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NEWSPAPER SECOND CLASS POSTAGE PAID AT PORTLAND, OREGON

City Club of Portland

BULLETIN

Portland, Oregon

Vol. 55, No. 18

Benson Hotel, Mayfair Room

12:15 p.m.

Friday, October 4, 1974

THE SPEAKER:

JAMES BIDDLE

President, National Trust for Historic Preservation

HIS TOPIC:

PRESERVATION IS PROGRESS

This year the National Trust for Historic Preservation celebrates the 25th anniversary of its establishment by Congressional charter. However, 1974 marks the 28th annual meeting and preservation conference, which is being held in Portland this week. Its president, James Biddle, will describe the work of this organization dedicated to the preservation of sites and buildings of architectural and historical interest in the United States.

Printed herein for presentation, discussion and action at the Friday membership luncheon meeting October 4, 1974:

**REPORT
ON
PERMITS STATE EMPLOYEES TO BE LEGISLATORS
STATE MEASURE NO. 9**

The Committee: Barnes H. Ellis, William H. Gregory, James Kirkham Johns, Mary Anne Normandin, John W. Osburn, Clifford N. Carlsen, Jr., *Chairman.*

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

CLUB APPROVES REPORT

At its meeting of September 27, 1974, City Club membership approved the committee report on State Measures No. 8 and 10. Represented by the chairman, Robert E. Maloney, the committee recommended a "YES" vote on both constitutional amendments. Ballot Measure No. 8 would revise school district election voting requirements to 18 years of age and 30 days' residence. Ballot Measure No. 10 would revise the Oregon voter qualification requirement to 18 years and 30 days' residence. The chairman commented, as was indicated in the report, that these are both "housekeeping" measures which would bring the Oregon Constitution into conformity with the U.S. Constitution, and confirm election procedures that have already been modified to comply with federal law.

CITY CLUB OF PORTLAND BULLETIN

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PROPOSED FOR MEMBERSHIP AND APPROVED BY THE BOARD OF GOVERNORS

If no objections are received by the Executive Secretary prior to October 18, 1974 the following applicants will be accepted for membership:

Yvonne Riley Rothert, Reporter, The Oregonian. Proposed by Malcolm Bauer.

Rosebelle Himmelstein, Retired Secretary. Proposed by Tom L. McCall.

Lloyd K. Marbet, Environmental Consultant, Forelaws on Board. Proposed by Robert E. Cobb.

Toni Galton, Tutor and homemaker. Proposed by James E. Maxwell.

Thomas J. Spence, Attorney, Chernoff and Vilhauer. Proposed by Bruce Samson.

COMING UP:

The best informed voters in the state should be City Club members!

Next week's meeting, October 11, will be devoted exclusively to ballot measures. These are the reports on SM #14, the Conflict of Interest Bill, SM #12, a Constitutional amendment permitting state bonding for community development projects, and SM #7, which would allow a tax base to include revenue sharing monies.

The following week, October 18, will see the platform shared by 1st District Congressional candidates Les AuCoin and Diarmuid O'Scannlain.

DO YOU HAVE A HISTORY?

New City Club members might be interested in reading *The Conscience of a City*, published in 1966 on the occasion of the Club's Golden Anniversary. The publication, written by Ellis Lucia, traces the history of the City Club's first fifty years, and is available at the Club offices at \$4.00 a copy.

ADDRESS CHANGES WANTED

Members are urged to keep the City Club staff posted on any changes in home or business phone or address, as well as occupation. Phone 228-7231.

**REPORT
ON
PERMITS STATE EMPLOYEES TO BE LEGISLATORS
STATE MEASURE NO. 9**

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OREGON:

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

Sec. 8. Notwithstanding the provisions of section 1 Article III and section 10 Article II of the Constitution of the State of Oregon, a person employed by the State Board of Higher Education or a person other than an executive in the exempt or nonacademic unclassified services employed by any other state agency, a member of any school board or employee thereof, shall be eligible to a seat in the Legislative Assembly and such membership in the Legislative Assembly shall not prevent such person from being employed by the State Board of Higher Education or other state agency or from being a member or employee of a school board.

