

9-20-1974

City Club of Portland Bulletin vol. 55, no. 16 (1974-9-20)

City Club of Portland (Portland, Or.)

Follow this and additional works at: https://pdxscholar.library.pdx.edu/oscdl_cityclub



Part of the [Urban Studies Commons](#), and the [Urban Studies and Planning Commons](#)

Let us know how access to this document benefits you.

Recommended Citation

City Club of Portland (Portland, Or.), "City Club of Portland Bulletin vol. 55, no. 16 (1974-9-20)" (1974). *City Club of Portland*. 290.

https://pdxscholar.library.pdx.edu/oscdl_cityclub/290

This Bulletin is brought to you for free and open access. It has been accepted for inclusion in City Club of Portland by an authorized administrator of PDXScholar. Please contact us if we can make this document more accessible: pdxscholar@pdx.edu.

NEWSPAPER SECOND CLASS POSTAGE PAID AT PORTLAND, OREGON

City Club of Portland

BULLETIN

Portland, Oregon

Vol. 55, No. 16

Benson Hotel, Mayfair Room

12:15 p.m.

Friday, September 20, 1974

Printed herein for presentation, discussion and action at the Friday membership luncheon meeting September 20, 1974:

REPORTS

ON

PERMITS ESTABLISHING QUALIFICATIONS FOR COUNTY ASSESSORS

STATE MEASURE NO. 6

The Committee: William L. Brewster, Jr., Ilo Bonyhadi, James A. Larpenteur, Jr.,
Stephen S. McConnel, Maurice O. Georges, *Chairman.*

RIGHT TO JURY IN CIVIL CASES

STATE MEASURE NO. 11

The Committee: Dennis Hartman, Kristena A. La Mar, Norman Smith, Harold Tascher,
Victor W. Van Koten, Craig E. Zell, Charles M. Chase, *Chairman.*

OBSCENITY AND SEXUAL CONDUCT BILL

STATE MEASURE NO. 13

The Committee: Renee Alexander, Lyle J. Ashcraft, Alan J. Gardner,
Richard T. Gourley, M.D., Nancy S. Kaza, Shirley M. Kennedy, Don Keith Lloyd,
Robert I. Mesher, R. J. Okoneski, Jr., Richard S. Pope, Robert M. Smith,
Herbert O. Crane, *Chairman.*

*"To inform its members and the community in public matters and to
arouse in them a realization of the obligation of citizenship."*

PROPOSED FOR MEMBERSHIP AND APPROVED BY THE BOARD OF GOVERNORS

If no objections are received by the Executive Secretary prior to September 27, 1974 the following applicants will be accepted for membership:

Stephanie Talley, Social work trainee. Proposed by Lorna Newcombe.

Jo Ann Proppe, Executive Secretary, Portland Chapter, American Institute of Architects. Proposed by Neil Farnham.

E. L. (Jim) Martin, Associate Broker, TDC Co., Realtors. Proposed by R. H. Coppock.

Geoffrey B. Moorman, Economist, BPA. Proposed by Forrest Blood.

Douglas W. McPhee, Program Analyst, BPA. Proposed by Forrest Blood.

ELECTED TO MEMBERSHIP

Jean M. France, Secretary, Potlatch Corporation. Sponsored by R. M. Lloyd.

H. Lawrence Griffith, D.M.D. Sponsored by Neil Farnham.

Renee Bergman, Teacher, Secondary Education, School District No. 1. Sponsored by James A. Nelson.

Mary Reynolds, Corporate Secretary/Treasurer, Multorpor, Inc. Sponsored by Donald J. Sterling, Jr.

Michael P. Opton, Lawyer, City-County Security & Privacy Advisory Commission. Sponsored by Peter F. Opton.

Jerry R. Baker, Agency Supervisor, Standard Insurance Co. Sponsored by Daryl Nelson.

Gene Wiley, Director of Community Relations, Parry Center for Children. Sponsored by Ross Miller.

John Michael Wight, Lawyer, Black, Kendall, Tremaine, Booth and Higgins. Sponsored by Leigh D. Stephenson.

CITY CLUB OF PORTLAND BULLETIN

Published each Friday by the

CITY CLUB OF PORTLAND

505 Woodlark Bldg. Portland, Oregon 97205
Phone 228-7231

MARILYN L. DAY, *Editor
and Executive Secretary*

MORRIS S. ISSEKS, *Archivist*

Second class Postage Paid at Portland, Ore.
Subscription rates \$6.00 per year included in
annual dues.

OFFICERS OF THE BOARD

George D. Dysart *President*
Clifford N. Carlsen, Jr. *President-Elect*
Thomas L. Gallagher, Jr. *1st Vice President*
A. Thomas Niebergall *2nd Vice President*
Thomas S. Stimmel *Secretary*
William C. Carpenter *Treasurer*

GOVERNORS OF THE BOARD

Jean Babson E. Shelton Hill
Forrest Blood Guenter Mattersdorff
Ross H. Coppock Bruce Samson

RESEARCH BOARD

Thomas L. Gallagher, Jr., *Chairman*
John E. Allen, Ph.D. Stephen B. Herrell
Charles W. Bursch, II Boyd MacNaughton, Jr.
William A. Comrie James A. Nelson
John L. Frewing Peter Plumridge
John F. Williams, Jr.

Stanton W. Allison, *Research Editor*

PROJECT PLANNING BOARD

A. Thomas Niebergall, *Chairman*
Jack R. Brown Campbell Richardson
Mary Anne Normandin William C. Scott, Jr.



PACKWOOD/ROBERTS MEET OUT

It was reported in this Bulletin a couple of weeks ago that we were negotiating to bring U.S. Senate candidates Bob Packwood and Betty Roberts to the City Club platform.

Prior commitments both on the part of the candidates and the Club prohibit making suitable arrangements.

CLUB APPROVES SM #4 REPORT

City Club members attending the meeting of September 13, 1974, approved by voice vote the report on State Measure #4, which recommended a "NO" vote. The Ballot Measure would eliminate the governor vacancy age requirement for succession.

The report was presented by Chairman Patrick H. Maney. His committee included John J. Collins, Roy W. Cooper, Helen E. Joyner, John A. Rau, Helen Riordan and James C. Wolfard.

**REPORT ON
STATE MEASURE NO. 6
PERMITS ESTABLISHING QUALIFICATIONS
FOR COUNTY ASSESSORS**

Purpose: Amends Section 8, Article VI, Oregon Constitution to permit the qualifications of the county assessor to be established by the legislature. Under present law there are no professional qualifications required for the office of county assessor.

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

I. INTRODUCTION

Your Committee was requested to study and report on State Ballot Measure No. 6, placed on the ballot by referral from the 1973 Legislature. The measure was House Joint Resolution No. 22, which would amend the Oregon Constitution to permit the Legislature to set qualifications for the office of county assessor.

II. SCOPE OF RESEARCH

In the course of its study, your Committee reviewed the history of this subject, as reflected in Attorney General's opinions, court decisions, and previous legislation and constitutional amendments. Some of that history is summarized below. In attempting to get various viewpoints, members of the Committee communicated with the following persons, either by telephone, correspondence, or personal interview:

STATE REPRESENTATIVE: *Earl Blumenauer.*

ASSESSORS: *Glenn P. Horn*, Jefferson County; *John H. Parkhurst*, Lane County; *Herbert A. Perry*, Multnomah County.

DEPARTMENT OF REVENUE, STATE OF OREGON: *Donald M. Fisher*, Administrator, Assessment and Appraisal Division.

PERSONNEL DIVISION, EXECUTIVE DEPARTMENT, STATE OF OREGON: *Joan McGuren.*

The Committee also referred to the report of the City Club Committee on Qualification for County Coroners and Surveyors (October 12, 1956, Vol. 36, No. 19) and the report of the City Club Committee on Qualifications for Sheriff Set by Legislature (October 26, 1972, Vol. 53, No. 22).

III. HISTORICAL BACKGROUND OF STATE MEASURE NO. 6

The original 1857 Constitution of the State of Oregon established the county offices of clerk, treasurer, sheriff, coroner and surveyor (Art. VI, §§ 6, 7, 8; Art. VII, § 8). The assessor was not mentioned.

