Michigan, Pennsylvania and Alaska.[12]

III. LEGISLATIVE HISTORY OF PROPOSAL IN OREGON

The 1965 Legislative Assembly established the Judicial Council of Oregon which includes not only representatives of the State Supreme, Circuit, District and Municipal courts, but also leading lawyers, as well as five public members appointed by the Governor. It recommended by its report dated December, 1966, the amendment of the Oregon Constitution to authorize legislation under which "a judge of any court may be censured, or suspended or removed from his judicial office by the Supreme Court" for grounds as stated in a proposed joint resolution

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(3)Report of the Judicial Council of Oregon, Dec. -, 1966, p. 13.

(4)Justice William M. McAllister (then Chief Justice) of the Oregon Supreme Court in an address to the City Club of Portland on January 20, 1967

(5)Oregon Constitution, Article II, Section 18.

(6)Oregon Constitution, Article VII, (Original), Section 20.

(7)Oregon Constitution, Article VII, (New), Section 6.

(8)According to the Report of the Judicial Council, supra at p. 13:

> "Bitter experiences in Florida are illustrative of the inefficiency of the impeachment system. Florida undertook two trials of judges by impeachment, one in 1957 and the other in 1963. The legislature had to meet in special session for each trial, because it was far too busy to take time during its regular legislative session. The trials cost about a quarter of a million dollars, which equalled over half the annual budget of the Florida Supreme Court. The two judges were acquitted although it is reported that they were guilty of misconduct. However, many of the legislators voting on the question of removal, the only punishment available, apparently felt that the punishment was too harsh to fit the misconduct proved."

(9)Frankel, "The Case for Judicial Disciplinary Measures," supra, p. 219.

(10)Idem, p. 219-220 and Report of the Judicial Council, supra, p. 14.

(11)Report of the Judicial Council, supra, p. 14.

(12)According to information compiled by Judicial Council of Oregon.

as attached to that report.[13] In 1966, the Oregon State Bar approved the report of its Committee on Judicial Administration, which endorsed this proposal by the Judicial Council of Oregon.[14]

At the same time, the Judicial Council recommended the adoption of a statute to implement the proposed constitutional amendment by the establishment of a Commission on Judicial Fitness, to investigate complaints of judicial misconduct and to make recommendations to the Oregon Supreme Court for possible censure, suspension or removal.[15]

The foregoing recommendations were approved, with some changes, by the adoption of Senate Joint Resolution 9, proposing amendment of the Oregon Constitution which is now the subject of Ballot Measure No. 2. These changes would eliminate provisions for censure and suspension and would also limit the grounds for removal.[16] It also adopted a statute to establish a Commission on Judicial Fitness, to become effective upon the effective date of the constitutional amendment.[17]

IV. ARGUMENTS IN FAVOR OF MEASURE

1. Present procedures for removal by impeachment, recall and trial are costly, cumbersome and time-consuming.[18]

2. Present procedures are also inadequate in that they do not provide a means by which a private citizen may register an effective complaint against an offending judge.[19]

3. Present procedures, when involved, necessarily tarnish the reputation of an innocent judge, even though he may ultimately prevail, thus rendering him less effective thereafter.

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[13] Report of Judicial Council, supra, pp. 15 and 41. The controlling section of the amendment to the Oregon Constitution, as proposed by the Judicial Council, was as follows:

"Section 8. In the manner provided by law, and notwithstanding Section 1 of this Article, a judge of any court may be censured, or suspended or removed from his judicial office by the Supreme Court for conduct that brings the judicial office into disrepute, including but not limited to:

(a) Conviction in a court of this or any other state, or of the United States, of a crime punishable as a felony or a crime involving moral turpitude; or

(b) Wilful misconduct in a judicial office, occurring not more than six years prior to the commencement of his current term; or

(c) Failure to perform judicial duties; or

(d) Habitual intemperance."

[14] Committee Reports, Oregon State Bar, 1966, pp. 108-110.

[15] Report of Judicial Council, supra, pp. 15 and 42.

[16] Or. L. 1967, ch. 294.

[17] The principal changes in S.J.R. 9 were the following:

(a) Elimination of provision for censure or suspension and limitation of possible discipline by the Oregon Supreme Court to removal.

(b) Elimination of the provision that judges may be disciplined for "conduct that brings the judicial office into disrepute, including but not limited to" the specific grounds stated, thus limiting the grounds for removal to such specific grounds.

(c) The addition of "moral turpitude" as a requirement for "wilful misconduct in a judicial office."

