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City Club of Portland

BULLETIN

Portland, Oregon

Vol. 57, No. 15

Benson Hotel, Mayfair Room

12:00 Noon

Friday, September 10, 1976

THE SPEAKER:

DR. LEWIS L. BLUEMLE, JR.

President, University of Oregon Health Sciences Center

THE TOPIC:

REPORT FROM MARQUAM HILL

Known familiarly for many years to Portlanders as the "med school," the University of Oregon Health Sciences Center is considerably more than that. Since Dr. Bluemle's appointment in 1974 to head this amazing complex of hospital, research and educational facilities, it has undergone some changes. Dr. Bluemle has agreed to bring us up to date on what has been happening on the "hill."

When Dr. Bluemle came to Portland, he brought with him a wealth of clinical, educational and administrative experience. He served as President of the Upstate Medical Center, State University of New York from 1968 to 1974. He combined teaching and clinical experience in the years before that, achieving the academic rank of Associate Professor in the Department of Medicine, University of Pennsylvania. Active in civic and professional organizations, he has also published extensively in scientific and professional journals.

Also, printed herewith for presentation, discussion and action on Friday September 17, 1976:

REPORT ON

REPEALS EMERGENCY SUCCESSION PROVISION (State Measure No. 4)

*The Committee: Ann Dahlen, Barbara McFarland, Patrick J. Simpson,
Gerald H. Robinson, Chairman.*

THE CITY CLUB OF PORTLAND ANNUAL DINNER

Tuesday, September 14

No-Host Reception, 6:00

Dinner, 7:00

Guest Speaker: Russell E. Train

Benson Hotel

\$10.00 per person

ELECTED TO MEMBERSHIP

Ray Crerand, Assistant Administrator, Good Samaritan Hospital & Medical Center. Sponsored by Alex Kennedy.

Joanne Osano Sasaki, Deputy City Attorney, City of Portland. Sponsored by Kit Jensen.

James L. Knoll, Lawyer, Bullivant, Wright, Leedy, et al. Sponsored by Douglas Hamilton.

D. Dean Casey, Research Manager, Tektronix, Inc. Sponsored by Donald D. Casey.

TICKETS STILL AVAILABLE

Tickets for the Annual Dinner are still available. Please note, however, that for any orders received this Friday or thereafter, your tickets will *not* be sent to you. Due to the vagaries of the mail, you will be advised by telephone that your money has been received and **YOUR TICKETS WILL BE HELD FOR YOU AT THE DOOR.**

Arrangements have been made for capacity in the Mayfair Room, which means that there will no doubt be some tickets still available the evening of the event. It would be more convenient for you to pay for them in advance, however, both for record-keeping and for making a firm guarantee to the Benson Hotel.

If you haven't already decided to attend, please consider doing so. We are fortunate to have an outstanding speaker; an excellent dinner menu has been arranged; and, you will have the pleasure of saluting the recipient of the City Club award.

If you have any questions, please call the Club office, 228-7231.

CITY CLUB OF PORTLAND BULLETIN

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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.

How long has it been since you sponsored someone for membership in the City Club?

**REPORT
ON
REPEALS EMERGENCY SUCCESSION PROVISION
(State Measure No. 4)**

Purpose: This measure would repeal the constitutional provision which authorizes legislation to provide for emergency succession to public offices becoming vacant, and to adopt other measures providing for the continuity of government, in a disaster resulting from enemy attack.

I. INTRODUCTION

The Committee reviewed the ballot measure, the state constitutional provisions affected by it, and the legislation enacted pursuant to Section 6, Article X. Your Committee also studied the summary of legislative committee meetings at which the resolution was considered and reviewed the arguments presented by the proponents which will be included in the voters pamphlet for the general election.

The Committee members individually contacted state officials who participated prominently in the debate on Measure No. 4 when it was passed by the legislature and referred to the people. The Appendix contains a list of all persons contacted for information by the Committee.

II. HISTORY AND BACKGROUND

In 1960 the Oregon Constitution was amended by the addition of Section 6, Article X. This amendment was part of a larger national plan to assure that government at all levels would continue to operate in time of emergency. Specifically, it stated that the legislature should provide for emergency succession to elected public offices in time of enemy attack. The legislature carried out this constitutional mandate in ORS Chapter 236, which supplies the specific details involved with such emergency succession.

