9-26-1958

County Home Rule Amendment (State Ballot Measure 11); Referendum Which Authorizes Different Use of State Institutions (State Measure 8); Referendum Which Authorizes Discontinuing Certain State Tuberculosis Hospitals (State Measure 12)

City Club of Portland (Portland, Or.)

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Printed in this issue, and scheduled for presentation, discussion and membership action at this week's meeting:

REPORT
ON
COUNTY HOME RULE AMENDMENT

The Committee: DONQLD C. ELLSWORTH, JOHN FULTON, PAUL GERHARDT, JOHN S. GRIFFITH, PHILIP HAMMOND, RALPH WESCOTT and IRVING G. SMITH, Chairman.

and

REPORTS
ON
STATE MEASURE NO. 8
Referendum which Authorizes Different Use of State Institutions

and

STATE MEASURE NO. 12
Referendum which Authorizes Discontinuing Certain State Tuberculosis Hospitals

The Committee: VERNON A. DOUGLAS, M.D., ALVIN L. FROST, JAMES A. NELSON, WALTER REYNOLDS, M.D., RAYMOND P. UNDERWOOD, EUGENE WATSON, and J. BARRON FITZPATRICK, Chairman.
REPORT
ON
COUNTY HOME RULE AMENDMENT

"AUTHORIZES the voters in any county to adopt a charter to provide for the exercise of authority over matters of county concern. Initiative and referendum powers are reserved to the legal voters of counties adopting a charter."

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND:

The undersigned committee has studied the proposed "County Home Rule Amendment" to the Constitution of the State of Oregon repealing Section 9A, Article VI, and creating a new Section 10 to be added to and made a part of Article VI of the Constitution.

The amendment was referred to the voters by the 1957 State Legislature with the passage of House Joint Resolution No. 22 which had been introduced by the Committee on Local Government at the request of the Local Government Interim Committee. The amendment will appear on the November, 1958, General Election ballot.

This amendment, though short, is significant and is reproduced in Appendix A of this report.

INTRODUCTION

This constitutional amendment is an enabling enactment which would permit the citizens of any Oregon county to adopt a home rule charter as can now be done by cities. If this proposal passes, the legislature is directed to establish election procedures whereby the voters of any county may adopt a county charter; the legislature may not limit the provisions thereof. It will then be incumbent upon the electorate of any county which so desires to enact its own charter. Such charters may prescribe the organization of county government and, except for judges, justices of the peace, and district attorneys, must provide for such county officers as are deemed necessary. In addition, this amendment would allow counties adopting a charter to legislate on "matters of county concern."

Ever since 1858, the Oregon constitution has provided for home rule in cities. Meanwhile counties, except in very limited fields, have been forced to look to the state legislature for specific statutory authority for their powers. In 1929, the Oregon Senate defeated a proposal which would have, on a statutory level, authorized county home rule. In 1944, a Constitutional Amendment allowing counties to adopt a County Manager form of government was passed, but it has thus far not been used despite two attempts at the polls by each of two Oregon counties. (The proposed amendment would repeal the 1944 county manager amendment; however a county, by its charter, could adopt a manager form of government.)

In 1956, stating that counties need the ability to take the initiative in the solution of suburban problems and "not be made to rely on specific statutory authority for each act," the Legislative Interim Committee on Local Government proposed the form of constitutional amendment substantially as now before the voters pursuant to H.J.R. 22.

The constitutions of California, Maryland, Missouri, Ohio, Texas and Washington now authorize county home rule charters, generally on a more limited basis than proposed for Oregon. In those six states, however, only 14 counties have actually adopted charters, 11 of which are in California. Generally, it has been the more urban or metropolitan counties which have felt the greatest need for home rule.

INVESTIGATION

In order to study and report on the problems presented by the proposed amendment, the following people were heard at committee meetings, or their views were given to the committee by letter: Ormond R. Bean, Commissioner, City of Portland, and Chairman, Joint Legislative Interim Committee on Local Government authorized
by Senate Joint Resolution 31, Oregon Laws, 1955; Kenneth C. Tollenar, Assistant Director, Bureau of Municipal Research and Service, who served as Executive Secretary after March 1, 1956 for the Joint Legislative Interim Committee on Local Government; John D. Mosser, State Representative, Washington County; Lloyd Keefe, Director, City Planning Commission, City of Portland; M. James Gleason, Commissioner, Multnomah County; George Baldwin, School Clerk and Comptroller, School District #1, Multnomah County; Rudie Wilhelm, Jr., State Senator, Multnomah County; Mrs. Ben Musa, State Representative, Wasco County; Philip B. Lowry, State Senator, Jackson County; Carl H. Francis, State Senator, Yamhill County; Donald R. Husband, State Senator, Lane County; Curtiss M. Everts, State Sanitary Engineer, and Representatives of the League of Women Voters Study Group on County Home Rule.