(d) The addition of "wilful or persistent" as a requirement for "failure to perform judicial duties."

(e) The addition of "illegal use of narcotic drugs" as a ground for removal.

Similar changes were also made in S.B. 124 adopted as Or.L.1967, ch.294.

[18] See footnote 8, supra.

[19] Burke, "The California Commission Story," supra, at p. 4.

4. The experience in California and in other states with programs similar to the proposed measure has been successful.[20]

5. Prominent judges of the courts of other states with similar programs, after experience with such Commissions, have joined in the endorsement of such programs.[21]

6. Although no official approval has been given to Senate Joint Resolution No. 9 by Oregon judges, most judges apparently favor the adoption of that proposed constitutional amendment.[22]

7. The very existence of such a Commission with the powers given to it will "act as a deterrent to the occasional recalcitrant judge."[23]

8. The proposal will provide a Commission which may investigate charges and complaints by any citizen, and yet afford maximum protection to judges from abuse and harassment as the result of irresponsible and baseless charges, by procedures which will be handled in a quick and impartial, yet private, manner.[24]

9. Finally, as stated by the Executive Director of the Texas Judicial Council Commission:

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[20] As stated in the 1967 Report of the Commission on Judicial Qualifications of California, p. 3:

"During the course of the year, out of 101 matters which came before the Commission for its consideration, 48 required some investigation. In 33 instances this included contacting the judge about the complaint either by way of letter or interviews.

"A number of times the judges explanation was wholly satisfactory. In several other cases, the judge, in effect admitted to some transgression or poor practice and the Commission accepted his recognition of the fault and his apparent willingness to correct it.

"There were other cases in which wrongdoing was denied, but the Commission, after studying the reply to the allegations and completing its investigation, concluded that the judge had been at fault and in effect admonished him. The Commission felt its confidential criticism and warning were the proper measure of discipline and that the circumstances did not justify a formal hearing.

"Five judges resigned or retired during the course of an investigation. This is only one-half of one percent of the state's judges."

As also stated in that report, p. 4:

"Professor Beverly Blair Cook of the California State College at Fullerton summarized the advantages of the Judicial Qualifications Commission concept in her recent book, *The Judicial Process in California,* page 55. 'The commisison fulfills several functions: it provides the public with a regular institution to listen to grievances against judges; it acts as a disciplinary force through its ability to issue warnings and to discuss personal problems with judges; and it provides a confidential arena removed from public political bodies to protect reputations until the verdict is reached'."

For similar favorable observations relating to the successful experience with the California program, see:

Report of the Judicial Council of Oregon, supra, pp. 14-15;

Burke, "The California Commission Story," supra; Frankel, "The Case for Judicial Disciplinary Measures," supra; Conference on Judicial Ethics, supra, pp. 42-52.

With reference to the success of the program in other states, see Note, "Remedies for Judicial Misconduct and Disability: Removal and Disability of Judges," 41 N.Y.U.L., Rev. 149 (1966).

According to the Executive Director of the Judicial Qualifications Commission of Texas in a letter to the Committee dated October 1, 1968:

"We believe that much has been accomplished of a remedial nature by the Judicial Qualifications Commission and the accrual of the benefits of the work of the Commission will result in a great saving to the state, a more efficient judicial system, and increased confidence and respect for our courts."

[21] See statements by Justice A. Frank Bray, who acted as chairman of the California Commission during the first four years of its existence, as quoted in Burke, "The California Commission Story,' supra, p. 7, and also by Chief Justice Roger J. Traynor of the California Supreme Court, according to the 1966 Report of the California Commission, supra. **p. 2.**

[22] Chief Justice William C. Perry of the Oregon Supreme Court has reported to the Committee that the individual members of that court favor the proposal. Judge Wendell H. Tompkins, President of the Circuit Judges Association of the State of Oregon, has also reported to the Committee that the Executive Committee of that Association has voted in favor of the proposal, although it has no authority to speak on behalf of individual circuit judges.

[23] Burke, "The California Commission Story," p. 7 quoting Justice A. Frank Bray.

[24] 1968 Oregon Voters' Pamphlet statement supporting Ballot Measure 2.