In 1975 the Oregon legislature held hearings to repeal Section 6 of Article X. A House Joint Resolution proposed the repeal of this constitutional provision. State Measure No. 4 will bring this issue before the electorate in November.

Section 6, Article X of the Oregon Constitution reads as follows:

Section 6. *Continuity of government in event of enemy attack.* (1) The Legislative Assembly, in order to insure continuity of state and local governmental operations in periods of disaster resulting from enemy attack, shall provide for prompt and temporary succession to the powers and duties of elected public offices, and may provide for temporary succession to the powers and duties of appointed public offices, the incumbents of which may become unavailable to exercise the powers and discharge the duties of such offices. Such provisions shall not be required to comply with any of the following provisions of this Constitution: Section 10, Article II; section 1, Article III; sections 3 and 11, Article IV; sections 3, 4, 8, 16 and 17, Article V; and section 10, Article VI.

(2) The Legislative Assembly, in order to insure continuity of state and local governmental operations in periods of disaster resulting from enemy attack, or the imminence thereof, shall provide for a temporary location or locations for the seat of government and the functions of state government and for the government of political subdivisions and shall adopt such other provisions as may be necessary and proper for insuring the continuity of governmental operations. Such provisions shall not be required to comply with any of the following provisions in this Constitution:

Section 10, Article IV; section 12, Article V; section 8, Article VI; section 1, Article XIV; and section 3, Article XIV.

III. ARGUMENTS IN FAVOR OF STATE MEASURE NO. 4

1. The provisions of the Oregon Constitution in Section 6, Article X, providing for continuity of state government in case of enemy attack, were enacted during the "cold war" when many people felt that atomic attack by the Russians was a distinct and immediate possibility. This residue of the "cold war" psychology should be repealed in order to reflect the present calmer perspective.

2. The succession provisions of the state constitution and the state laws enacted under them have proven to be ineffective. Many state legislators, for example, do not file the names of their emergency successors and in some cases the whole process has been treated as a joke. There is no apparent penalty for state officials failing to make such appointments. When made, they are likely to be political in nature. Also, the appointed successors are not investigated to determine if, in fact, they are qualified to serve in case of emergency.

3. There are other statutes and constitutional provisions which provide, in part, for the replacement of officials in case of death or incapacity.

4. In case of an extensive attack, particularly one involving atomic or bacteriological weapons, damage would be so extensive as to render any emergency succession provisions useless and pointless. If anyone survives such a holocaust the government would be run by martial law in any event.

5. The repeal of Section 6, Article X would eliminate irrelevant and useless material from a state constitution which is already too heavily burdened by such material.

6. The statute passed pursuant to Section 6, Article X allows a member of one branch of government to serve as an emergency successor in another.

IV. ARGUMENTS AGAINST THE ADOPTION OF STATE MEASURE NO. 4

1. If, as the proponents of the ballot measure contend, the present emergency succession statutes are ineffective, they should be amended, but the constitutional provisions authorizing such legislation should be left intact.

2. Even though the threat of atomic attack, as far as the Soviet Union is concerned, is small, there is still danger that less responsible governments, or a terrorist group, may utilize atomic weapons, and therefore some provisions for continuity in government should exist.

3. Even if the emergency succession statutes have not been implemented by government officials, appropriate amendments could be enacted which would require the appointment of successors and provide machinery for making sure that persons so appointed are fully qualified to assume their positions.

4. Whatever position is finally adopted is a legislative decision and one that should not involve modification of the state constitution. The legislative process which involves study by committees and floor debate is an appropriate procedure for the correction or modification of existing laws.

5. It is a debatable legal question whether the repeal of Section 6, Article X will automatically repeal ORS 236.405 et seq. (the appointive successor statute). The voters should not be asked to act where the effects of their decision cannot be determined without litigation.