In addition, eleven counties in California and two counties in Maryland now operating under County Home Rule charters were contacted by letter, and excerpts from some of their replies are given in Appendix B.

ANALYSIS

Based upon the committees' investigation, it is our opinion that the principle points in favor of and against this proposal are as follows:

1. Affirmative Arguments

A. The present structure of county government in Oregon is based upon a medieval concept. In 1859 when Oregon was admitted to the Union, counties in Oregon were largely rural and had no demand for many of the services now required of local government. Present economic conditions were not foreseen when the people adopted that section of the State Constitution relating to county government.

B. The counties of Oregon vary in size, population and resources, with substantial differences in the type and extent of services demanded by the citizens, depending largely upon the population density and the differences between agricultural counties and counties with large suburban areas. Only through Home Rule can counties that desire it make changes in the organization of county government best suited for their present and future needs.

C. Due to lack of statutory authority in county government, there is slowly spreading over the state—and especially in areas adjoining the larger cities—an ever-increasing number of tax levying bodies for purposes of installing water systems, providing sanitary services, building hospitals, establishing drainage districts, and other service districts. There is at present no control over these various taxing units except at the state legislative level. Many of these services could be consolidated and more effectively administered by county government.

D. The reorganization of county government is a pressing necessity to provide the authority for long range financial planning.

E. If the Home Rule Amendment is adopted and implemented, and the voters also adopt Ballot Measure #6 Modifying County Debt Limitation, (not before this committee) then the counties might issue bonds to finance capital projects requiring long range planning, and also use the assessment procedures now available to cities under the "Bancroft Act." The inability to use this assessment procedure for local improvements in areas outside city limits is currently restricting the proper financing of many needed and worthwhile improvements.

F. The passage of a county charter would permit the voters of each county to determine, with the exceptions stated in the proposed amendment, what elective county officials they require, the duties of each, and their compensation, without being required to seek statewide approval on matters of purely local county concern.

G. Counties now lack the authority to act on many matters of pressing county concern, as in the case of the Tri-County Sewer Plan. This often means a delay of years until the state legislature passes the appropriate measure. Under a Home Rule charter, this roadblock would be eliminated and matters of purely local concern would be dealt with at the appropriate level.

H. This County Home Rule Amendment would permit any county desiring so to do to work out an efficient plan of consolidated city and county government.
I. This constitutional amendment is sufficiently broad to accomplish its intended objectives. It is essential to bear in mind, however, that this is only an enabling act.

To implement the intent of this amendment requires drafting of a charter, followed by an affirmative ballot of the voters concerned.

2. Negative Arguments

A. The County Home Rule Amendment permits sweeping changes and gives a grant of power not within the present theory of the conduct of county business in Oregon, or as county business has been conducted for the past 99 years.

B. This sweeping grant of power to the voters of each county might result in radically different ordinances and laws being adopted by each county; thus, the local law of each county under a Home Rule charter might be different. There could be as many different codes of law governing county business as there are counties in the State of Oregon, resulting in confusion in the normal conduct of business.

C. Based upon experience in the operation of county governments for the past 99 years, members of county courts are often elected to represent areas in the county rather than the county as a whole. This has led to sectionalism in the operation of county business. With the grant of greater power under a Home Rule Charter, this could become an even more acute problem.

D. There is no clause in the County Home Rule Amendment permitting the legislature to recapture any of the power granted by this constitutional amendment. The power granted to counties could only be recaptured by a further amendment to the State Constitution.

E. It would be possible under this County Home Rule Amendment for charters to be enacted which would result in small type legislatures in each county. Counties could adopt charters and, in the exercise of power acquired, radically alter the present theory of law in Oregon, even changing the present form of taxation. It would be necessary for continuing litigation in the Supreme Court of the State of Oregon to determine the scope of authorities of counties under such charters, and to determine the limits within which the legislature could enact general laws affecting county matters.

F. The principle objectives of County Home Rule could be achieved more conservatively through a legislative enactment without writing this provision into the state constitution.

CONCLUSIONS

This constitutional amendment provides the legal machinery to radically alter the traditional concept of county government. It provides a permissive grant of local legislative authority at the county level. Two points are important and should be borne in mind: (1) to be effective, legislative authority at the county level should not be unduly restricted, and (2) there can be no surrender of the negatively safe aspects of existing county government without an affirmative vote of the registered voters of the county concerned.

Under proper Home Rule Charters, substantial savings might be effected. Since the demands for police, welfare, health services and similar items are more required in counties with a large population density, the savings might be a material sum in tax dollars in such counties. Better administrative practices and a more efficient operation under Home Rule Charters should save tax dollars, as has been experienced by most counties in the nation operating under Home Rule.

The State Constitution now has Home Rule for cities. There is no reason why the same principles should not be extended to the corresponding form of municipal government for the entire area of each county.