"For every bad judge, there are a hundred good, conscientious, hard-working judges who want the image of the judiciary protected. The misconduct of one judge casts an adverse reflection on every judge and this is something the judiciary can ill afford."[25]

V. ARGUMENTS IN OPPOSITION TO MEASURE

There appears to be no vocal, much less organized, opposition to the measure. However, the following objections have been suggested:

1. By eliminating provisions for censure and suspension of judges, in addition to their removal;[26] by further limiting the grounds for removal,[27] and by adding the requirements of misconduct involving "moral turpitude" and "wilful and persistent" failure to perform judicial duties, the scope of the measure, as originally proposed by the Judicial Council of Oregon, has been substantially limited.[28]

2. The proposed amendment is an improper infringement upon the independence of the judiciary. [29]

VI. CONCLUSION

The Committee, after considering the foregoing arguments in favor of and against this measure, as well as the literature and other material on the subject, as previously referred to, has concluded that the arguments in favor of this measure are valid arguments and that they heavily outweigh the arguments to the contrary. Perhaps the most significant fact is the support of this measure by the judiciary of this state, in the interests of maintaining the already high level of judicial administration in Oregon.

VII. RECOMMENDATIONS

The Committee, therefore, recommends that the City Club of Portland go on record in favor of "Yes" on State Measure No. 2.

Respectfully submitted,
Robert Conklin
Jack G. Collins
Harold A. Mackin
Morris Malbin, M.D.
Garry P. McMurry
Wm. T. C. Stevens, *and*
Thomas H. Tongue, *Chairman*

Approved by the Research Board October 10, 1968 and submitted to the Board of Governors.

Received by the Board of Governors October 14, 1968 and ordered printed and submitted to the membership for discussion and action.

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[25] Letter to the Committee dated October 1, 1968.

[26] It has been suggested, however, that while the change may remove the power of such a Commission to recommend the suspension of a judge and also to recommend the public reprimand of a judge, the Commission could nevertheless, in the course of its investigation of complaints and in private meetings with the judges involved, privately reprimand judges found to have engaged in improper conduct which would not be a basis for a recommendation of removal.

[27] It has also been suggested, on the contrary, that the limitation of the grounds for removal to the specific grounds named has removed what otherwise might have been urged as a possible ground for attacking the validity of the proposal.

[28] See footnote 17, supra.

[29] See Frankel, "The Case for Judicial Disciplinary Measures," supra, at p. 219.

REPORT

ON

EMPOWERING LEGISLATURE TO EXTEND OCEAN BOUNDARIES

(State Measure No. 3)

Purpose: Amends ARTICLE XVI, Oregon Constitution.
Permits legislature to extend state's seaward boundaries or jurisdiction under authority of laws heretofore or hereafter enacted by Congress of the United States.

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

I. ASSIGNMENT

Your Committee was asked to study and report on State Measure No. 3 which, if adopted at the general election on November 5, 1968, would authorize the Legislature to extend the "boundaries or jurisdiction" of Oregon "seaward" under authority of "a law heretofore or hereafter enacted by the Congress of the United States."

II. RESEARCH AND BIBLIOGRAPHY

The Committee interviewed the following:
Jason Boe, State Representative, Douglas County, principal sponsor of the measure
Rollin E. Bowles, Attorney and commercial fisherman.
Nathan D. Buell, Fishing tackle distributor and spokesman for Sport Fishing Institute.
Dr. John V. Byrne, Chairman, Department of Oceanography, Oregon State University.
Commander James Marsh, U. S. Department of Transportation.
A. R. Panissidi, Oregon Division of State Lands.
Arden E. Shenker, Attorney and author of article entitled "Foreign Fishing in Pacific Northwest Coastal Waters", 46 Oregon Law Review 422-453 (June 1967).

In addition to the materials cited in footnotes, the Committee considered answers to written inquiries received from various federal and state senators and representatives and from representatives of commercial fishing concerns and a petroleum products company.

III. BACKGROUND

Since ratification of the Oregon Constitution in 1857[1] and approval of the Admissions Act of 1859[2] the western boundary of Oregon has been fixed as "one marine league at sea." A marine league is three nautical (geographical) miles or 3.45 statute miles.

On October 14, 1966, an Act of Congress[3] established a fisheries zone extending nine nautical miles seaward of the outer limit of the territorial sea of the United States. Within this contiguous zone, which extends nine nautical miles seaward of the western boundary of Oregon,[4] the United States asserted rights "in respect to fisheries in the zone" to the exclusion of other nations, except those

(1)11 Stat. 383 (Feb. 14, 1859), 9 O.C.L.A. 71.
(2)Ore. Const. Art. XVI, (Nov. --, 1957) 9 O.C.L.A. 306.
(3)80 Stat. 908 (Oct. 14, 1966), 16 U.S.C. 1091-94 (1966 Supp.)
(4)The outer limit of this zone varies from 12 to 17 nautical miles from the low-water mark on the Oregon coast. This is because rocks less than 3 miles offshore cause the 3-mile limit to be extended 3 miles further seaward from the rocks.

with "traditional fishing" rights, but expressly refrained from extending or diminishing the jurisdiction of the States to the "natural resources" beneath and in the waters of the zone and the territorial sea.