In 1949 the Legislature passed an act requiring that a county surveyor must be either a registered professional engineer or a registered professional land surveyor (Ch. 31, Or. Laws 1949). At the 1952 election Peter W. Welch was elected surveyor of Multnomah County, although he was neither a registered professional engineer nor a registered land surveyor. In a quo warranto proceeding the Oregon Supreme Court held that the act of the Legislature was invalid, in that the Legislature had no power to add to the qualifications for office set forth in the Constitution. If the Constitution had not prescribed any qualification whatever, then the Legislature could have done so; but since the Consti-

tution did require that the county surveyor be an elector of the county, it was presumed that this was the only qualification that the Constitution intended. Therefore, Peter Welch was declared to be the duly elected and qualified surveyor of Multnomah County [*State ex rel Powers vs. Welch*, 198 Or. 670, 259 P.2d 112 (1953)].

Thereafter, in 1955, the Constitution was amended with respect to the county coroner and county surveyor to provide that they "shall possess such other qualifications as may be prescribed by law" (HJR 7, 1955, amending Art. VI §§ 6 and 8, approved November, 1956). Under this amendment the Legislature could prescribe additional qualifications for the coroner and surveyor. In 1972, the Constitution was further amended to permit the legislature to prescribe other qualifications for the sheriff (HJR 42, 1971, amending Art. VI, § 8, approved November, 1972).

In the 1973 session the House Committee on Revenue, at the request of the Oregon State Association of County Assessors, introduced HJR 22, which would amend Sec. 8, Art. VI, to include the county assessor as an office for which the Legislature could prescribe qualifications other than that the assessor be an elector of the county ("Other Qualifications"). HJR 22 passed the House of Representatives by a vote of 35 to 21, and the Senate by a vote of 24 to 5, with 1 excused, and it is now State Measure No. 6 for the 1974 general election. The full text of HJR 22 is set forth in *Appendix A*.

The 1973 Legislature also passed Chapter 538 (HB 2298), which would implement the constitutional amendment, if it is passed, by establishing the Other Qualifications permitted by the then amended Constitution. Chapter 538 is set forth in *Appendix B*.

The assessor's chief responsibility is to appraise all real property and all taxable personal property in the county. The assessor has numerous other duties such as determining whether property is taxable or exempt, maintaining records required by law and furnishing reports to the Department of Revenue. The assessor has been an established county officer since 1854 but is not mentioned in the Oregon Constitution.

The Department of Revenue was established in 1969. The Department of Revenue succeeded to the powers and responsibilities of the State Tax Commission, originally established in 1909. Since 1909, the State Tax Commission and the Department of Revenue have had supervisory powers over boards and officers (including assessors) administering laws relating to revenue and taxation. See ORS 305.090.

Since 1957, the Personnel Division, Executive Department, State of Oregon has prescribed standards for personnel engaged in work as county appraisers. See ORS 308.010. Certificates are issued for qualified appraisers and appraiser trainees.

The authors of Measure No. 6 have concluded that, by reason of Oregon Constitution, Art. VI, § 8, the Legislature may not prescribe Other Qualifications. However, the two prior amendments to Art. VI, § 8, relating to the surveyor, coroner and sheriff, concerned offices named in Art. VI, § 6. The assessor is nowhere mentioned in the Constitution. The assessor is a county officer who is to be "elected, or appointed in such manner as may be prescribed by law" as specified in Art. VI, § 7. It is not clear, therefore, that the rule of *Powers vs. Welch* applies to the assessor or that Measure No. 6 is necessary to permit the Legislature to prescribe Other Qualifications. Two attorneys general, however, have stated the proposed amendment must be adopted before the Legislature may lawfully prescribe Other Qualifications [Opinion of Robert Y. Thornton dated April 15, 1955, 27 Opinions of Attorney General 99 (1955); Opinion of Lee Johnson of March 13, 1974, 36 Opinions of Attorney General 898 (1974)]. In any event, if the proposed constitutional amendment (Measure No. 6) is passed, Chapter 538 will become effective, and thereafter new assessors will have to meet the qualifications stated therein.

The amendment would not apply to assessing officers in home rule counties such as Multnomah, Washington and Lane counties. By reason of Oregon Constitution Art. VI, § 10, these counties are specifically authorized to designate their own officers and prescribe the qualifications [Opinion of March 13, 1974, *supra*].

IV. RELATIONSHIP OF STATE MEASURE NO. 6 AND CHAPTER 538 FOR PURPOSES OF THIS REPORT

Chapter 538 was enacted by the 1973 Legislature. However, Chapter 538 will not become operative unless the Constitution is amended as provided in State Measure No. 6 (SM 6). On the other hand, if the Constitution is amended as provided in SM 6, subsequent legislatures are free to amend Chapter 538.

Chapter 538 contains some ambiguities and perhaps some deficiencies.

Respecting the prescribed qualifications, two interpretations of proposed ORS 204.016 (3) are possible.

First interpretation: a candidate must:

- (a) be a certified appraiser or appraiser trainee and have two years of office and accounting experience, or
- (b) have two years of full-time employment in the office of a county assessor.

Second interpretation: a candidate must:

- (a) be a certified appraiser or appraiser trainee and have two years of office and accounting experience, or
- (b) be a certified appraiser or appraiser trainee and have two years of full-time employment in the office of a county assessor.

G. F. Bartz, Assistant Attorney General, Tax Division, in a letter to Charles H. Mack dated August 31, 1973, has said the second interpretation is proper. Your Committee considers the second interpretation more logical and agrees with Mr. Bartz.

The terms "certified appraiser" and "appraiser trainee" as used in proposed ORS 204.016 (3) (a) are not ambiguous. The State of Oregon Personnel Division and the Multnomah County Civil Service Commission have established qualifications for certified appraisers and appraiser trainees. In general, appraiser trainees need not have any special experience or education, but must pass a written examination covering a general knowledge of public relations, vocabulary, report writing, basic economics, basic accounting, surveying and mapping, arithmetic and reading comprehension. An individual may remain an appraiser trainee only two years. A certified appraiser must have certain education or experience (including as one alternative two years' experience as an appraiser trainee) and pass one of several written examinations testing specific appraisal skills.

The term "two years' office and accounting experience, including experience in office management," may be ambiguous. It will be necessary for the Department of Revenue to issue implementing rules or regulations.

The term "two years of full-time employment in the office of a county assessor" should not present significant interpretation problems.

As stated in proposed ORS 204.016 (4), the Department of Revenue will effectively determine whether an individual is qualified to take office. It is not clear whether a candidate should appeal an adverse Department of Revenue decision to the Marion County Circuit Court or the Court of Appeals under ORS Chapter 305.183 or the appeal should be to the Oregon Tax Court under ORS 305.105.

V. ARGUMENTS FOR AND AGAINST THE MEASURE

A. Arguments For:

1. The successful carrying out of a reappraisal program, the maintenance of appraisals and the successful equalization of property tax values depends upon the careful selection of qualified county assessors.
2. In order that the assessor can properly judge the competence of the appraisers working under him, it is necessary that he have qualifications at least equal to theirs.

3. Since the assessor in some counties must perform actual appraisal work, the level of performance state-wide will improve by the setting of qualifications.

B. Arguments Against:

1. In at least one-half of the counties the assessor does little or no actual appraisal work so that the setting of qualifications for this position is not important in those counties.
2. This proposed legislative delegation to the Department of Revenue of the effective power to determine which candidates are qualified and which are not, results in further erosion of local voter control.
3. This measure is only a piecemeal approach to improving county government; the legislature and the voters should face up to the need for completely revising the entire system.

VI. DISCUSSION

The fourth recital in SM 6 states:

"the successful carrying out of a reappraisal program, the maintenance of appraisals and the successful equalization of property tax values throughout the state is in large part dependent upon the existence of carefully selected and qualified county assessors."

Arguments in support of the proposed amendment implement this central theme.

The proponents concede that, in perhaps half the counties, the assessor does little or no actual appraisal work. But even if the assessor is not often in the field, it is important that he understand the work the appraisers are required to perform. Otherwise it will not be possible for the assessor to judge the competence of the appraisers or to improve their performance. Similarly, intelligent discussion between the assessor and taxpayers concerning the work of the appraisers is not possible unless the assessor understands the appraiser's work. In the smaller counties where the assessors actually engage in appraisal work, the proponents find it anomalous that all appraisers except the assessor must be either a certified appraiser or (under the supervision of a certified appraiser) an appraiser trainee.