V. DISCUSSION

It appears to the Committee that, regardless of what arguments are voiced, there are two real reasons why State Measure No. 4 is before Oregon voters:

1. The emergency succession provision of the Oregon Constitution and the enabling legislation, ORS 236.405 et seq. (succession legislation) are seen by the proponents of

the measure as the product of cold war paranoia and as inappropriate and embarrassing; and

2. The succession legislation has proven to be ineffective and unworkable.

The Committee disagrees with the proponents of the measure that it is inappropriate to make provision for continuity of government in the event of enemy attack by providing for emergency interim successors to state and local offices. While there may be less risk today of an attack by a nuclear super power than there was in 1960, the proliferation of nuclear weapons and the spread of international terrorist activity seem to demand some rational provision for the continued operation of government in the event of an attack which kills or incapacitates large numbers of people. It is not paranoia to provide for continuity of government in the event of enemy attack, however remote one might hope such an eventuality is.

The argument that the current succession legislation has proven ineffective is quite beside the point when dealing with the issue of the constitutional amendment. The defects in the succession legislation have nothing to do with the efficacy or desirability of the constitutional provisions in question.

It is quite true that the succession legislation is inartfully drafted. For example, it fails to define "enemy." Moreover its succession scheme is cumbersome; it provides that the senior circuit judge of the state would succeed to the governor's office and that each member of the legislature and each state officer shall designate not fewer than three nor more than seven emergency interim successors and file the names of such successors with the Secretary of State.

It may well be that some other succession plan would be preferable. For example, in an attack an emergency session of the legislature may not be immediately necessary or desirable. However, these questions go to the issue of the structure of the succession legislation, *not* to the desirability of making provision for the continuity of government in the event of an enemy attack.

The submission of State Measure No. 4 to the people of Oregon to deal with what is in reality a legislative problem appears to the Committee to be unnecessary. There is no need for the proposed constitutional amendment; improvements in the succession statutes can be made by legislative enactment.

Furthermore, it is not clear that Measure No. 4 will entirely solve the problem. The repeal of the constitutional provision will not necessarily repeal, even by implication, the succession legislation. At least some of the succession legislation can be supported by other parts of the Oregon Constitution. For example, Section 3, Article IV provides that if a vacancy occurs in the office of Senator or Representative it shall be filled as may be provided by law. This language may be broad enough to justify portions of the succession legislation dealing with emergency interim succession of legislators. Without Section 6, Article X, other constitutional provisions would prevent some people from serving as emergency interim successors, for example, someone who holds another paid position with the state or federal government. However, this would serve only to limit the choice of emergency interim successors, it would not completely disable the succession legislation. This uncertainty of result is another reason to reject State Measure No. 4.

VI. CONCLUSIONS

Providing for continuity of state government in the event of enemy attack is not inappropriate, regardless of whether such attack may seem remote. The proliferation of nuclear weapons and the spread of international terrorist activity seem to demand some rational provision for the continued operation of government in the event of an attack which kills or incapacitates large numbers of people.

If criticism of the statute enacted pursuant to the authority vested in the legislature by the constitutional provision is uppermost in the considerations of the proponents of

State Measure No. 4, remedy should be directed at the particular evil. The submission of this measure to the people of Oregon to deal with what is really a legislative problem appears to the Committee to be unnecessary.

VII. RECOMMENDATIONS

1. It is the recommendation of this Committee that the City Club go on record as opposing the passage of State Measure No. 4 with a "NO" vote on November 2, 1976.

2. It is the further recommendation of the Committee that the City Club propose to the Legislative Assembly the rewriting of the emergency succession provisions to provide a more workable scheme limited to the relatively small number of offices which would have to be filled on an emergency interim basis in order to insure the continuity and operation of state government.

Respectfully submitted,
Ann Dahlen
Barbara McFarland
Patrick J. Simpson
Gerald H. Robinson, *Chairman*

Approved by the Research Board August 26, 1976 for transmittal to the Board of Governors. Received by the Board of Governors August 30, 1976 and ordered published and distributed to the membership for consideration and action.

APPENDIX

PERSONS INTERVIEWED BY THE COMMITTEE

Proponents

Stephen Kafoury, State Representative
William W. Wyatt, former State Representative
James A. Redden, State Treasurer
Blaine Whipple, State Senator
Betty Roberts, State Senator
Cal Henry, office of the Secretary of State

Opponents

Jeff L. Gilmour, State Representative
Anthony Meeker, State Senator