On February 20, 1967, Representative Jason Boe of Reedsport spoke to the House Committee on Natural Resources in support of House Joint Resolution 24 (HJR 24), the measure which, with four words deleted, became State Measure No. 3. According to the official minutes (not a verbatim transcript) Representative Boe, after mentioning the 1966 Act, said

> ". . . it is only a matter of time before the territorial rights of the U. S. are extended 12 miles out, and perhaps even to the continental shelf. Under the present Constitution, it would be impossible for Oregon to extend her boundaries to the boundaries which are called for in the recent federal act. The problems which presently relate to the fisheries zone may not be the only ones to be considered in this, but there may also be some vast mineral wealth beneath our offshore lands. It seems very important that Oregon should be able to extend its boundaries seaward by legislative actions so that they concur with the territorial rights of the U.S., something which we are not able to do at the present because of the limitations contained in the Oregon Constitution."

No one else spoke for or against the measure. HJR 24, as subsequently passed by both houses (with 84 ayes, 1 nay[5], and 5 not participating) and referred to the electorate, would amend Article XVI, Oregon Constitution, by deleting certain extraneous language (in brackets) and adding an entirely new section 2 (italicized):

> "Sec. 1 [In order that the boundaries of the State may be known and established, it is hereby ordained and declared that] The State of Oregon shall be bounded as provided by section 1 of the Act of Congress of February [,] 1859, admitting the State of Oregon into the Union of the United States, until:
>
> "*(1)* Such boundaries are modified by appropriate interstate compact or compacts heretofore or hereafter approved by the Congress of the United States; *or*
>
> "*(2) The Legislative Assembly by law extends the boundaries or jurisdiction of this state an additional distance seaward under authority of a law heretofore or hereafter enacted by the Congress of the United States.*"

If State Measure No. 3 is adopted, two successive steps will still be necessary before Oregon's boundary can be extended seaward: (1) enabling legislation by Congress (which has not taken place) and (2) extension by act of the Legislature. Thus, State Measure No. 3 is designed to answer the narrow procedural question: How can Oregon extend her boundary seaward? It does not directly raise the more complex and interesting question: Should Oregon extend her boundary seaward? This, perhaps, explains why the measure has received almost no opposition or comment. Nevertheless, the Committee found that boundary extension could bring substantial economic benefit to Oregon, thereby making relevant the considerations raised by the second question.

IV. ARGUMENTS: PRO AND CON

Arguments for adoption of State Measure No. 3:

1. It would clarify potentially restrictive language in the Oregon Constitution, thereby enabling the Legislature to extend the boundary seaward without first seeking judicial clarification or further approval by the electorate.

2. The Legislature is better qualified than the electorate to make the final decision whether boundary extension would be desirable.

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(5)No reply was received from Rep. W. Priestly in explanation of his lone negative vote.

3. The Legislature could not act to extend the boundary until Congress gives its authorization, thereby preventing any unilateral action adverse to our national interests.

4. Extension of the boundary seaward would bring substantial economic benefit to Oregon. It is therefore desirable to establish the machinery to permit the Legislature to act promptly if the occasion arises.

5. Because of the likelihood that profitable development of the extensive natural resources in and under the ocean will soon become feasible, it is desirable that the electorate now acknowledge this probability and formally encourage Oregon's participation in such development.

Arguments against adoption:

1. The measure is unnecessary. The federal government now has exclusive control of water and submerged lands lying beyond the three-mile limit and can do with such lands as it sees fit, notwithstanding anything in the laws or Constitution of Oregon to the contrary. Any act of Congress authorizing boundary extension will override limitations in the Oregon Constitution. Furthermore, the federal government, with its continual involvement in military and international affairs, is better able to determine if, when and where a boundary extension would be desirable.

2. The measure is premature. Congress is not likely to pass legislation authorizing boundary extension in the foreseeable future.

3. The electorate should, as it has in 1859 and 1958, pass on each delineation of boundary.

4. The possible adverse effects of boundary extension, which cannot properly be weighed until Congress authorizes extension, should be considered by the electorate before the Legislature is authorized to act.