The opponents represent two completely opposite points of view. One group deplors the further erosion of local control, particularly the legislative delegation to the Department of Revenue of the effective power to determine which candidates are qualified and which are not. The proponents reply that the standards for determining qualified candidates are adequately set forth in the statute.

The second group of opponents characterizes the effort as a band-aid approach to county government. This group does not want piecemeal improvements to county government but prefers to scrap the entire "mess" and substitute a more logical and efficient system. Attempts to patch up delay the day when voters must face reality and junk the existing system. In general, under a revised system, county assessing officials would be subordinate employees of the Department of Revenue. Proponents reply that there are no alternative programs expected to be enacted in the near future and that a modest improvement in the existing system should not be sacrificed for indefinite hopes.

Both groups of opponents claim an unfettered right for voters to choose whomever they wish for office regardless of qualifications. Some would not require that judges, district attorneys or the attorney general be lawyers. Proponents respond that the voters neither have nor claim any unfettered right to select a completely unqualified candidate for any office requiring technical qualifications for competent performance.

VII. CONCLUSIONS

No one has suggested the establishment of qualifications for assessors would not improve the performance of assessors. One opponent stated he did not expect the establishment of qualifications would measurably improve their performance. The Committee is convinced the long-range result will be to improve overall performance.

If it is conceded that the overall result of fixing qualifications will be to improve performance, the opposing arguments lose strength. If the standards to be implemented by the Department of Revenue are vague or the right to a speedy judicial remedy to correct arbitrary and capricious decisions of the Department is not clear, these matters can be corrected by subsequent legislation. The Committee is not convinced the existing system of county government is about to collapse or that a current modest improvement in assessment performance should be sacrificed for the hope of obtaining overall improvement in county government at some indefinite future date.

As stated in Section III, it is not clear that State Measure No. 6 is necessary. Further, if this measure is adopted, the Constitution will provide that the Legislature may prescribe Other Qualifications even though the assessor is not mentioned elsewhere in the Constitution. Your Committee has concluded, however, that it is possible the Oregon Supreme Court might ultimately decide the Legislature may not prescribe Other Qualifications without the adoption of Measure No. 6.

The best argument in opposition claims that, if an office is elective, the voters ought to have absolutely free right to choose whom they wish. The candidates may extol their own technical and other qualifications and criticize the technical and other qualifications of their opponents, but the right of choice should remain untrammelled. The Committee agrees that, if technical qualifications are generally required for competent performance, the selection of the office holder should probably be by appointment and not by election. But if it is not currently politically possible to change the manner of selection from election to appointment and if technical qualifications are generally required for competent performance, it is preferable to require the qualifications as a condition of holding office.

VIII. RECOMMENDATION

The Committee recommends that the City Club go on record as supporting State Measure No. 6 and urges a vote of "Yes."

Respectfully submitted,
Ilo Bonyhadi
William L. Brewster, Jr.
James A. Larpenteur, Jr.
Stephen S. McConnel
Maurice O. Georges, *Chairman*

Received by the Research Board August 29, 1974 and approved for transmittal to the Board of Governors.

Received by the Board of Governors Sept. 11, 1974 and ordered printed for presentation to the membership for discussion and action.

APPENDIX A

HOUSE JOINT RESOLUTION 22 (State Measure No. 6)

Whereas the Constitution and statutes of the State of Oregon provide, generally, that the assessment and taxation of ad valorem property be done uniformly throughout the state; and

Whereas the public policy of this state, as declared by statute, is that all real property shall be reappraised at least once every six years; and

Whereas the Department of Revenue and counties are engaged in a program of maintaining the level of appraisals at current values after a completion of their reappraisal; and

Whereas the successful carrying out of a reappraisal program and maintenance of appraisals and the successful equalization of property tax values throughout the state is in large part dependent upon the existence of carefully selected and qualified county assessors; now, therefore

Be It Resolved by the Legislative Assembly of the State of Oregon:

Paragraph 1. Section 8, Article VI of the Constitution of the State of Oregon, is amended to read:

Sec. 8. Every county officer shall be an elector of the county, and the county assessor, county sheriff, county coroner and county surveyor shall possess such other qualifications as may be prescribed by law. All county and city officers shall keep their respective offices at such places therein, and perform such duties as may be prescribed by law.

Paragraph 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next regular general election held throughout the state.

**APPENDIX B
CHAPTER 538
AN ACT**

Relating to county assessors; creating new provisions; and amending ORS 204.016.

Be It Enacted by the People of the State of Oregon:

Section 1. ORS 204.016 is amended to read:

204.016. (1) A person is not eligible to any office listed in subsection (1) of ORS 204.005 unless he is a citizen of the United States, a qualified elector under the Oregon Constitution and a resident of the county wherein he is elected for the period of one year next preceding his election, except that in counties of less than 20,000 population the requirement of residency in the county wherein he is elected shall not apply to the county surveyor **or assessor.**

(2) A person is not eligible to hold the office of county surveyor unless he is registered under the laws of this state as a registered professional engineer or a registered professional land surveyor.

(3) A person is not eligible to hold the office of county assessor unless:

- (a) He is a certified appraiser or appraiser trainee under ORS 308.010; and
- (b) He has two years of office and accounting experience, including experience in office management activities; or
- (c) He has two years of full-time employment in the office of a county assessor.

(4) The Department of Revenue shall prepare applications and questionnaires, and obtain information it may deem necessary to determine that a candidate for the office of county assessor has met the requirements of this section, and shall furnish to applicants suitable certificates evidencing satisfactory compliance with the required qualifications.

SECTION 2. The amendments to ORS 204.016 by section 1 of this 1973 Act shall not apply to any assessor in office on the operative date of this Act.

SECTION 3. The amendments to ORS 204.016 by section 1 of this 1973 Act shall not be operative unless the Constitution of the State of Oregon is amended by a vote of the people as proposed by Enrolled House Joint Resolution 22 (1973 regular session).

Approved by the Governor July 21, 1973.

Filed in the office of Secretary of State July 24, 1973.

REPORT ON
RIGHT TO JURY IN CIVIL CASES
STATE MEASURE NO. 11

Purpose: This constitutional amendment increases the minimum amount of a claim in a civil action for which the right to a jury trial is constitutionally guaranteed, from \$20.00 to \$200.00.

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

I. INTRODUCTION

The Oregon Constitution presently guarantees the right to a jury trial in all civil actions where the amount in controversy exceeds \$20.00: "In actions at law, where the value in controversy shall exceed \$20.00, the right of trial by jury shall be preserved . . ." Article VII, Sec. 3, paragraph 1.

Oregon statutes presently provide that all civil actions not exceeding \$20.00 *must* be brought in Small Claims Courts and any civil action not exceeding \$500.00 *may* be brought there.¹ When an action is filed in Small Claims Court for a sum between \$20.00 and \$500.00, the defendant can have it removed to District Court by requesting a jury trial.²

State Measure No. 11 (SM 11) would amend the constitutional guarantee by changing the \$20.00 minimum to \$200.00. A companion bill (HB 3236), which will go into effect only if SM 11 is adopted, would amend the statutes to provide that all actions involving \$200.00 or less *must* be brought in Small Claims Courts. Plaintiffs with claims between \$200 and \$500 could still bring their actions either in district court or Small Claims Court, and defendants in such cases could still have them removed to district court by requesting a jury.

II. BACKGROUND

The purpose of Small Claims Courts is clearly expressed in ORS 46.415 (3): "The hearing and disposition of all cases shall be informal, the sole object being to dispense justice promptly and economically between the litigants . . ." By the rules of the court, attorneys cannot practice in Small Claims Court without special permission and juries are supplanted by the judge, who has broad, discretionary powers. Decisions of the judge are final and there can be no appeal.