Though acknowledging the validity of the arguments presented against this proposed amendment, your committee is convinced that the intelligence of the electorate of any county is an adequate safeguard to protect its citizens from ill-advised or impractical actions with respect to the adoption of a county charter on the one hand or subsequent administrative failures on the other.
RECOMMENDATION

Your committee unanimously recommends that the City Club go on record as approving the County Home Rule Amendment.

Respectfully submitted,

DONALD C. ELLSWORTH
JOHN FULTON
PAUL GERHARDT
JOHN S. GRIFFITH
PHILIP HAMMOND
RALPH WESCOTT* 
IRVING G. SMITH, Chairman

* Mr. Wescott was transferred to Europe before the completion of the committee's study or report.

Approved August 20, 1958, by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors September 8, 1958, and ordered printed and submitted to the membership for discussion and action.

COUNTY HOME RULE AMENDMENT

Appendix A

HOUSE JOINT RESOLUTION NO. 22

Introduced by COMMITTEE ON LOCAL GOVERNMENT (by request of the Local Government Interim Committee) and read February 13, 1957, Regular Session, Forty-Ninth Legislative Assembly.

Be It Resolved by the House of Representatives of the State of Oregon, the Senate jointly concurring:

That section 9A, Article VI of the Constitution of the State of Oregon, be repealed; and that the Constitution of the State of Oregon be amended by creating a new section to be added to and made a part of Article VI of the Constitution and to read as follows:

Section 10. The Legislative Assembly shall provide by law a method whereby the legal voters of any county, by majority vote of such voters voting thereon at any legally called election, may adopt, amend, revise or repeal a county charter. A County charter may provide for the exercise by the county of authority over matters of county concern. Local improvements or bonds therefor authorized under a county charter shall be financed only by taxes, assessments or charges imposed on benefited property. A county charter shall prescribe the organization of the county government and shall provide directly, or by its authority, for the number, election or appointment, qualifications, tenure, compensation, powers and duties of such officers as the county deems necessary. Such officers shall among them exercise all the powers and perform all the duties, as distributed by the county charter or by its authority, now or hereafter, by the Constitution or laws of this state, granted to or imposed upon any county officer. Except as expressly provided by general law, a county charter shall not affect the selection, tenure, compensation, powers or duties prescribed by law for judges in their judicial capacity, for justices of the peace or for district attorneys. The initiative and referendum powers reserved to the people by this Constitution hereby are further reserved to the legal voters of every county relative to the adoption, amendment, revision or repeal of a county charter and to legislation passed by counties which have adopted such a charter.

Be It Further Resolved, That the proposed amendment be submitted to the people for their approval or rejection at the next regular general election held throughout the state;
COUNTY HOME RULE AMENDMENT

Appendix B

Your committee corresponded with various counties throughout the United States who have adopted county charters. Information provided was overwhelmingly affirmative. This compilation of data is now in the City Club files. While it is not directly pertinent to the question at issue, which in essence deals with an enabling act, we believe the membership will be interested in the following excerpts:

COUNTY OF SAN MATEO, CALIFORNIA, by E. R. Stallings, County Manager, July 9, 1958:

" * * * Our Board's (of Supervisors) over-all objective is to deal effectively with the problems of this expanding area and obtain a dollar's worth in service for each of our citizen's tax dollars.

"One problem which tends to make the fulfillment of these objectives more difficult is the fact that, traditionally, county governments have consisted of many different elective officials, each one autonomous in his own department and considering himself primarily responsible to the people * * * Reorganization within limits permitted by the charter, budgetary and expenditure control, and appointment of key personnel are the principal methods of offsetting this tendency."

" * * * An important element in the achievement of this record (low per capita cost of county government) has been the fact that San Mateo County has operated under its own charter."

__________________________________________________________

COUNTY OF SANTA CLARA, CALIFORNIA, by Howard W. Campen, County Executive, July 2, 1958:

" * * * We believe that it (our charter) constituted a very forward step in County Government in that it centralized the authority and responsibility for the administrative affairs of the County Government in the Office of the County Executive, and, as a result, many administrative changes have been made, and will be made, which will result in more efficient administrative procedures and, at the same time, at lesser cost."

__________________________________________________________

COUNTY OF SAN DIEGO, CALIFORNIA, by F. J. Morey, Ass't Chief Administrative Officer, July 17, 1958:

" * * * By the terms of this last provision, adopted in 1952 (providing for the consolidation of city and county offices), the personnel of the Health Department of the City of San Diego were transferred to the county, and the city retired from the health business."