V. ANALYSIS

A. Necessity for Constitutional Amendment

Representative Boe, and presumably the other 83 representatives and senators who voted for HJR 24, apparently assumed that it would be "impossible" under the present Constitution to extend the boundary of Oregon seaward. Support is found in the fact that present Article XVI which adopts the 1859 boundary "until . . . modified by interstate compact or compacts . . . approved by the Congress of the United States," impliedly forbids boundary change by any other method.

One persuasive argument against this conclusion is that it ignores Article IV, section 3 of the U. S. Constitution in two respects. First, any modification of a common boundary between two states must under the first paragraph of Section 3 of Article IV, be done by mutual consent of the Legislatures of the affected states and Congress. The "interstate compact" language was added to Article XVI in 1958, to allow adoption of the compact clarifying the boundary in the Columbia River and hence was addressed to such first paragraph. Prior to 1958, Article XVI did not use the world "until" or contain language limiting the state's power to act in after-added territory. In this context, the language following "until" need not be read to exclude other constitutionally accepted methods of enlarging territory.

Second, under the property and supremacy clauses of the U. S. Constitution (second paragraph of Article IV, Section 3 and Article VI) an act of Congress adding territory to Oregon probably would be valid, "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Even if Congress should make extension contingent upon acceptance by the Legislature, that Congressional authorization would be sufficient to enable the Legislature to act, without need to amend the Oregon Constitution. And Article XVI already authorizes compacts to legalize extension of the common ocean boundaries with Washington and California.

It has also been argued that Oregon can act beyond the three-mile limit pursuant to the police power, without formal extension of boundary by Congress or the Legislature. The Committee found this argument less persuasive. While the police power clearly applies to certain limited activities, such as enforcement of

laws relating to crimes, health, public safety, etc., its application to other areas, such as exploitation of mineral resources, is doubtful, especially in view of federal legislation pre-empting control of submerged lands and waters lying beyond the three-mile limit (discussed in Section C, below).

In spite of the foregoing legal objections, State Measure No. 3 is, on balance, a desirable amendment. It clarifies the potentially restrictive language added to Article XVI in 1958, thereby reducing the likelihood of a court test of a boundary extension done by means other than an "interstate compact". Consistent with procedures used in 1859 and 1958, it requires some formal act of acceptance by the state — there may be valid reasons *not* to extend our boundary. And, most important, it properly places the power of boundary extension in the Legislature, rather than the electorate.

B. Ocean Resources

Oregon's present offshore lands contain approximately 811,500 acres (about 1,268 square miles or 1.3 percent of the States total area) and are managed by the Oregon Division of State Lands (formerly State Land Board) under legislation[6] requiring that proceeds therefrom be treated as revenue of the common school fund. To date, however, the only activity in this area which produces revenues for the state is fishing, both commercial and sport, and these revenues, consisting largely of fines and license fees, are used for certain purposes other than the common school fund.

The ocean and seabed contain vast quantities of beneficial resources. Techniques for use of these resources in commercial quantities are now being developed by a number of businesses, many with direct and indirect government assistance.

Resources found in the ocean include food fish, various sources of biological products used in treatment or prevention of disease, minerals, and water.

In addition to commonly utilized food fish, such as salmon and tuna, there are many underutilized food fish, e.g. tanner crab, threadfin herring and saury, which may be important for the future as needs and market for high quality protein foods expand.[7] Other nations, notably Russia and Japan, have begun taking fish from American coastal waters in such quantities that concern about depletion of certain species, especially perch and hake, has been expressed publicly.[8]

The sea, which harbors 80 percent of the earth's animal life, is a largely untapped source for medicinal materials. Already Loridine and Keflin (important antibiotics) can be derived from one strain of sea fungus. Seaweed is a well-known source of food and fertilizer and iodine is produced from burned kelp. The future possibilities of utilizing the sea as a source of new drugs and medical knowledge are tremendous. Before long, one or more biomedical oceanographic centers may be established to pursue this research.[9]

Minerals now being extracted from sea water include magnesium, bromine and iodine.

Principal resources on and under the ocean floor include aluminum, manganese, copper, oil, natural gas, gold, sand and gravel. Two quotations give an idea of the magnitude of reserves of some of these resources:

> ". . . Under the Pacific Ocean alone, it has been estimated, there is, in nodules lying on the ocean floor, enough aluminum to last at the present rate of consumption for twenty thousand years, compared to a hundred years of reserves known on land; enough manganese for four hundred thousand years, compared to land reserves of a hundred years; and enough copper for six thousand years, compared to land reserves of only forty years."[10]

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(6) Chapter 274, Oregon Revised Statutes. See also Portland City Club Bulletin, Vol. 48, No. 52, p. 194 (5/24/68) and "Technical-Legal Implications of HJR 24, 1967" report by A. R. Panissidi, Oregon Division of State Lands, p. 7.