Under present law, a claim up to \$20.00 must be brought in Small Claims Court, but larger actions from \$20.01 up to \$500.00 may be filed by plaintiff in the district court. If plaintiff selects the Small Claims forum, the defendant can seek removal of the case into district court by filing a small fee and requesting a jury trial within ten days after being served the complaint. This procedure unfortunately can be used to thwart the underlying policy for the existence of the "little man's court." For example, Mr. Jones, an automobile mechanic, is unable to collect a \$100.00 repair bill from Mr. Smith for work performed on the latter's car. Mr. Jones can sue Mr. Smith in Small Claims Court at nominal expense. However, Mr. Smith can respond to the suit by demanding a jury trial. Mr. Smith has this right because he is disputing a claim in excess of \$20.00. As a consequence, Mr. Jones must now file a formal lawsuit in a higher court in which jury trials are permitted. He will almost certainly need to hire an attorney to draft a

¹ORS 46.405 (2)

²ORS 46.455 (2)(c)

complaint and to argue his case to the jury. He realizes the delay involved may be substantial. Mr. Jones might therefore drop his claim rather than undergo the additional time and expense. When the procedure is used in this manner, the defendant can "slip out" of the selected forum and perhaps the controversy.

State Measure 11, which was considered by the 1973 Legislature as House Joint Resolution 71 (HJR 71) and its companion bill, HB 3236, are an outgrowth of citizen input to a legislator.³ House and Senate committee minutes reveal that \$200 was selected rather arbitrarily to replace the \$20 figure, which is confirmed by interviews with members of the committees.⁴ The increase was viewed primarily as an adjustment for the inflation that had occurred since the original provision was inserted in the Oregon Constitution in 1910.

III. ARGUMENTS ADVANCED IN FAVOR OF THE MEASURE

1. Small Claims Courts are an expedient method of handling a volume of small cases economically. Increasing their exclusive jurisdiction from \$20.00 to \$200.00 will reduce the cost to the taxpayer of resolving such disputes by precluding them from the higher trial courts.
2. For controversies involving \$200.00 or less, litigants would be assured of obtaining an expeditious, final determination at a minimum cost to them.
3. The present opportunity for a defendant to "slip out" of the Small Claims Court and thereby bluff an opposing litigant into not pursuing a claim would be eliminated in cases involving \$200.00 or less.
4. The \$200.00 minimum for a jury trial is realistic in view of the inflation that has occurred since the \$20.00 minimum was established.

IV. ARGUMENTS ADVANCED AGAINST THE MEASURE

1. Trial by jury in civil actions is a valued and time-honored right which should not be eroded by increasing the minimum dollar amount.
2. State Measure 11 would discriminate against low income people (who may be entitled to assistance of a legal aid attorney in district court) by denying them the right to jury trial for a sum which though not large to others, may to them represent a month's income or more.
3. Litigants not skilled in articulating their argument will be forced into a forum where attorney representation is not available, providing a distinct advantage for a more skilled opponent.
4. The legislative attempt to close a loophole in the law as it pertains to the Small Claims Courts is inadequate in its effect since claims between \$200.00 to \$500.00 could still be filed originally in the district court or removed there from Small Claims Court.
5. Before referring SM 11 to the people, the Legislature did not fully consider and address all of the arguments against the proposed amendment. Another change in the Oregon Constitution should not occur without a strong, apparent probability that a benefit will be derived as the net effect of the amendment.

³Mr. Harold Jambor, a Portland resident, contacted State Representative Vera Katz of the House Judiciary Committee during the 1973 session of the Oregon Legislature after his son, Nick, had a direct experience in Benton County with a weakness built into the Small Claims Court system.

⁴Interviews with State Representatives Vera Katz and Lewis Hampton.

V. DISCUSSION

In pursuing its assignment, the Committee has assumed that data from the Multnomah County Court system provides a reliable example for statewide consideration of this measure. The absence of available data from other counties has made it essential to proceed on this basis.

During March and April of 1974, 1,467 cases were filed in the Multnomah County Small Claims Court. Of these, 866 involved claims under \$200, or about 59 percent. In the corresponding period, the district court filings of civil actions numbered 2,129. Statistics were not available as to how many of the latter involved claims under \$200.00. However, it was the Committee's impression that a significant portion of them did involve sums in that range, some being remoyals from the Small Claims Court.

To the extent that district court cases are shifted to Small Claims Court savings to the taxpayer would result. Even when a jury is not used, resolution of a controversy in district court is more time consuming than in Small Claims Court due to the more formal procedures. When a jury is utilized, costs rise even higher. Jurors receive \$10 per day and \$.08 per mile. The standard number of jurors in a district court case is only six, but numerous other potential jurors must be paid and kept on hand. The right of either litigant in a dispute to "challenge" a juror normally results in several extra persons being called before the jury is finally sworn. During March and April of 1974 about 400 citizens were on the Multnomah County jury roster at a cost to the county of \$78,888. It is known that district court civil cases required a fairly small proportion of the services of this jury panel, but no specific data was found by the Committee.

Exclusive jurisdiction in Small Claims Court for disputes under \$200.00 would also result in lower cost to the litigants involved. The parties whose disputes are in Small Claims Court need not file formal pleadings, nor hire attorneys, nor defend an appeal. The threat by the wealthier party to remove a small claims case to district court, or to appeal the case, or to initiate the case in district court, could not be used to force his opponent to concede the case.

Unanimous recommendations for passage of HJR 71 and HB 3236 were given by the Senate Committee on the Judiciary and the House Judiciary Committee. Although voting with his committee, State Senator George Eivers requested a notation on the record that his vote was merely to expedite the legislation, which appeared bound for passage. Senator Eivers asked Senator Betty Browne, "You don't think the people are going to buy this do you?" Senator Browne's reply was that she thought so.⁵ Senator Eivers' opinion of SM 11 is that if passed it would take away a time-honored right to a jury trial from one economic class of litigants. He believes the measure represents an attempt at change without substantial supportive evidence that a clear benefit will be derived.⁶

In any event, SM 11 and its companion legislation would only take care of existing abuses of the Small Claims Court procedure in cases under \$200.00. Disputes involving sums in excess of \$200.00 would not be affected. In its hearings on the amendment, the House Judiciary Committee gave no consideration to other possibilities which might be more satisfactory in preventing abuse. For example, if the prevailing party were allowed to recover his reasonable expenses of litigation against the losing party (as is presently permitted by statute in a few kinds of cases) then the low-income individual with a good case could afford to litigate in the more expensive forum. This solution would be not limited to matters involving less than \$200.00. Neither would it discriminate against low-income individuals by forcing them to forego a jury trial when the dispute involves a sum which to them is substantial.

Your Committee does not believe there is conflict between the provisions of SM 11 and the right guaranteed by the Seventh Amendment to the U.S. Constitution to trial by jury in common-law civil suits involving \$20.00 or more. Little of any concern for a possible conflict was expressed during deliberations by the Legislature on the two bills.

⁵Minutes of the Oregon Senate Committee on Judiciary, June 27, 1973.

⁶Interview with State Senator George Eivers.

VI. CONCLUSIONS

Based upon the data available to the Committee, it is not possible to determine with accuracy the effect which SM 11 and its companion legislation would have on relieving congestion in Oregon's courts and saving taxpayer dollars. Some benefits of this nature probably would result.

It is even more difficult, given available data, to balance the relative disadvantages to litigants of this legislation with those of the status quo. Although it is clear that removal from Small Claims Court merely to make prosecution prohibitively expensive is an abuse which can occur under present law, the Committee's investigation does not establish that these instances of abuse are more serious than the unfairness which would result from forcing low-income or inarticulate litigants to resolve their disputes in Small Claims Courts.

Even if it is justifiable to close the loophole of removal by a constitutional amendment, the solution of SM 11 is inadequate. Claims from \$200.00 to \$500.00 could still be removed to district court by the defendant, or filed originally there by the plaintiff. Unnecessary overlap in jurisdiction and resulting abuse of the small claims procedure would not be eliminated.

The Legislature has referred to the people a measure which only superficially answers a partially defined problem. Constitutional amendments are relatively permanent. If Article VII, Section 3, paragraph 1 is amended by passage of SM 11, the Constitution is not likely to be changed again soon in favor of another solution. Before asking the people of Oregon to do surgery once again on their Constitution, the Legislature should consider all the issues surrounding the proposed change.

VII. RECOMMENDATION

Your Committee respectfully recommends the City Club oppose passage of State Measure No. 11 and urges a "NO" vote at the November 5, 1974 general election.

Respectfully submitted,

Dennis Hartman

Kristena A. La Mar

Norman Smith

Harold Tascher

Victor W. Van Koten

Craig E. Zell

Charles M. Chase, *Chairman*

Received by the Research Board August 29, 1974 and approved for transmittal to the Board of Governors.