__________________________________________________________

COUNTY OF ALAMEDA, CALIFORNIA, by William S. Coit, Deputy District Attorney, July 17, 1958:

"As a 'home rule' or charter county, we believe Alameda County has considerably more freedom and latitude in determining its own administrative structure and organization and procedures than do counties operating under general law."
COUNTY OF SACRAMENTO, CALIFORNIA, by M. D. Tarshes, County Executive, July 9, 1958:

"* * * the Charter system provides certain outstanding advantages by comparison with the general laws of the state applicable to county government:

"1. A reduction in the number of elective department heads—thus tending to centralize political responsibility in the Board of Supervisors, the governing body in the county * * *

"2. A strong County Executive (County Manager) position with a broad scope of administrative and management authority * * *.

"It is my personal opinion that we must look to county government for the assumption of increasing responsibilities in our metropolitan areas—and that the counties must be given adequate home rule powers in order to permit them to assume these responsibilities effectively."

COUNTY OF FRESNO, CALIFORNIA, by Ernest N. Mobley, County Administrative Officer, June 30, 1958:

"Through the utilization of our home rule charter provisions, our County may give itself such new powers as are not in conflict with general legislation; may achieve some simplification of structure by consolidating certain offices, and may determine those salaries not set by State law."

Of greater significance is the background material now available in City Club files which can be utilized should the enabling act be passed and should various counties implement this by initiating a move for county home rule.
REPORT
ON

STATE MEASURE NO. 8
REFERENDUM WHICH AUTHORIZES DIFFERENT USE
OF STATE INSTITUTIONS
(Senate Joint Resolution 41)

PURPOSE: Authorizes the Legislature to alter, reduce, enlarge or
terminate the use or purpose of any state institution located out-
side Marion County at any time after 10 years from the date of
the election which located the institution.

and

REPORT
ON

STATE MEASURE NO. 12
REFERENDUM WHICH AUTHORIZES DISCONTINUING
CERTAIN STATE TUBERCULOSIS HOSPITALS
(Chapter 695, Oregon Laws 1957)

PURPOSE: To permit the Board of Control to discontinue using the
Eastern Oregon and University State Tuberculosis Hospitals, in
whole or in part. Board could designate the use for any other state
institution or agency.

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND:

SCOPE OF INVESTIGATION

Your committee was asked to study and report on each of the above measures,
since they are felt to be closely interrelated and both were inspired in part, at least,
by the growing number of vacant beds in the three state tuberculosis hospitals.

In general session your committee interviewed the following individuals who pro-
vided much helpful information regarding the background of these measures:

Dr. Ambrose Churchill, Director, Tuberculosis Section, Oregon State Board of
Health;

William C. Ryan, Secretary, Oregon State Board of Control;

Kenneth C. Ross, Executive Secretary, Oregon Tuberculosis and Health Asso-
ciation;

F. Tom Humphrey, member, Advisory Committee on Tuberculosis Institutions to
Oregon State Board of Control.

Representatives of your committee also interviewed State Senator Alfred H.
Corbett and Mr. Ed Kaen, chairman, Advisory Committee on Tuberculosis Institutions
to Oregon State Board of Control.

The Division of Elections, Secretary of State’s office, was also consulted.

Various reports and documents consulted by your committee are listed in Ap-
pendix A.
REPORT
ON
MEASURE NO. 8 (S.J.R.* 41)

LEGISLATIVE BACKGROUND

Senate Joint Resolution 41 refers to the voters amendments to Article XIV of the Oregon Constitution. The most important part of this referendum is the proposed amendment of Section 3 of this Article which presently reads in pertinent part as follows:

"Section 3. * * * All the public institutions of the State, not located elsewhere prior to January 1, 1907, shall be located in the county where the seat of government is, excepting when otherwise ordered by an Act of the Legislative Assembly and is ratified by the electors of the State at the next general election following such Act, by a majority of all the votes cast on the question of whether or not such Act shall be ratified. (Constitution of 1859: Amendment proposed by S.J.R.* No. 1, 1907, and adopted by people June 1, 1908.)"

The pertinent portions of S.J.R. 41 read as follows:

"That sections 1 and 3, Article XIV of the Constitution of the State of Oregon be repealed, and that the following sections be enacted in lieu thereof:

Section 1. The permanent seat of government for the state shall be Marion County.

Section 2. (1) All public institutions of this state, other than public institutions located outside Marion County prior to November 1, 1958, shall be located in Marion County; except that an Act of the Legislative Assembly which is ratified by a majority of the votes cast thereon at the next general election held after passage of such Act may order the location of any public institution to be outside Marion County.

(2) The Legislative Assembly may alter, reduce, enlarge or terminate the use or purpose of any public institution located outside Marion County at any time after 10 years from the date of the general election at which the location of the institution outside Marion County was ordered."