However, the Legislative Assembly may by law prescribe uniform rules applicable to state employees under this section governing leaves, position protection and related employment relationships during election campaigns and during legislative service.

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

SCOPE OF RESEARCH

In general session your Committee interviewed State Representative Stafford Hansell; Roy E. Lieuallen, Chancellor, State Board of Higher Education; Thomas C. Enright, Executive Secretary, Oregon State Employees Association; State Representative Mary Roberts, and State Senator Victor Atiyeh. Individual members of the Committee contacted representatives of the Association of Oregon Industries; State Representatives Norma Paulus, Sam Johnson, Gordon MacPherson, and State Senators Edward Fadeley and George Eivers. Your Committee reviewed the legislative history of HJR 30, the act which became Ballot Measure No. 9 and the history leading to the passage of the 1958 amendment to Article XV of the Oregon Constitution which permitted employee members of a school board or the Board of Higher Education to serve as members of the Legislature.

INTRODUCTION

The proposed constitutional amendment would increase the number of state government employees who are permitted to serve in the Legislature while retaining their governmental employment. At present, employees of the State Board of Higher Education and members and employees of local school boards are eligible to serve as legislators, but most other state employees are ineligible because of provisions of the State Constitution. The proposed amendment was introduced as HJR 30 in the 1973 regular legislative session by Representatives Paulus and Roberts at the request of the Oregon State Employees Association and passed the House by a vote of 38 to 7. It was amended in the Senate and passed by that body by a vote of 16 to 13. The House concurred in the Senate amendments by a vote of 38 to 19.

CONSTITUTIONAL BACKGROUND

Section 1 Article III of the Constitution of Oregon provides:

"Separation of powers. The powers of the Government shall be divided into three separate departments, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided."

Section 10 Article II states:

"Lucrative offices; holding other offices forbidden. No person holding a lucrative office, or appointment under the United States, or under this State, shall be eligible to a seat in the Legislative Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted; Provided, that Officers in the Militia, to which there is attached no annual salary, and the Office of Post Master, where the compensation does not exceed One Hundred Dollars per annum, shall not be deemed lucrative."

These provisions, one prohibiting persons from serving in more than one branch of the government, and the other prohibiting the holding of more than one lucrative office at the same time, were part of the Constitution of 1859. These sections have been the subject of numerous judicial decisions and opinions of the Attorney General. The prohibition against holding two lucrative offices and serving as a member of the legislature effectively barred many public employees from serving in the legislature. Since the administrative department is the largest employer in state government, *most* state employees are ineligible for legislative service because of the prohibition against serving in more than one department.

In 1956, Thomas Monaghan was elected to the legislature. He was also a teacher in the Clackamas County schools. He filed legal proceedings to determine whether he could continue his employment as a teacher while holding a position as a member of the House of Representatives. The Supreme Court, in *Monaghan v. School Dist. No. 1, Clackamas County*, 211 Or 360, 315 P2d 797 (1957), said that his position as a teacher was not technically an "office," and therefore Monaghan did not hold two lucrative offices. However, the Court held that he was barred from serving as a teacher for a school district while a legislator, because a school district is a state administrative agency, and a teacher exercises a function of that department.

Following the decision in the *Monaghan* case, an initiative petition was circulated and filed, resulting in the adoption of a constitutional amendment in 1958. Section 8, Article XV now provides:

"Person eligible to serve in legislature. Notwithstanding the provisions of section 1 Article III and section 10 Article II of the Constitution of the State of Oregon, a person employed by the State Board of Higher Education, a member of any school board or employee thereof, shall be eligible to a seat in the Legislative Assembly and such membership in the Legislative Assembly shall not prevent such person from being employed by the State Board of Higher Education or from being a member or employee of a school board."

The City Club report on the 1958 initiative opposed the measure.

Since the adoption of the *Monaghan* amendment, numerous educators have been elected and have served as legislators. Nine of the 90 legislators in the 1973 session listed their occupations as teachers, professors or administrators in public education.