Received by the Board of Governors September 9, 1974 and ordered printed for presentation to the membership for discussion and action.

Committee Sources

1. Interviews with Oregon State Representatives Lewis Hampton and Vera Katz, members of the Oregon House Judiciary Committee.
2. Interview with Mr. Harold Jambor, Portland, Oregon.
3. Steinberg, Alfred, "The Small Claims Court: A Consumer's Forgotten Forum," National Civic Review, June, 1974.
4. Minutes of the Oregon House Judiciary Committee, June 14, 1973.
5. Minutes of the Oregon Senate Committee on Judiciary, June 27, 1973.
6. Interview with Mr. Bill Christiansen, Systems Analyst Supervisor and Planner for Multnomah County.
7. Interview with The Honorable Aaron Brown, Judge of the District Court of Multnomah County, Small Claims Dept.
8. Oregon Revised Statutes 46.405; 46.415; 46.455.
9. Oregon State Bar publications, "1973 Oregon Legislation," published by the Committee on Continuing Legal Education; "Small Claims Courts in Oregon," published by the Public Service and Information Committee.
10. Interview with State Senator George Eivers, member, Senate Committee on the Judiciary.

**REPORT ON
SENATE BILL 708
STATE MEASURE NO. 13
OBSCENITY AND SEXUAL CONDUCT BILL**

Purpose: This measure makes it a crime to distribute or exhibit "obscene" materials to adults or to conduct live sex shows in public places or clubs. Defines "obscene." Also redefines the crime of prostitution to not only prohibit engaging in sexual intercourse for a fee, but also any physical touching for the purpose of arousing or gratifying sexual desire, and to prohibit paying for either.

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

I. INTRODUCTION

We were assigned to study and report on State Ballot Measure No. 13, submitted to the electorate of Oregon by Referendum Petition to be voted on at the General Election, November 5, 1974. The measure makes it a crime to make, exhibit, sell, deliver or provide "obscene" materials to adults, or to engage in "sexual conduct" in a live public show. It also redefines the crime of prostitution to prohibit touching for a fee. The measure is included in its entirety as "Appendix A."

II. SCOPE OF RESEARCH

We interviewed the following people in committee sessions:

Howard Dean, Professor of Political Science, Portland State University

*Rabbi Yonah H. Geller, Congregation Shaari Torah

Fr. Alfred E. Williams, Archdiocese of Portland, Roman Catholic

Ernest Eberhart, Portland Mission of the Mormon Church

*Rev. Sam Fort, Exec. Secretary, N.W. Baptist Convention

Capt. Ron Still, Former Commander, Special Investigations Division; Commander, East Precinct, Portland Police Bureau.

Officer James D. Wiseman, former Vice Officer, Special Investigations Division; Narcotics Officer, Special Investigations Division, Portland Police Bureau.

Jack Collins, U.S. Attorney's Office.

Harl Haas, District Attorney, Multnomah County.

Paul Meyer, National Board Member, ACLU.

Cliff Atchley, Organizer of "People Against Censorship." Adult movie exhibitor, adult bookstore owner.

Jack Matlack, Public Relations, Motion Picture Exhibitor.

John McKee, Motion Picture Exhibitor.

Reginald Williams, Attorney. Lobbyist, Motion Picture and Producers Association of America.

*Frank Rodgers, President, Oregon Library Association. Director, P.S.U. Library.

Elizabeth A. Barnhart, Anthropology Researcher on Portland's Lesbian Community.

George Nicola, Portland Association for Gay Equality.

*These people submitted position papers.

Individuals among us were in communication with the following people on behalf of the Committee:

Former Portland Mayor Terry D. Schrunk.

Officer Michael Hentschell, Special Investigations Division, Portland Police Bureau.

Fr. John A. Bright, Christ Episcopal Church.

Rev. Richard Hughes, Ecumenical Ministries of Oregon.

Ray Gauer, Citizens for Decent Literature (Los Angeles)

Bob Oliver, Legal Counsel to Governor Tom McCall.

Fr. Jack Hilyard, Director of Christian Education, Episcopal Diocese of Oregon.

Dr. George Saslow, Professor Emeritus, Dept. of Psychiatry, University of Oregon Medical School.

Professor Leonard DuBoff, Assoc. Professor of Law, Northwestern School of Law.

Peter Paskill, Manager, Portland State University Bookstore.

Ms. Mary Tobkin, Secretary, Mayor's Committee on Decent Literature, 1959-69.

Two groups of Committee Members visited various adult bookstores with the capable assistance of Officer James D. Wiseman of the Portland Police Bureau. This assistance is gratefully acknowledged.

We studied and discussed minutes and transcripts of hearings of the House Judiciary Committee on SB 708 and minutes of the Criminal Law and Procedure Committee of the Senate during its deliberations of the Criminal Law Revision, Ore. Laws 1971 (Ch. 743).

Under the guidance of the three attorneys on our Committee we undertook a study of the Oregon Legislative History of the subject matters involved. We also reviewed the Constitutional History.

We reviewed lower court and Supreme Court decisions in the area of obscenity, pornography and motion pictures.

We studied the history of the Oregon constitutional provisions governing the subject matter and titles of legislative acts and their application to State Measure 13.

We reviewed and considered past City Club reports on studies of a similar nature.

We were assigned reading material on a group and individual basis, and discussed in detail particulars of various writings which dealt most directly with the subject.

We sent an observer to the Conference on Law and the Visual Arts (sponsored by the Northwestern School of Law) on March 15, 1974. The particular sessions attended were: "Obscenity and Pornography" and "Copyright Law." The initial session was led by Professors Hughey and Huffman of the Northwestern School of Law. The latter session was led by Professor Forkosch, a leading expert on Constitutional Law.

Limitations of Scope

In our early deliberations we concluded that there were three different subjects in the referred bill: Obscenity, Prostitution, and Live Public Shows. We discussed what depth of review to direct toward each and decided to address the main focus of this report to Section 4 of SM 13 which deals with Obscenity.

1. Oregon has prohibited prostitution since the first criminal code, enacted in 1864. In the referred bill the Legislature intended to further refine the prohibition by adding a separate statutory basis for controlling masturbation for a fee. However, the language of the bill is so broadly drawn that otherwise legal conduct could be subject to persecution. We believe that since prostitution is already prohibited, masturbation for a fee might reasonably be included in the prohibition by the legislature in future enactments. But, prostitution is a separate subject and is not a legitimate issue in this bill.

2. Oregon has also prohibited live hard core sex shows since 1864. The prohibition was embodied in the statutes regulating prostitution, i.e. sexual conduct for a fee, or in-

decent exposure. Prosecutors are successfully controlling such shows with current laws prohibiting prostitution and indecent exposure.

We have grave apprehension as to what may be included under the definitions and prohibitions of "Live Public Shows" and/or "Public Shows" in the measure. The Committee is unanimous in the view that the referred bill could, if passed, be used to prohibit legitimate entertainments and/or exhibitions that do not contain patently offensive sadomasochistic abuse or patently offensive sexual conduct. Furthermore, live sex shows have been successfully prosecuted under existing law. Law enforcement officials advise that currently there are none for that reason. Live sex shows, although a legitimate issue, are adequately covered by existing legislation.

III. BACKGROUND

A. Cultural Perspective

There is clear evidence that great diversity in sexual practices, family organization, and public and private moralities exists among humankind. Moreover, contemporary social scientists assert that there is no convincing evidence of a correlation between cultural decay and particular sexual preferences and practices within a society. Indeed, civilized cultures of long standing have included pornographic literature and art among their traditions. Civilizations are typically more tolerant of sexual and familial diversities than are tribal or smaller scale societies.

While it has been assumed that we are a melting pot society tending toward agreed upon values and standards, we are in fact a pluralistic society made up of groups with a variety of cultural values. Moreover, these standards are currently in a process of complex change in both sexual and nonsexual areas. This comes from a variety of influences, among which are effective methods of contraception, changes in the roles of women and men in our society and the increased education and mobility of our people.

That these social pressures are at work in Oregon is evidenced by the decision of the 1971 Legislature to liberalize Oregon law.