During the 1953 Legislative Session an Interim Committee, known as the Governor's and Legislative Constitutional Committee, was authorized to study the need for a general overhauling of the Oregon Constitution. Article XIV came under scrutiny because of its obsolete language relating to the first session of the State Legislature, and because of a general feeling that the clause prohibiting the creation of State institutions outside of Marion County without legislative action followed by ratification by the people—known as the Marion County Clause—was an unnecessary safeguard. The recommendation of this Interim Committee that a constitutional convention be called was defeated by the 1955 Legislature and this led to the later introduction of various bills attempting piecemeal amendments to the Constitution. Among such later legislation was S.J.R. 16, introduced during the 1957 Legislative Session, which contained provisions to amend Article XIV somewhat similar to those proposed by the Interim Committee. Objection was raised to the proposed elimination of the so-called Marion County Clause in S.J.R. 16 on the ground that it might lead to logrolling, vote trading and overbuilding of state institutions. In view of this objection, S.J.R. 16 was dropped and S.J.R. 41 was ultimately introduced by the Committee on State and Federal Affairs, and referred to the people for acceptance or rejection at the general election in November of 1958.

The purpose of this measure was to eliminate some of the obsolete language of Article XIV of the Constitution, and empower the Legislature, after the passage of a reasonably safe period of time, to alter the use or purpose of any state institution located outside of Marion County, without the expense and difficulty of ratification by the voters at the next general election. At the same time, the safeguard of requiring ratification on the location of any new institution would be retained.

* S.J.R. abbreviates Senate Joint Resolution.
DISCUSSION AND COMMENTS ON S.J.R. 41

This committee's assignment to report on the proposed amendments to Article XIV does not require a consideration of the broader questions, which have nevertheless been several times discussed by the committee, of the historical and contemporary service to good government performed by Article XIV. Possible objectives of Article XIV occurring to the committee were: prevention of logrolling among state legislators in the matter of locating state institutions; hindrance of over-building of state institutions; more efficient management of state institutions located in one county. However, some members of your committee have raised the fundamental question—which is beyond the scope of our report—whether or not the Marion County Clause should be eliminated entirely from the Oregon Constitution.

Your committee's investigation did not reveal a judicial interpretation of the phrase "public institutions" as used in Article XIV. It appears that Article XIV has not been uniformly complied with in the creation of state educational facilities outside of Marion County. An example is the acquisition by the State Board of Education of the Klamath Falls Marine Barracks for a vocational school on the strength of the Attorney General's opinion under date of March 6, 1947. That opinion states that "schools for vocational education established pursuant to Chapter 421, Oregon Laws, 1951, are not public institutions of the state within the meaning of that term as used in Section 3, Article XIV of the Constitution of Oregon." The purported basis for this is that the Act providing for the creation of such schools does not refer to them as "public institutions." On the other hand, by opinion dated May 5, 1925, the Attorney General without doubt recognized the Oregon Normal School at Monmouth to be a state institution within the meaning of Article XIV. In view of the unsettled state of the law, it is not possible for your committee to categorically list the existing state institutions subject to Article XIV. Nevertheless, it is clear that Article XIV includes institutions other than tuberculosis hospitals and in all probability includes at least all of the institutions administered by the Oregon State Board of Control. (1)

The committee has found no significant arguments to report against the proposed amendments.

ARGUMENTS FOR S.J.R. 41

1. The changing needs of state institutions makes it desirable that the Legislature should have the power without having to refer the matter to the voters to alter, reduce, enlarge or terminate the uses of these institutions. The recent dramatic decrease in need for TB beds in our state tuberculosis hospitals is an illustration of this need to save taxpayers money and meet the needs of persons requiring institutional care without the time-consuming process of referral to the people by referendum.

2. The utilization of state institutions is a technical one which should be decided by the Legislature on the advice of an informed state agency, rather than by the people in referendum.

ARGUMENTS AGAINST S.J.R. 41

1. It is desirable to have the people participate in making decisions about their state institutions as much as possible.

2. The Legislature might act arbitrarily or capriciously.

(1) The Oregon State Board of Control is charged with the duty of administration of the following institutions:

1. Oregon State Hospital
2. Eastern Oregon State Hospital
3. Oregon State Penitentiary
4. Oregon Fairview Home
5. MacLaren School for Boys
6. Oregon State Tuberculosis Hospital
7. Eastern Oregon Tuberculosis Hospital
8. Oregon State School for the Blind
9. Oregon State School for the Deaf
10. Hillcrest School of Oregon
11. F. H. Dommesch State Hospital
CONCLUSIONS

The proposed amendments to Article XIV would, while continuing the requirement of a referendum on the question of locating any new state institution outside Marion County, grant the Legislature discretion to change the use of any such institution ten years or more after any such favorable referendum. The Committee has concluded that the grant of such discretion is desirable since the passage of time may dictate a change in use. Ten years is believed to be a reasonable minimum time limit on the exercise of such legislative discretion. The committee also approves, of course, the elimination by the proposed amendments of the obsolete material from Article XIV. (1)

RECOMMENDATION

Your committee unanimously recommends a “yes” vote on State Measure No. 8, the referendum amending Article XIV of the Oregon Constitution by S.J.R. 41 (Authorizing Different Use of State Institutions).