(7) Pub. Info. Bull., "Fisheries Report," University of Washington, Information Services, 8/1/68, re report by 1968 conference of College of Fisheries.

(8) Shenker, "Foreign Fishing in Pacific Northwest Coastal Waters," 46 Ore. Law Review 425-427 and authorities cited therein.

(9) The National Observer, "Scientists Look to the Sea for New Drugs," August 5, 1968, p. 18.

(10) The New Yorker, June 1, 1968, p. 25.

> "The underwater [oil] reserves in the world are probably at least 10 billion and may be more than 150 billion tons. . . . Sixteen percent of world production of oil and gas already comes out of submarine wells. . . . Some 75 countries are searching for offshore oil. . . ."[11]

Recent oil strikes off the north coast of Alaska could, it is estimated, increase U. S. oil reserves by 25 percent.[12]

The State of Maine granted to a Colorado firm exclusive exploration rights to 3.3 million offshore acres for a fee of $333,760. Court tests are yet to come. But if mineral deposits are found, the state of Maine will collect royalties of five percent[13]. ". . . The supposedly long-since settled 'tide-lands' oil controversy of the early 1950's seems about to be reopened . . . the scramble for these revenues has begun in earnest."[14]

While recent exploratory drilling off the Oregon Coast by Shell Oil Company have given disappointing results, [15] and results of drilling operations for gold at Cape Blanco and at the mouth of the Rogue River by the U. S. Geological Survey and the Bureau of Mines are yet unknown,[16] a report prepared for The Port of Portland by Scott Engineering Associates predicted discovery off the Oregon coast of production quantities of minerals within five years, and of oil within ten years.[17]

It is apparent that we are on the threshhold of an era of intensive use of ocean resources. Oregon stands to benefit directly because the state now has a vested interest in 811,500 acres of ocean and underlying land, and stands to benefit indirectly through development of new industries along the coast and offshore. Oregon has the added advantage of having in Oregon State University one of the three sea-grant colleges (the others being Washington and Rhode Island) which receive federal financial support for work in oceanography

It is also apparent that any extension of State boundary seaward will increase the likelihood of economic benefit to the State. For example, increasing the limit to 12 nautical miles would increase the State's offshore acreage to about 3,246,000, a four-fold increase[18] (about 5 percent of total area of the State).

The "continental shelf" can be thought of as the area extending to the 100-fathom (about 600 feet) contour line, beyond which the rate of "drop-off" increases rapidly. Off the Oregon coast this line varies from about 10 miles to 40 miles off shore.[19] Extending the boundary to this line would roughly double again the States offshore acreage (about 9.5 percent of total area of the State).

A territorial sea extending seaward 200 nautical miles, as now claimed by El Salvador, would increase the area of the state by nearly one-half of its present size.

The Committee concluded that the economic benefits to the State which are likely to result from a boundary extension seaward are a compelling reason to vote in favor of State Measure No. 3. Although the measure itself does not extend our boundary, but merely enables such extension to take place, and although the adverse consequences of boundary extension cannot fully be known at this time —enforcement of laws, for example, will require boats and personnel — approval by the voters can at least encourage the State's involvement in sound development of our *present* ocean resources, as well as alert the Legislature to the desirability of extension.

Some additional questions posed by the Committee, which are beyond the scope of this report, are: Should the State become active in development of ocean resources? If so, do we have agencies and personnel capable of performing this

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(11)The National Observer, "Staking Claims on the Ocean Frontiers," September 23, 1968, p. 22.
(12)Sunday Oregonian, September 22, 1968.
(13)Washington Star, May 5, 1968; New York Times, May 8, 1968.
(14)160 Science 1431, 1433, June 28, 1968; see discussion in Section C, below.
(15)Letter from G. A. Burton, Vice President, Shell Oil Company.
(16)Oregonian, July 31, 1968.
(17)Oregon Journal, June 14, 1968.
(18)Panissidi, op.cit. p. 7.
(19)Estimate based on contour map reflecting data compiled by Dr. John V. Byrne and drawn by S. Riesland.

function? Should the Division of State Lands alone have control of ocean resources? Will the Legislature make appropriations to support such development? What steps must be taken to coordinate State development efforts with those by private industry, federal and state governments, and research institutions?