B. Background in Literature

The Report of the Commission on Obscenity and Pornography states:

"Censorship for political and religious reasons dates back at least to Greek and Roman times. In both cultures however sexual licentiousness was tolerated in drama (a principal means of popular entertainment) and was often combined with religious themes. During medieval times bawdiness was apparently quite acceptable in ballads (again, frequently mixed with religious themes) and even in religious work."

For over 300 years major literary figures have raised objections to censorship. One of the great pleas for freedom is John Milton's "Areopagitica" which appeared in 1644. It embraced an historical review of censorship as a servant of tyranny, a defense of freedom in the age of books, an argument against trying to make men virtuous by legislation, and a plea for complete liberty in the pursuit of truth. The plea failed and England had to wait for unlicensed printing until 1696; but to this powerful document in the history of freedom, its advocates in many lands and generations have repeatedly returned for inspiration.

Two centuries later John Stuart Mill wrote his essay "On Liberty" which has been quoted, in part, by some who have appeared before this Committee: "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind." They might have also included from "On Liberty": "The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people."

Two Oregonians, Paul Meyer and Daniel Seifer, in their treatise, "Censorship in Oregon," summarize the relationship between law and sex: "Sex seems to have an enduring

quality about it; and materials with a sexual theme are as ancient a subject of communication as one can find. By comparison, the legal guarantees of freedom of speech and freedom of the press embodied in the first amendment to the U.S. Constitution are new and fluid."

C. Legal Background

Oregon has not been uniform in its treatment of obscenity. Obscene materials were prohibited for both minors and adults as outside any constitutional protection by a law that survived with only minor amendments from 1864 to 1961. In 1961 the Oregon Legislature repealed the old statute and replaced it with one which reflected recently defined constitutional standards. Constitutional standards are important, because only *obscene material* is outside the protection of the United States Constitution. In the new statute the Oregon Legislature attempted to define obscenity for the first time by requiring the application of contemporary community standards to determine if the predominant theme of the work appealed to the prurient interest. Two years later the statute was amended to add the additional constitutional requirement that the materials be patently offensive to be obscene.

During the mid and late 1960's the United States Supreme Court continued to refine the constitutional standard. First the court added the requirement that to be obscene the materials must be utterly without redeeming social value. The court held that even if the material was obscene there must also have been pandering, obtrusive public advertising, or exploitation of the juvenile market in order to support a conviction.

In 1969 the Court held that it was not and could not be a crime for one to possess any sexual material, whether or not obscene, for use in one's own home. A corollary of the right to possess was the right to acquire the material. The local result of this cart-wheel of refinements came in 1970 when the Oregon statute was declared unconstitutional and its enforcement was enjoined.

The Legislature convened in 1971 with the perspective of over a decade of rapid constitutional refinements of what constituted obscenity and what type of material the state could prohibit as obscene. In revising the criminal code the Legislature decided on a different approach toward obscenity. The new law deregulated obscene materials except for distribution to minors and public display for advertising purposes.

The 1971 statute was in force less than two years when the Legislature decided to revert to a pre-1971 approach. This reversal was precipitated by United States Supreme Court decisions in 1973 which appeared to grant local communities a relatively free hand in determining and prohibiting obscene material. These decisions were clarified in June of 1974. The Court now indicates that the First and Fourteenth Amendments to the United States Constitution protect all but the patently offensive public portrayal of hard core sexual conduct for its own sake, and for ensuing commercial gain.

IV. ARGUMENTS IN FAVOR OF THE MEASURE

Pornography is degrading to the individual.

Pornography portrays sex in a degrading manner because it concentrates on the physical aspects without regard to the emotional and spiritual relationships of the persons involved.

Pornography leads to the breakdown of the family unit and national morals.

Pornography influences sexual deviancy.

Pornography is responsible for sex crimes.

Pornography is responsible for other criminal and anti-social behavior.

Pornography is controlled by "organized crime."

Oregon's lax laws make Oregon a "mecca" for criminals and pornographers in the manufacture of their products.

Adult bookstores and theaters are unsightly, unattractive and detrimental to the areas in which they exist.

Obscene material easily falls into the hands of children and youth even though expressly prohibited by Oregon Law.

V. ARGUMENTS AGAINST THE MEASURE

No responsible study has ever demonstrated a connection between pornography and anti-social behavior.

Some behavioral scientists report successful use of sexually explicit material in the treatment of sexual inadequacies.

Congressional and other research indicates a long term decrease in sex crimes following liberalization of pornography laws.

Attempts to legislate a uniform moral standard are contrary to the nature of American society which is culturally pluralistic.

No one is forced to see or read anything. Why then should he be permitted to deprive someone else of seeing or reading anything?

What may begin as a censorship of pornography can become a deadly instrument to prevent the dissemination of political material, religious material, or any other kind of material.

Depictions of certain obscenities (cruelty, war, greed, violence for the sake of violence) not prohibited are more offensive to some than are the prohibited obscenities.

Freedom is not freedom if it is accorded only to the accepted and inoffensive.

California, New York and Florida all prohibit the manufacture and sale of pornographic material, yet the great bulk of such material sold in Oregon comes from these states.

The bill violates the Oregon Constitution in that it contains more than one subject matter.

Its definition of obscenity is so broad as to allow widespread censorship if applied literally. In addition it may inhibit the exercise of legal behavior.

The measure may place librarians, booksellers, theater operators, and others in personal liability for distributing works which they cannot know in advance may be deemed "obscene" by a jury in a subsequent criminal trial.

Making "obscene" material illegal will not eliminate it any more than prohibition eliminated the use of liquor.

The Supreme Court has unanimously held that adult legislation premised on the basis of protecting youth is clearly an unconstitutional interference with liberty.

The definition of obscenity by the U.S. Supreme Court seems to change with each decision. How can the Oregon Legislature define what the Supreme Court itself cannot?

To spend public resources regulating victimless crimes is a waste.

VI. DISCUSSION

A.

The Report of the Commission on Obscenity and Pornography states that the best evidence available neither proves nor disproves a relationship between pornography and anti-social behavior. Both proponents and opponents challenge this conclusion. We believe that the underlying issue in this dispute is whether or not, in the absence of evidence of social harm, the government has the right to criminalize the use of material depicting sexual matters.

B.

Proponents state pornography is controlled by "organized crime," and that Oregon's lax laws make the state a mecca for criminals and pornographers in the manufacture of

their products. Opponents state that the great bulk of such material sold in Oregon comes from California, New York and Florida where its manufacture and sale are illegal, and that making it illegal will not eliminate it.

All of the law enforcement officials and representatives of the pornography industry whom we interviewed were unanimous in stating that virtually all of the pornographic material sold in Oregon originates in California, New York and Florida. This indicates that under the present law Oregon is not a manufacturer's mecca.

The charge that the pornography industry is controlled by "organized crime" was thoroughly examined by this Committee. We studied the report of the Commission on Obscenity and Pornography, interviewed representatives of the Portland Police Bureau and U.S. Attorney's Office, and the Multnomah County District Attorney. There were conflicting opinions within the Portland Police Bureau, but no evidence of organized crime was presented to us by anyone.

C.

The ugliness of the adult bookstores and massage parlors is, as with other matters of taste, beyond objective discussion. However, granting that many are garishly and tastelessly decorated is not a legitimate reason to criminalize the activities themselves. Rather, it draws attention to the fact that our zoning, sign and similar laws are either poorly written or poorly enforced. To this we respectfully direct the attention of the appropriate governing bodies.

D.

It is the belief of the Committee that Measure 13 possibly violates Article IV, Sec. 20 of the Oregon Constitution, which requires that legislation not embrace more than one subject, and that the subject be expressed in the title of the legislation.

The title to Measure 13 is:

"Relating to prohibited activities, including but not limited to live public shows, prostitution and dissemination of obscene materials; creating new provisions, amending ORS 167.002 and 167.007; and providing penalties."

The Committee feels the title is itself proof that the act embraces more than one subject in that obscenity, live public shows, and prostitution are not synonymous terms, the term "obscenity" involving the depiction of sexual matters, the term "live public shows and prostitution" involving actual sexual activity, and the term "prohibited activities" being so broad as to be meaningless. Furthermore, the title does not sufficiently express the subject of the act.