The proposal which is submitted to the people by Ballot Measure No. 9 would expand the number of public employees eligible for legislative service to include any person employed by a state agency, who is not an executive in the exempt or nonacademic unclassified services. In general, all state employees would be made eligible except elective officials, administrators of departments and divisions, and executive secretaries of boards and commissions. Administrators in public education retain their eligibility.

ARGUMENTS IN FAVOR OF THE AMENDMENT

Proponents of the measure advance the following arguments in favor of the amendment:

1. The state should be able to utilize in the Legislature the talents and expertise of this well informed group of citizens.
2. State employees should have the right enjoyed by almost all other citizens, including educational employees, to serve in the Legislature if their constituents see fit to elect them.
3. Potential conflicts of interest arising from a state employee serving in the Legislature are neither greater nor more frequent than in the case of a legislator of any other profession or calling.

ARGUMENTS AGAINST THE AMENDMENT

Opponents of the bill advance the following arguments against the amendment:

1. It violates the concept of separation of powers.
2. Legislative service by public employees may give rise to serious conflicts of interest, particularly where the legislator has power to review the programs and budget of his agency.
3. The measure is contrary to the concept of an impartial, non-partisan civil service system.
4. A public employee would almost certainly maintain a special status if he were also a legislator, thereby adversely affecting the morale of his fellow employees and the supervisory authority of the agency administrator.
5. Time spent by state employees campaigning for office, attending legislative sessions and performing legislative interim duties would disrupt the continuity and efficiency of public employment.

DISCUSSION

Your Committee considered that the proposed measure raises two correlative issues. The first is whether the public is well served by permitting state employees to sit as members of the Legislature. The second issue is whether it is in the public interest for legislators to be employed in other branches of the government. Each issue involves a delicate balancing of interests.

Your Committee was impressed with the arguments that removal of the constitutional barriers to legislative service by state employees would make eligible a group of people who would be well qualified and knowledgeable legislators, that the present prohibition may tend to cause state employees to consider themselves as "second class citizens," and that legislative service by most of the employees who would be made eligible poses no greater threat to the doctrine of separation of powers than does the present eligibility of employees of the public education system. It is true that the number of persons employed by the various branches of government, particularly the executive or administrative department, has increased greatly since the adoption of the Oregon Constitution, and that the majority of these employees do not exercise, in any real sense, the constitutional powers of that branch of government. Whether a given state employee would make a desirable legislator could ultimately be decided by the voters of his district.

The other question is whether it is appropriate for a legislator to be employed as a member of the public service, and it was this issue which caused the Committee to reach its recommendation against the measure. Your Committee recognized that the potential abuses resulting from allowing state employees to campaign for and subsequently serve in the Legislature may greatly diminish the efficiency, integrity and discipline of the civil service and undermine public confidence in its neutral performance of public business. The potential abuses considered by your Committee included the obvious threat of direct and indirect pressure and coercion upon fellow employees, whether superiors or sub-

ordinates, predicated upon partisan political interests, the resulting decline in and damage to employee morale, and the reduction or elimination of the continuity that is so essential to proper and efficient administration.

The voters of a single legislative district may prefer to be represented by a state employee rather than by his opponent, but the potential impact of such a choice may have an effect on the merit system which is statewide.

The measure allows for the adoption of legislation that could reduce the most obvious potential dangers presented by allowing state employees to serve in the legislature. However, your Committee felt that no rules could be drafted or adopted that would adequately or effectively deal with those abuses of a more varied and subtle nature.

The Committee concluded that retaining the present constitutional barriers to a combination of legislative service and public employment is preferable to removal of the prohibition and reliance on the protection of future legislation.

RECOMMENDATION

Your Committee recommends that the City Club oppose passage of State Measure No. 9 and urges a "NO" vote at the November 5, 1974 general election.

Respectfully submitted,

Barnes H. Ellis

William H. Gregory

James Kirkham Johns

Mary Anne Normandin

John W. Osburn

Clifford N. Carlsen, Jr., *Chairman*

Approved by the Research Board September 19, 1974 for transmittal to the Board of Governors.

Received by the Board of Governors September 23, 1974 and ordered printed for presentation to the membership for discussion and action.