C. Paramount National Interest

Two acts of Congress and a series of U. S. Supreme Court decisions, triggered by the "tide-lands" oil controversy, have fixed the outer limit Oregon can claim at three nautical miles. In 1947 the Supreme Court held that the nation has "full dominion" over resources in the land lying off California below the low water mark.[20] The court rejected the contention that each state, by virtue of its sovereignty, owned offshore lands. Sovereignty passed to the colonies collectively, not individually; and the three-mile limit claimed by California was deemed to be

> "but a recognition of the necessity that a government by the sea must be able to protect itself from dangers incident to its location. Control of the three mile belt has been and is a function of national external sovereignty. . . . The state is not equipped in our constitutional system with the powers or the facilities for excercising the responsibilities which would be concomitant with the dominion which it seeks. . . ."

In 1953, Congress passed two acts[21] which fixed the outer limit of the boundary of states bordering the Atlantic and Pacific Oceans at three nautical miles, and of states bordering the Gulf of Mexico at nine nautical miles. The U. S. Supreme Court has upheld the validity of these acts.[22] Thus, the federal government has a clear paramount right to waters and lands lying beyond Oregon's three-mile boundary, subject to change by act of Congress.

The Committee was informed that Congress is not expected to take action to extend ocean boundaries, at least in the foreseeable future.[23] Of several proposed bills studied by the Committee, one would give states exclusive regulatory jurisdiction over natural resources and services produced, transported, and consumed solely within or off the shore of a single state;[24] and others called for allocation of revenues produced from offshore resources between the littoral state closest to the resource and the nation. It is interesting to note that deficiencies in the Land and Water Conservation Fund, which will finance Redwood National Park and North Cascades National Park, will be made up from revenues produced by offshore oil production.[25] Hence, national usage can produce benefits for the state.

It is safe to predict that Congress will not act to extend state boundaries seaward without consideration of international consequences. An extension of U.S. boundaries twelve nautical miles seaward undoubtedly will cause a worldwide reciprocal reaction, which will adversely affect American shrimp fishermen off the coast of Mexico, the U. S. Navy in waters off North Vietnam, North Korea and elsewhere, etc. It is believed that the executive branch of the federal government opposes any extension of boundaries at this time. Whether the collective efforts of the 23 coastal states and the eight states bordering the Great Lakes can override such opposition is difficult to predict. Nevertheless, it is germane to discuss the question of boundary extension in an international context, to see what forces shape our national policies with respect to boundary claims by foreign nations.

D. Competing International Interests

The seas have been with us since the beginning, but the body of rules applicable to these seas are the work of a man of a latter age. About the time of Francis Drake and the Spanish Main, i.e. circa 1600, a Dutchman, Hugo Grotius, in his

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[20] *U. S. vs. California* (1947) 332 U. S. 19.

[21] Submerged Lands Act (1953), 67 Stat. 29, 43 USC §§ 1301-1303, and 1311-1315 and Outer Continental Shelf Lands Act (1953), 67 Stat. 462, 43 USC §§ 1331-1343.

[22] *U. S. vs. States of Louisiana, Texas, Mississippi, Alabama and Florida* (1960) 363 U.S. 1, 121, reh.den. 364 U.S. 856.

[23] Letter to Committee from Sen. Hatfield dated July 9, 1968.

[24] S. 2475, 90th Cong. 1st Sess. (Sept. 25, 1967), proposed by Sen. Long, referred to Committee on Commerce.

[25] Oregonian, September 26, 1968.

classic *Mare Liberum,* vigorously expounded the concept that the high seas should be open to free navigation of all nations. A century later, this principle of freedom of the seas and that the high seas belong to all mankind had been generally accepted by the nations of the world. The freedom of the high seas doctrine was, at least in part, rooted upon the untested assumption that the resources of the seas were inexhaustible.. With the advent of modern technology and oceanographic research, this assumption is now being attacked. Although ocean resources are extensive, they also are exhaustible.

Since the days of Grotius, laws applicable to territorial waters have differed from laws applicable to the high seas. These territorial waters belong to the littoral state. Formerly, there was general agreement among nations that the territorial sea extended one marine league or three nautical miles from shore. In the mid-years of this century, this doctrine came under attack by virtue of the vastly increased fishing activity of some nations and more recently by exploration of sea beds for minerals both within and beyond the three-mile limit. Most territorial claims now range from six to twelve miles from shore. El Salvador claims a 200-mile territorial sea.

