

4-11-1980

Amends Liquor by the Drink Constitutional Provision (State Measure No.2)

City Club of Portland (Portland, Or.)

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Recommended Citation

City Club of Portland (Portland, Or.), "Amends Liquor by the Drink Constitutional Provision (State Measure No.2)" (1980). *City Club of Portland*. 340.

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REPORT ON
"AMENDS LIQUOR BY THE DRINK
CONSTITUTIONAL PROVISION"
(STATE MEASURE NO. 2)

Purpose: "Constitution now limits passenger common carrier liquor-by-the drink licenses to railroads, requires commercial liquor licensees to cook and serve food where liquor is served. Proposed amendment would authorize laws permitting liquor licenses for other passenger common carriers (bus, airline), and allowing commercial liquor licensees cooking and serving food to also serve liquor by the drink at another location where food is not cooked and served, subject to requirements to be established by law."

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

I. INTRODUCTION

Passage of State Measure No. 2 would amend the Oregon Constitution (Paragraph 1, Section 39, Article I): to permit off-premise liquor service by food-serving licensees, to delete from the constitution the phrase "railroad corporations operating interstate trains" and to substitute the phrase "companies operating common carriers of passengers" (See Appendix B. If the measure is approved by the voters in May 1980, the Oregon legislature would have to enact laws specifying requirements under which it would be administered.

II. BACKGROUND

Enacted by voter approval of an initiative petition in 1952, Article I, Section 39 of the Oregon Constitution gives the state the power to administer the Oregon Liquor Control Act. It has not been amended since then.

An attempt to amend Section 39 in November 1974 by replacing the phrase "railroad corporations operating interstate trains" with the phrase "passenger common carriers" was defeated by Oregon voters by a margin of 384,521 to 353,357. The City Club Committee which studied that measure recommended passage, and that recommendation was accepted by a vote of the City Club members. The ballot measure report was published in the October 25, 1974 City Club *Bulletin*. The central argument for passage was the clarification of licensing for airlines serving liquor-by-the drink. Other previous City Club research included a recent comprehensive study on *Oregon Liquor Control* (Vol. 59, No. 34, January 2, 1979) in which the City Club adopted the committee recommendations aimed at liberalizing the requirements for granting liquor licenses.

State Measure No. 2, also known as Senate Joint Resolution 18 (SJR 18), was sponsored by Senator George Wingard, Senator Ted Hallock, and Representative Mary Burrows. Introduced in the Senate Trade and Economic Development Committee with the primary purpose of promoting mass transit, the original bill only replaced the phrase "railroad corporations operating interstate trains" with the phrase "companies operating common carriers of passengers." Senator Wingard believed passage would encourage the use of future bus transit systems (such as articulated buses moving commuters up and down the Willamette Valley). SJR 18 was later amended by what was considered to be a "housekeeping" provision to allow the extension of licenses off the premises of commercial establishments where food is cooked and served and also to clarify certain other language in Section 39.

III. ARGUMENTS ADVANCED IN FAVOR OF PASSAGE

The following arguments were presented to your Committee in favor of Measure No. 2:

1. Passage of this amendment would broaden the constitution thereby giving the legislature and the regulatory agency latitude to enact specific laws and regulations pertaining to the sale and consumption of liquor-by-the-drink.

2. The Oregon Liquor Control Commission (OLCC) would have increased control over the existing practice of "bringing your own liquor" onto charter buses.

3. Good public policy would be promoted by encouraging use of mass transit and by reducing the number of drinking drivers.

4. The regulatory question would be clarified as to whether or not other passenger common carriers (e.g., airlines, buses, boats) under the jurisdiction of the OLCC should be treated the same as trains.

5. Constitutional authority would be clarified regarding the current practice of extending liquor service licenses off licensed premises.

6. Commercial bus companies offering charters could extend the same service in Oregon that is currently provided in many other states.

7. The State of Oregon would receive increased revenues from liquor licenses and taxes.

IV. ARGUMENTS ADVANCED AGAINST PASSAGE

The following arguments were presented to your Committee against Measure No. 2:

1. Serving alcohol on buses would make it more available, and could increase its consumption or abuse.

2. Alcohol service on common carriers could make travel on them less attractive to some non-drinking passengers.

3. The practice of extending commercial liquor licenses exists without this constitutional amendment.

4. Enforcement of regulations may be difficult and expensive.

5. The amendment could create a greater demand, and there could be increased pressure for a limited number of available liquor licenses.