Each of these subjects has long been the center of intense public debate as to the propriety of state regulation. Any given citizen may have different views as to how each of these matters should be treated. To combine them in one measure deprives a conscientious citizen of his right to intelligently vote on each of these subjects, and operates to prevent complete and thorough public debate on the merits of the distinct subjects. Furthermore, at least one of these subject areas, obscenity, involves the highly sensitive area of free speech protected by the First Amendment.

E.

Opponents state that the pornography legislation is unconstitutionally vague; that librarians, booksellers, theater operators and others cannot know in advance of a jury trial whether a work is obscene; and, that citizens will fail to exercise the full scope of their First Amendment rights because of fear of prosecution. Proponents state that the pornography legislation is constitutional in that it was drafted in strict accordance with recent U.S. Supreme Court decisions.

Again, we believe that the underlying issue is whether or not, in the absence of evidence of social harm, the government has the right to criminalize the use of material depicting sexual matters.

VII. CONCLUSIONS

1. There is no affirmative evidence that the use of pornography causes individual or social harm. In the absence of affirmative evidence we are of the unanimous opinion that government should not criminalize the use of material depicting sexual matters.
2. We believe that one of the purposes of the Bill of Rights was to limit the powers of government. Attempts to criminalize otherwise legitimate activity because "organized crime" might involve itself violates the very purpose of this document. (For example, were the "Mafia" to take over a chain of hotels would we be justified in making the hotel business illegal?) Evidence from law enforcement agencies fails to disclose any connection between pornography and "organized crime" in Oregon.
3. The legislation embraces separate subject matters some of which invoke intense emotional response. As a matter of public policy, freedom of speech issues should not be put to the electorate, or to the Legislature, in a format where non-free speech factors tend to influence them to approve legislation infringing on First Amendment freedoms in order to get at non-free speech problems. This is particularly true where, if the issues were segregated, the freedom of speech issues might be decided in such a manner as to resolve questionable legislation in favor of free speech.
4. Since there are differing legal opinions regarding the vagueness of the measure, librarians, book sellers and theater operators might, in the performance of their normal duties, stand in jeopardy of the law.
5. Since the dissemination of pornography to minors is expressly prohibited by current law, the argument that State Measure 13 is needed for this purpose is irrelevant.
6. Since prostitution and live sex shows are adequately covered by current law, the arguments that State Measure 13 is needed are irrelevant.
7. Our involvement with the subject touched by this legislation convinces us that the City Club should instigate a study of what are commonly called "victimless crimes."

VIII. RECOMMENDATION

We therefore unanimously recommend that the City Club oppose passage of State Measure 13, and urge a "NO" vote.

Respectfully submitted,

Renee Alexander

Lyle J. Ashcraft

Alan J. Gardner

Richard T. Gourley, M.D.

Nancy S. Kaza

Shirley M. Kennedy

Don Keith Lloyd

Robert I. Mesher

R. J. Okoneski, Jr.

Richard S. Pope

Robert M. Smith

Herbert O. Crane, *Chairman*

Received by the Research Board August 15, 1974 and approved for transmittal to the Board of Governors.

Received by the Board of Governors August 19, 1974 and ordered printed for presentation to the membership for discussion and action.

APPENDIX A
SENATE BILL 708

Submitted to the Electorate of Oregon by Referendum Petition to be voted on at the General Election, November 5, 1974.

MEASURE NO. 13

Ballot Title: OBSCENITY AND SEXUAL CONDUCT BILL

Purpose: This measure makes it a crime to distribute or exhibit "obscene" materials to adults or to conduct live sex shows in public places or clubs. Defines "obscene." Also redefines the crime of prostitution to not only prohibit engaging in sexual intercourse for a fee, but also any physical touching for the purpose of arousing or gratifying sexual desire, and to prohibit paying for either.

AN ACT

Relating to prohibited activities, including but not limited to live public shows, prostitution and dissemination of obscene material; creating new provisions; amending ORS 167.002 and 167.007; and providing penalties.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 to 4 of this Act are added to and made a part of ORS 167.060 to 167.095.

SECTION 2. As used in this 1973 Act unless the context requires otherwise:

(1) "Live public show" means a public show in which human beings, animals, or both appear bodily before spectators or customers.

(2) "Public show" means any entertainment or exhibition advertised or in some other fashion held out to be accessible to the public or member of a club, whether or not an admission or other charge is levied or collected and whether or not minors are admitted or excluded.

SECTION 3. (1) It is unlawful for any person to knowingly engage in sadomasochistic abuse or sexual conduct in a live public show.

(2) Violation of subsection (1) of this section is a Class A misdemeanor.

(3) It is unlawful for any person to knowingly direct, manage, finance or present a live public show in which the participants engage in sadomasochistic abuse or sexual conduct.

(4) Violation of subsection (3) of this section is a Class C felony.

SECTION 4. (1) A person commits the crime of disseminating obscene material if he knowingly makes, exhibits, sells, delivers or provides, or offers or agrees to make, exhibit, sell, deliver or provide, or has in his possession with intent to exhibit, sell, deliver or provide any obscene writing, picture, motion picture, films, slides, drawings or other visual reproduction.

(2) As used in subsection (1) of this section, matter is obscene if:

(a) It depicts or describes in a patently offensive manner sadomasochistic abuse or sexual conduct;

(b) The average person applying contemporary state standards would find the work, taken as a whole, appeals to the prurient interest in sex; and

(c) Taken as a whole, it lacks serious literary, artistic, political or scientific value.

(3) In any prosecution for a violation of this section, it shall be relevant on the issue of knowledge to prove the advertising, publicity, promotion, method of handling or labeling of the matter, including any statement on the cover or back of any book or magazine.

(4) No employe is liable to prosecution under this section or under any city or home-rule county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employe is acting within the scope of his regular employment at a showing open to the public.

(5) As used in this section, "employee" means an employe as defined in subsection (3) of ORS 167.075.

(6) Disseminating obscene material is a Class A misdemeanor.

SECTION 5. ORS 167.002 is amended to read:

167.002. As used in ORS 167.002 to 167.027, unless the context requires otherwise:

(1) "Place of prostitution" means any place where prostitution is practiced.

(2) "Prostitute" means a male or female person who engages in sexual conduct or sexual contact for a fee.

(3) "Prostitution enterprise" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.

(4) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.

(5) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

SECTION 6. ORS 167.007 is amended to read:

167.007 (1) A person commits the crime of prostitution if:

(a) He engages in or offers or agrees to engage in sexual conduct or sexual contact in return for a fee [.] ; or

(b) He pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact.

(2) Prostitution is a Class A misdemeanor.

Certified by the Secretary of State on October 19, 1973.

GENERAL BIBLIOGRAPHY

Books and Pamphlets:

Brown, H., and Leech, M. *Anthony Comstock*, Literary Guild, 1927.

Commission on Obscenity and Pornography, *Report of The Commission*. New York, New York Times Publishing Co., 1970.

Ford, C. S. and F. A. Beach, *Patterns of Sexual Behavior*. London, Eyre, & Spottiswoode, 1952.

Friends Home Service Committee, *Towards a Quaker View of Sex*. London, Revised ed., 1964.

Gebhard, Gagnon, Pomeroy and Christenson, *Sex Offenders: An Analysis of Types*. New York, Harper and Row, Publishers and Hoeber, Inc., Medical Books, 1965.

Kennedy, Michail J. and Gerald B. Lipcourt, *Obscenity and the Law*.

Kronhausen, Eberhard and Phyllis, *Pornography and the Law*. Ballantine Books, 1959.

Lawrence, D. H., *Sex, Literature and Censorship*. N.Y., Viking Press, 1953.

Meine, Franklin J., "Introduction," pp. 10-29 in Mark Twain, *1601*. Published by Lyle Stuart, n.d.

Metro Women's Club, *Report on Pollution of the Mind—Pornography in Oregon*. Portland, September, 1972.

Powell, Lawrence Clark, *Books in My Baggage*. pp. 24-36 (Casanova) and pp. 37-48 (D. H. Lawrence), World Pub., 1960.

Practicing Law Institute, *Criminal Law and Practice*. Course Handbook series, #66 (4-3181).

Rember, Charles, *The End of Obscenity*. N.Y., Bantam Books, 1968.

Taylor, G. Rattray, *Sex in History*. Ballantine Books, 1954.