REPORT
ON
STATE MEASURE NO. 12
(CHARTER 695, OREGON LAWS 1957)

At the same time that S.J.R. 41 was being considered during the 1957 Legislative Session by the Committee on State and Federal Affairs, as discussed in the preceding report, the Joint Committee on Ways and Means was considering legislation suggested by the Board of Control, which ultimately became Chapter 695, Oregon Laws 1957. This legislation was also referred to the people for acceptance or rejection at the general election in November, 1958.

This legislation was brought about by the increasing realization that one of the State’s three tuberculosis hospitals (located at Salem, The Dalles and Portland) could be closed in the interest of economy, or put to another use in the interest of improved service to the people of the State, without adversely affecting the tuberculosis program. Under Article XIV, as it presently provides, such closure or altered use could not be effected without the tedious, expensive and inflexible process of legislative action, followed by voter ratification.

DISCUSSION AND COMMENTS ON CHAPTER 695

Chapter 695, Oregon Laws 1957, gives the Oregon State Board of Control discretionary authority to discontinue as a tuberculosis hospital, in whole or in part, Eastern Oregon Tuberculosis Hospital at The Dalles and University State Tuberculosis Hospital at Portland.

The Act provides that upon the complete or partial discontinuance of either of these hospitals as a tuberculosis hospital, the Board of Control may:

(1) Designate the use to which the hospital or the discontinued portion thereof shall be put by the Board of any other state agency;

(2) Operate the discontinued state tuberculosis hospital as a state institution for some other purpose;

(3) Transfer all or part of the patients being treated or cared for therein to other state tuberculosis hospitals;

(4) Transfer the property of such hospital, or any part thereof, to another state institution or other state agency for an appropriate charge fixed by the Board, or, if none of the state institutions or other state agencies have need of or use for any such

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(1) S.J.R. 41, in Section 1, specifically designates Marion County as the permanent seat of the state government, and repeals present Section 1 of Article XIV which provides a procedure, after the original adoption of the Constitution, for the voters to determine the place of the permanent seat of the state government.

S.J.R. 41 does not provide for the repeal of present Section 2 of Article XIV, though this section is obsolete because it prohibits a tax or expenditure or incurrence of a debt for erection of a State House prior to 1865. This section, of course, has no present operating effect. It appears that S.J.R. 17 provided for the repeal of this section, but for some reason it was not passed. Evidently when S.J.R. 41 was drafted, the expectation was that S.J.R. 17 would be passed by the Legislature, since it was non-controversial, and be referred to the voters.

If S.J.R. 41 is approved by the voters, there will be two sections 2 in Article XIV. This is not a new problem, since a few years ago, two Constitutional amendments designated new Articles of the Constitution as Article XI-F. By legislative resolution one has been designated XI-F(1) and the other XI-F(2).
property, the Board may sell or dispose of such property at the best terms obtainable. The net proceeds of any such sale would be credited to the general fund of the State.

If a hospital is discontinued entirely as a state tuberculosis hospital, the Board may use any unspent and unobligated appropriation previously made for the operation and maintenance of the hospital in the operation and maintenance of the state institution designated to replace the discontinued hospital. If a hospital is discontinued in part as a state tuberculosis hospital, the Board shall determine how much of any unspent and unobligated appropriation made previously shall be retained for the operation and maintenance of the remaining part of the tuberculosis hospital, and the Board is authorized to use only the remainder for the cost of operation and maintenance of any state institution designated to replace the part discontinued.

MEDICAL BACKGROUND

The continuing decrease (12½% to 20% a year) in bed population of the tuberculosis hospitals of Oregon over the past few years has made it apparent that the existing number of tuberculosis hospitals could be safely and advantageously consolidated or reduced. This viewpoint is shared and supported by recognized private and official tuberculosis authorities throughout the state.

The current tuberculosis bed capacity, which totals approximately 683, is concentrated mainly in three hospitals: Oregon State Tuberculosis Hospital at Salem (250 beds), Eastern Oregon State Tuberculosis Hospital at The Dalles (160 beds), and University State Tuberculosis Hospital at Portland (80 beds). The beds that remain are in the Veterans Hospital, Multnomah County Convalescent Hospital at Troutdale, and Portland Isolation Hospital. Actual bed occupancy in the state hospitals at the present time—about 300—is such that a concentration of patients could be accomplished readily, it is believed, in two of the three mentioned state institutions. Four years ago there was a minimum bed occupancy of eleven months duration. It is now six months or less.

It appears that the decline in bed occupancy has been a result of several factors in a more effective tuberculosis control program, including:

a. Intensified case finding, including wide-scale use of x-ray.

b. Prompt and effective isolation and treatment.

c. New methods of chemotherapy—Isoniazid, Para-Amino-Salicylic Acid (PAS) and Streptomycin.

d. Improvement in surgical techniques and anaesthesia.