V. DISCUSSION

In studying State Measure No. 2, your Committee reviewed the source and purpose of this legislation and examined its implication to the OLCC, licensees and the consuming public.

Your Committee did not identify any organized support or opposition to this measure. We interviewed individuals who expressed interest in its passage or defeat. Appendix A lists those contacts.

The main argument against passage seems to be primarily one of temperance. Conceptually, any increase in the availability of alcohol could increase its consumption or abuse. However, passage of Measure 2 will not change the purpose of the Liquor Control Act "to promote temperance" (see ORS 471.030) and that function clearly is the responsibility of the Legislature and the OLCC. Therefore, opposition to the measure on the grounds of temperance appears to challenge the consumption of alcohol on any terms rather than the procedural changes proposed by this amendment.

With regard to serving liquor on buses, it was felt by some that the carriers should not be issued liquor licenses since the lack of separate lounge areas could make buses less attractive to riders not wishing to sit next to a drinking passenger. In that same vein, one

opponent predicted there also would be increasing opposition to alcohol service on airplanes because passengers would demand separate non-alcohol areas just as they demand separate non-smoking areas.

It was made obvious to your Committee during testimony that commercial bus companies and municipal transit authorities are not interested in liquor service on regularly scheduled bus routes for precisely the reason stated above. However, commercial bus companies contend there is a market for sale of liquor-by-the-drink on charter bus service and, in fact, offer such services in other states. Examples of possible charters include sight-seeing tours and special buses to ski resorts and sporting events.

While SJR 18 was being drafted, the OLCC staff suggested the language of the amendment relating to the extension of licenses off premises. Although the OLCC's position on the measure was stated by its administrator to be neutral, he testified that passage would clarify the regulation of common carriers and off-premise extension of licenses.

Regulation of passenger common carriers other than trains has been under question since the Article was enacted in 1952. An attorney general's opinion dated March 9, 1955 concluded that the Legislature had no power to permit commercial aircraft to serve liquor-by-the-glass since they were not specifically listed in the constitution as were railroads.¹ However, a memorandum dated April 13, 1973 from an assistant attorney general to the OLCC contended that the earlier opinion was erroneous and that airlines could be licensed as "commercial establishments" so long as they cooked food and served it on their flights.² The OLCC administrator testified that regulation of interstate common carriers continues to be under question and that the agency has requested another attorney general ruling on the subject. It appears to your Committee that by deleting the specific reference to "railroad corporations operating interstate trains" and substituting "companies operating common carriers of passengers," the state will have removed any appearance of special constitutional treatment for one form of common carrier over another.

Your Committee was advised that the language granting specific authority to extend licenses off the premises where food is cooked and served amends the constitution to conform to a practice currently allowed by the OLCC for civic groups, fraternal organizations, veterans organizations, and other groups organizing special events. Your Committee found no opposition to this portion of the measure other than the obvious argument that since the practice of extending licenses for special events occurs without such language, the amendment is unnecessary. Since the amending language was suggested by the OLCC, it obviously would find the amendment useful.

The assistant attorney general's memorandum mentioned earlier also specifically sanctioned the practice of permitting commercial establishments to serve liquor-by-the-drink at a place other than where the food actually was prepared, so long as food was available with the liquor. Your Committee believes that the practical effect of Measure No. 2 may also be to permit licensed commercial establishments to serve liquor off-premises without being required to serve food as well.

The balance of the amendment removes language already contained in the Oregon Liquor Control Act and specifically instructs the Legislature to determine when food must be served in conjunction with the serving of alcoholic liquor at licensed commercial establishments.

VI. CONCLUSIONS AND RECOMMENDATION

The proposed amendment clearly directs the Legislature to establish the details of dispensing liquor on passenger common carriers and off licensed premises. In so doing, the public is given both adequate protection and a chance to participate in the formation of those regulations.

¹27 Op Att'y Gen. 76 (Or. 1955)

²Memorandum to Raymond P. Underwood, Chief Counsel, from Robert L. Haskins, Assistant Attorney General (Or.) April 13, 1973.