Extension of the territorial waters encroaches upon the historical freedom-of-the-seas principle. But this does not dissolve the present uncertainty at law concerning where territorial waters end and free high seas begin.

To resolve this question by international agreement, conferences were held at Geneva in 1958 and 1960. Neither evoked general or specific agreement on this subject, but the 1958 convention formally recognized ownership of the continental shelf "to a depth of 200 meters, or where the depth of the superjacent waters admits of exploitation."

Since 1793 the United States has stoutly proclaimed a three-mile territorial limit (the limit of sovereignty), both as U. S. boundary and as the proper boundary to be claimed by other nations. But, inconsistently, Congress established the nine-mile contiguous fishing zone in 1966 and, on September 28, 1945, President Truman issued Proclamation 2667 declaring U. S. "jurisdiction and control" over natural resources beneath the continental shelf adjacent to the American coast and Proclamation 2668 establishing U. S. "conservation zones" in certain fishing waters lying beyond the territorial sea.

The width of the American shelf varies from one nautical mile off LaJolla, California, to 250 nautical miles of Kennebunkport, Maine.

Now that mining of underwater minerals is becoming feasible, every coastal nation is looking seaward, even beyond the continental shelf. At the close of World War II most such nations claimed ownership or sovereignty over their continental shelves. The total area in the world between the low-water line and the 100-fathom contour is larger than the area of the continent of Asia. Development is already well underway in the North Sea. Thus, the economic benefit to be gained from ownership of this relatively small band of land is considerable. Its size grows as the edge of the "continental shelf" is, by change of definition, moved seaward. Some groups, including the United Nations Charter Committee of the World Law Center at Geneva, would limit the continental shelf to 200 meters in depth, or 50 miles from shore, whichever is greater. This would widen the shelf legally for nations that are endowed with little or no geological shelves, but limit the claims of certain countries and the potential claims of others utilizing highly refined search devices that presently sweep some 15,000 feet below the ocean surface.

A sincere effort is being made to affirm beyond the continental shelf the ancient principle of freedom of the seas to all, and to favor granting to the United Nations the exclusive right to control the mining of lands under the high seas. This precise proposal is presently being studied by an *ad hoc* committee of the United Nations General Assembly, of which committee this nation is a member. Your Committee believes that such action is desirable. In the words of Mr. Arvid Pardo, Ambassador from Malta:

> ". . . [It] would be highly unjust, and dangerous, for the ocean floor to become subject to competitive appropriation, exploitation, and military use by those few countries that have the technical facilities."(26)

(26)The New Yorker, June 1, 1968, p. 24.

It is difficult to predict when major nations might reach agreement on territorial seas and ocean resource development. Russia, with her sophisticated fishing equipment,[27] appears to have a lead which could obstruct agreement. Although this Committee favors international agreement to avoid an imperialistic race for ocean resources, it does not believe that this hope is a reason to vote against State Measure No. 3.

VI. CONCLUSIONS

The arguments for State Measure No. 3 outweigh those against. Even if, under the federal constitution, Congress can, without counterpart action by the Legislature, extend the state boundary seaward, Article XVI of the Oregon Constitution leaves doubt that an attempt to act in such new territory would go unchallenged. The Oregon Constitution should not be ambiguous. State Measure No. 3 makes a desirable clarification.

There is no reason to wait for Congress to act before giving the Legislature power to react. We can assume that authorization by Congress will be in the national interest, with due regard for international considerations.

Your Committee also believes that approval might well be construed as a timely mandate to the state to become involved in development of ocean resources generally, which in turn should benefit the sizable ocean area now under state control, even if our boundary is never extended. The vote has this importance because passage of the measure clearly will place the power of boundary extension in the Legislature. The electorate would have no further voice in the mattter, except through the Legislature.

VII. RECOMMENDATION

Your Committee recommends that the City Club go on record as favoring adoption of State Measure No. 3 and urging a "Yes" vote on such measure.

Respectfully submitted,

Frank A. Bauman
Dale Duvall
Nathan J. Heath
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John M. Swarthout
Leigh D. Stephenson, *Chairman*

Approved by the Research Board October 10, 1968 and submitted to the Board of Governors.

Received by the Board of Governors October 14, 1968 and ordered printed and submitted to the membership for discussion and action.

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[27]The view has been expressed that such equipment may not be used solely for fishing, but may be used for gathering information in connection with Russia's mineral resource development and military programs. The Committee found no evidence to support or refute this view.