Wilson, W. Cody and Michael J. Goldstein, ed., *Pornography: Attitudes, Uses, and Effects*. Special Issue, *Journal of Social Issues*, Vol. 29, No. 3, 1973.

Newspapers and Periodicals:

American Libraries. November, 1973, "Trash" by David R. Slavitt.

Box Office. March 11, 1974 (12 news articles); April 27, 1974 (14 news articles); April 29, 1974, (14 news articles).

- Liberty*. July-August, 1973, "Your Trash is Blowing in My Yard," by E. F. Wills.
- Los Angeles Free Press*. Pull out sections of March 22 and May 24, 1974.
- National Decency Reporter*. (Newsletter of Citizens for Decency Through Law), March, April, 1974.
- Newsletter on Intellectual Freedom*. (Pub. by A.L.A. Int. Freedom Committee). January and March, 1974.
- Oregon Journal*. Jan. 17, 1973, "Adult Courses Open in Church with showing of Hard Core Films on Sex;" June 26, 1973, "Book Stores Unshaken by Ruling;" Aug. 25, 1973, "Abhorrence of Pornography Seen as Turning to Embrace in 'Puritan' Albany;" June 5, 1974, "California's Smut Law Struck Down."
- Oregon's Playmate Guide*. Volume 3, Issue 8, April 20-May 4, 1974.
- The Oregonian*. July 6, 1973, "Censors Feared in the Wake of Ruling;" Dec. 11, 1973, "Court Faces Tough Task;" Dec. 19, 1973, "Vote in May Urged on New Porn Law."
- Time*. June 25, 1973, "The Court Moves Against Porn," and July 8, 1974, "Back to Pornography."
- Wall Street Journal*. Jan. 18, 1974, "Judging Pornography is Hard Work" by Wayne E. Green.
- WAY. Catholic Viewpoint*. Jan., Feb., 1974.
- The City Club of Portland *Bulletin*. Aug. 17, 1934, Vol. 15, "Movie Censorship."
- The City Club of Portland *Bulletin*. Sept. 16, 1938, Vol. 19, "Salacious Magazines in Portland."

LEGAL BIBLIOGRAPHY

1. *Roth v. United States*, 354 US 476 (1957).
3. *State v. Jackson*, 224 Or 337 (1960).
3. *Manual Enterprises v. Day*, 370 US 478 (1962).
4. *Jacobellis v. Ohio*, 378 US 184 (1964).
5. *Memoirs v. Massachusetts*, 383 US 413 (1966)
6. *State v. Watson*, 243 Or 454, 414 P.2d 337 (1966).
7. *Redrup v. New York*, 386 US 767 (1967).
8. *State v. Childs*, 252 Or 91 (1968); *cert. den.* 394 U.S. 931 (1969); *hab. corp.* granted 330 F. Supp. 649 (D. Or 1969); reversed 431 F.2d 272 (9th Cir. 1970); reversed 401 US 1006 (1971).
9. *Stanley v. Georgia*, 394 US 557 (1969).
10. *Hayse v. Van Hoomissen*, 321 F. Supp 642 (D. Or 1970); remanded 403 U.S. 927 (1971).
11. *Miller v. California*, 413 US 15 (1973).
12. *Hamling et al v. United States*, 42 LW 5035 (USSC June 24, 1974).
13. *Jenkins v. State of Georgia*, 42 LW 5055 (USSC June 24, 1974).
14. *Paris Adult Theatre I et al v. Seaton*, 413 US 49 (1973).
15. Probert, The Constitutional Restriction on Titles of Acts in Oregon, 31 OLR 111-114 (1952).
16. *Lovejoy v. Portland*, 95 Or 459, 188 P 207 (1920).
17. *State v. Shaw*, 22 Or 287, 29 P 1028 (1892).
18. *State v. Williamson*, 4 Or App 41, 475 P.2d 583 (1970).
19. *Nielson v. Bryson*, 257 Or 179, 477 P.2d 714 (1970).
20. *State v. Shaw*, 22 Or 287, 29 P 1028 (1892).
21. *Warren v. Marion County et al*, 222 Or 307, 353 P.2d 257 (1960).
22. *Miles et al v. Veatch et al*, 189 Or 506, 220 P.2d 511, 221 P.2d 905 (1950), quoting in part from Sutherland, Statutes and Statutory Construction, Section 117 (2d Ed. 1904).
23. *Eastman v. Jennings-McRae Logging Co.*, 69 Or 1, 10-11, 138 P 216 (1914).

24. *State v. Shaw*, 22 Or 287, 29 P 1028 (1892).
25. *State v. Bryson*, 257 Or 179, 477 P.2d 714 (1970).
26. *Lovejoy v. Portland*, 95 Or 459, 188 P 207 (1920).
27. *People's Utility District et al v. Wasco County et al*, 210 Or 1, 305 P.2d 766 (1957).
28. *Lovejoy v. Portland*, 95 Or 459, 188 P 207 (1920).
29. *State v. Shaw*, 22 Or 287, 29 P 1028 (1892).
30. *Petition of the Board of Directors of Tillamook People's Utility District*, 160 Or 530, 86 P.2d 460 (1939).
31. *People's Utility District et al v. Wasco County et al*, 210 Or 1, 305 P.2d 766 (1957).
32. *Leicheidner v. Carson*, 156 Or 636, 68 P.2d 482 (1937).
33. *State Ex Rel. Pierce v. Slusher*, 119 Or 141, 248 P 358 (1926).
34. *Tompkins v. District Boundary Board*, 180 Or 339, 177 P.2d 416 (1947).
35. *Bennett v. Oregon State Bar*, 256 Or 37, 470 P.2d 945 (1970).
36. *Miller v. California*, 413 US 15, 37 LE2d 419, 93 Sct 2607, 2616 (1973) (footnote 8).
37. *State v. Childs*, 252 Or 91, 447 P. 2d 304 (1968).
38. *State v. Oregon Bookmark Corp.*, 7 LOR App 554, 492 P.2d 504 (1972).
39. *Id.*
40. *Gantenbein v. West*, 74 Or 334, 144 P 1171 (1915).
41. *State v. Williamson*, 4 Or App 41, 474 P.2d 593 (1970).

II.

Prostitution

- A. ORS 167.002-167.027 (1971 to date).
- B. Pre-1971.
- B.1 ORS 167.105 (1864: D 635; DL 651; 1867; BC 1932; 1905 C 211; LOL 2089; LO 2082; OC 14-724; OCLA 23-919).
- B.2 ORS 167.110 (1864; D 636; DL 652; H 1868; BC 1933; LOL 2090; OL 2090; OC 14-725; OCLA 23-92D).
- B.3 ORS 167.115 (1905 c. 71§1; LOL 2091; OL 2091; OC 14-726; OCLA 23-921).
- B.4 ORS 167.120 (1913 c. 140 §§ 1, 2; OL 2092; OC 14-727; OCLA 23-922).
- B.5 ORS 167.124 (1911 c. 68 §1; OL 2085-1; OC 14-716; OCLA 23-916).
- B.6 ORS 167.130 (1911 c. 68 §2; OL 2085-2; OR 14-717; OCLA 23-917).
- B.7 ORS 167.135 (1911 c. 68 §3; OL 2085-3; OC 14-718; OCLA 23-918).

Indecent Exposure

8. ORS 167.140 (1864; D219; DL 174; H 1373; BC 1408; LOL 1542; OL 1542; OC 13-937; OCLA 26-941).
9. ORS 167.145 (1864; D632; DL 648; H 1864; BC 1922; LOL 2079; OL 2079; OC 14-709; OCLA 28-923).

Obscenity

- A. ORS 167.060-167.100 (1971 to date).
- B. Pre-1971.
- B1. ORS 167.151: Pre-1961 ORS 167.150; History of ORS 167.150: 1864; D 637; DL 653; 1885 p. 126; H 1870; BC 1935; 1903 p. 67; LOL 2094; 1917 c. 88; OL 2094; OC 14-729; OCLA 23-924.
- B2. ORS 167.152.

III.

1. Paul Meyer and Daniel Seifer, "Censorship in Oregon; New Developments in an Old Enterprise," 51 OLR 537 (sp. 1972).
2. Don Keith Lloyd, "Memorandum Re Article IV, Section 20, Oregon Constitution." Memorandum to Committee to Study State Measure No. 13, July 24, 1974. (On file in the City Club office.)