An analysis of the trend of tuberculosis in all age groups for the past ten years provides a trustworthy index for predicting the incidence of new cases, reactivated old cases, total number of persons infected (but not necessarily active), and also for anticipating the total number of hospital beds that will be required in the future.

For the next ten years it is estimated that the total active cases registered annually will approximate 500, as compared to 593 in 1956, for example. Approximately 90% of each year's crop of new cases will require hospitalization. Those not hospitalized, and patients who have completed their hospital stay, will need public health surveillance and medical supervision. An adequately-manned travelling tuberculosis clinic dispatched by the state to assist county health departments and private physicians at the local level will facilitate more efficient supervision and control of the post-sanatorium cases as well as earlier diagnosis of suspects.

Continued diligence in the control of tuberculosis in the future will be necessary since, although the death rate has dropped rapidly from 22 per 100,000 in 1946 to 4 per 100,000 in 1956 (or 270 cases to 70 cases), ranking Oregon the eighth lowest in the nation, the decline in morbidity has been relatively slower, from 51.7 per 100,000 in 1946 to 34.2 in 1956 (or 697 cases to 593 cases). In fact, the 578 new cases of tuberculosis registered in Oregon in 1957 represent only a 2½% drop from the 593 new cases reported in 1956. This slight contraction in the number of new cases is a continuation of the trend that has been reported annually in the past 15 years. It is believed that this slow drop may be accentuated in the future through new medical discoveries and techniques, and with fewer desperate cases, much of the previous load on the state could be advantageously transferred to the county level as indicated above.

The closing of one of the state hospitals at this time will provide savings for the taxpayer through more efficient and economical operation of facilities that would be used to full capacity. At the present time, the existing available beds are only partially in use in each of the hospitals, while the hospital must still be subject to routine basic
costs of operation. In addition, closure or discontinuance of one of the present tuberculosis units will make available its facilities for other vital community medical needs. These might include facilities for a general hospital to care for geriatric patients, medically indigent, terminal cancer patients, the convalescent or chronically ill. In Salem, the Fairview Home for retarded persons needs additional facilities for retarded persons who are committed to that institution but who have to wait sometimes over two years for admission. Spastic children and alcoholics also are in need of more adequate facilities for their care and rehabilitation.

**QUESTIONS OF FUTURE USE OF STATE TUBERCULOSIS HOSPITALS**

The over-all tuberculosis control programs of the Oregon State Board of Health have carefully reflected the needs and requirements of this state. The Board now generally concludes that in the immediate and foreseeable future there can be a safe consolidation of state tuberculosis hospitals to effect a significant saving to the Oregon taxpayer.

While there is general agreement among those interviewed by your committee that one of the three tuberculosis hospitals could be closed now, (') disagreement was found in regard to which it should be.

The Advisory Committee on Tuberculosis Institutions to the Oregon State Board of Control, in its report of April 17, 1958, recommended that the tuberculosis hospital in Marion County near Salem be closed and tuberculosis patients cared for at hospitals in The Dalles and Portland. The Oregon Tuberculosis and Health Association and the Oregon State Board of Health favor closing of the hospital at The Dalles.

Your committee unanimously agreed that the complexities in regard to which hospital should be closed and to what use such a facility might be put was outside the scope of its inquiry. The question of the merit of the proposed legislation does not require a determination of which hospital should be closed. The question of which hospital could be closed and what other utilization could be made of its facilities is a complex and technical question which should occupy the attention of a long-time study committee of the City Club.

**CONSTITUTIONAL QUESTIONS REGARDING CHAPTER 695**

The question has arisen whether the delegation of the authority by Chapter 695 to the Board of Control is not an unconstitutional delegation of power by the State Legislature. The Attorney General has ruled in an opinion of April 24, 1958 that, whether or not the proposed amendments to Article XIV of the Oregon Constitution, as discussed above, are approved by the voters at the November, 1958 election, the Board of Control cannot validly exercise the authority purportedly delegated to it by Chapter 695. He believes the Act is unconstitutional.

The Attorney General's opinion states that there are at least two constitutional issues apparent:

"First, can the Legislature or the people delegate the power to the Board of Control, in its uncontrolled and unguided discretion, to discontinue a state institution which has been located by the people and second, can the Legislature, by an act referred to and approved by the people, delegate authority to the Board of Control not only to discontinue all or a portion of the use of either or both of these hospitals, but in addition designate them or a portion thereof to be used by the Board or another state agency or operate the same for a different state institutional use, without submitting the change of use to the voters."

The Attorney General's opinion states that it is well established that the Legislature cannot delegate to an administrative agency the power to legislate and that the power to locate state institutions is expressly given to the Legislative Assembly, subject to the approval or disapproval of the electors of the State, by Article XIV of the Oregon Constitution.