There are differences among passenger common carriers, but the Oregon Constitution should not give preference to any one carrier in the matter of alcohol sales. In 1952 when Article I, Section 39 was approved, the voters could not have conceived of the transportation systems that would be serving the Oregon market in 1980. The Legislature should have the flexibility to deal with future changes in common carrier service, and State Measure No. 2 would give it that.

Changing the constitution to permit the Legislature to regulate the sale of liquor-by-the-glass off premises of licensed establishments where food is cooked and served recognizes a current practice allowed by the OLCC, although it has done so with uncertain constitutional authority. Since interpretations of the present language now allow private clubs, fraternal and veterans organizations to serve liquor by the glass off licensed premises, without food, there seems to be little reason not to allow commercial establishments to do the same. Again, the details of protecting the public and regulating food service requirements will remain a responsibility of the Legislature.

For these reasons your Committee finds State Measure No. 2 both acceptable and beneficial.

Your Committee recommends a YES vote on State Measure No. 2.

Respectfully submitted,
Donald J. Friedman
Ralph Gens
Ann T. Hawkins
John M. Setters
Catherine P. Smither, *Chairman*

Approved by the Board of Governors March 10, 1980 for publication and distribution to the membership for discussion and action on Friday, April 11, 1980.

APPENDIX A
PERSONS INTERVIEWED

Legislators

Senator Keith Burbidge, Salem
Senator Ted Hallock, Portland
Senator George Wingard, Eugene
Representative Mary Burrows, Eugene

Other Contacts

Hank Crawford, Lobbyist, Restaurants of Oregon
Bill Cross, Legislative Lobbyist, Oregon Restaurant and Beverage Assn.
Dennis Mulvihill, Administrator, Senate Trade & Economic Development Committee
Paul M. Niskanen, Vice President—Marketing, Pacific Trailways
Robert Prowda, Director of Marketing, Tri-Met
Sam J. Sherer, Special Assistant to the President, United Airlines
Dean Smith, Administrator, Oregon Liquor Control Commission
Donald Streun, President, Air Oregon

APPENDIX B

SENATE JOINT RESOLUTION 18

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

Paragraph 1. Section 39, Article I of the Oregon Constitution, is amended to read:

Sec. 39. The State shall have power to license private clubs, fraternal organizations, veterans' organizations, *[railroad corporations operating interstate trains]* **companies operating common carriers of passengers** and commercial establishments where food is cooked and served, for the purpose of selling alcoholic liquor by the individual glass at retail, for consumption on the premises, including mixed drinks and cocktails, compounded or mixed on the premises only. The license privilege conferred upon a commercial establishment where food is cooked and served may be extended beyond the premises of the establishment to allow the mixing, service, sale and consumption of alcoholic liquor where cooked food might not be available. Such licensing shall be administered in a manner consistent with the promotion of temperance and the purposes of the Oregon Liquor Control Act. The Legislative Assembly shall provide in such detail as it shall deem advisable for carrying out and administering the provisions of this amendment *[and shall provide adequate safeguards to carry out the original intent and purpose of the Oregon Liquor Control Act, including the promotion of temperance in the use and consumption of alcoholic beverages, encourage the use and consumption of lighter beverages and aid in the establishment of Oregon industry]* **including determining when food must be served in conjunction with the serving of alcoholic liquor at licensed commercial establishments.** This power is subject to the following:

(1) *[The provisions of this amendment shall take effect and be in operation sixty (60) days after the approval and adoption by the people of Oregon; provided, however,]* The right of a local option election exists in the counties and in any incorporated city or town containing a population of at least five hundred (500). The Legislative Assembly shall prescribe a means and a procedure by which the voters of any county or incorporated city or town as limited above in any county, may through a local option election determine whether to prohibit or permit such power, and such procedure shall specifically include that whenever fifteen per cent (15%) of the registered voters of any county in the state or of any incorporated city or town as limited above, in any county in the state, shall file a petition requesting an election in this matter, the question shall be voted upon at the next regular November biennial election, provided said petition is filed not less than sixty (60) days before the day of election.

(2) Legislation relating to this matter shall operate uniformly throughout the state and all individuals shall be treated equally; and all provisions shall be liberally construed for the accomplishment of these purposes.

Paragraph 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at a special election held in conjunction with the next state-wide primary election.

NOTE: Matter in bold face in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted; complete new sections begin with SECTION.