(') It is predicted that in another ten years, all TB patients may be concentrated in one hospital.
The Attorney General’s opinion concludes:

“I wish to reiterate that in my opinion the location and continued maintenance of a state institution outside Marion County is a legislative and not an administrative or executive concern. The Legislature may, however, delegate to administrative or executive agencies the power not only to make rules and regulations but to make factual determinations upon which happening the invocation or force of the law may be brought to bear. Foeller v. Housing Authority of Portland, (1953) 198 Or. 205, 264.

“However, our Supreme Court has repeatedly expressed itself in clear and unambiguous terms that with any such delegation the Legislature must establish standards or channels to guide the executive officers in making their determinations. Ibid; Demers v. Peterson (1953), 197 Or. 466, 470. If the Legislature itself had declared the use of these institutions discontinued upon a finding by the Board of Control of certain facts or conditions, then a materially different question would be presented. Bailey v. State Board of Public Affairs, (1944) 194 Okla. 495, 153 P. (2) 235. However, in leaving this essentially legislative decision to the absolute and uncontrolled discretion of the Board of Control, the Legislature has in effect attempted to delegate to the Board the power to repeal the Acts of 1926 and 1934, which, as approved by the voters, located these tuberculosis hospitals in the affected counties. This, in my opinion, the Legislature cannot constitutionally do.”

It further states that the proposed amendments to Article XIV of the Oregon Constitution, if approved by the voters, would make no difference on this question since such proposed amendments leave the duty with the Legislative Assembly to alter, reduce, enlarge or terminate the use or purpose of any public institution located outside Marion County at any time after ten years from the date of the general election at which the location of the institution outside Marion County was ordered. This simply eliminates the necessity of referring the proposed change to the electors.

As the Attorney General’s opinion suggests, only the Supreme Court has the power to declare a law unconstitutional. Nevertheless an act of the legislature when it is referred to the people is treated as a “bill” and the Attorney General is required, as he was in this instance upon the request of a member of the Legislature to give his opinion on the potential constitutionality of such a measure if it were to be adopted.

ARGUMENTS FOR CHAPTER 695, OREGON LAWS 1957

1. As the Executive Branch of the government which is intimately concerned with the day-by-day operation of our state institutions, the Board of Control is in a better position than the Legislature and the voting public to determine the method by which these institutions can best meet the needs of persons requiring institutional care.

2. As the need for beds for tuberculosis cases declines further, only one hospital will be needed and this should be in Marion County where the largest hospital and staff with an extensive out-patient program is now located.

3. If an attempt is made to persuade the voters to vote for S.J.R. 41 and against Chapter 695, the public will become confused and may turn down both measures.

ARGUMENTS AGAINST CHAPTER 695, OREGON LAWS 1957

1. This measure is of doubtful constitutionality, as pointed out by the Attorney General’s opinion.

2. There is at present disagreement among various groups in the state as to which tuberculosis hospital should be closed, and until this is resolved, it will not be known if this is the measure which is appropriate. As it is doubtful that the Board of Control has the power without additional legislative authorization to close or otherwise utilize the tuberculosis hospital in Marion County, this measure would give it more power over the tuberculosis hospitals outside of Marion County than over the tuberculosis hospital in Marion County.

3. S.J.R. 41 will fill the need of changing institutional functions outside of Marion County, without raising the question of constitutionality.

4. Changes in institutional functioning will not be so rapid that the Legislature cannot take care of needed changes at its biennial sessions.

5. If at some future date it is decided that it is desirable to give the Board of Control (or Governor) the power to change functions of various institutions outside
of Marion County, the Legislature should set up specific criteria on how this is to be done so that the executive department is following a legislative directive rather than exercising legislative power.

CONCLUSION

Your committee felt that the arguments pointing out the doubtful constitutionality of this Act, and the unsound policy giving the Board of Control power to discontinue state institutions without guiding directives outweighed the arguments for this measure. Furthermore, the desirable objectives of this measure would be achieved by the passage of Measure No. 8.

RECOMMENDATION

Your committee unanimously recommends a "no" vote on Measure No. 12, the referendum (Authorizing Discontinuing Certain State Tuberculosis Hospitals), on passage of Chapter 695, Oregon Laws, 1957.

Respectfully submitted,

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

Received by the Board of Governors September 22, 1958, and ordered printed and submitted to the membership for discussion and action.

Appendix A

INSTITUTIONS REPORT

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3. Attorney General's Opinion on S.J.R. #41, #4018 Dated 4-24-58
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6. "Recommendations for Use of Vacant Tuberculosis Beds"
   Reprint from November 1957 issue of American Review of Tuberculosis and Pulmonary Diseases
7. Resolution of Oregon State Health Officers Association, June 20, 1958
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