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State Measure No. 7 Special Grand Jury Bill; Constitutional Amendment Authorizing Certain Temporary Appointments and Assignments of Judges (State Measure 9); Financing Urban Redevelopment Projects (State Measure 5)

City Club of Portland (Portland, Or.)

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REPORT ON SPECIAL GRAND JURY BILL STATE MEASURE NO. 7

The Committee: Roger Bachman, John F. Cramer, Jr., Ross H. Hughes, Philip A. Levin, Carl M. Saltveit, and Jack Hoffman, Chairman.

REPORT ON TEMPORARY APPOINTMENT AND ASSIGNMENT OF JUDGES STATE MEASURE NO. 9


REPORT ON FINANCING URBAN REDEVELOPMENT PROJECTS STATE MEASURE NO. 7

The Committee: Archie E. Woodliff, Kenneth Todd, Volney Pratt, Arthur Markowitz, Paul Boley and George S. Woodworth, Chairman.

"To inform its members and the community in public matters and to arouse in them a realization of the obligations of citizenship."
REPORT
ON
STATE MEASURE NO. 7
SPECIAL GRAND JURY BILL

AN AMENDMENT TO THE OREGON CONSTITUTION authorizing the Legislature to enact laws permitting the calling of a special grand jury.

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

ASSIGNMENT

Your committee was appointed to study and report on the proposed amendment to the Oregon Constitution relating to special grand juries.

LEGISLATIVE HISTORY

This amendment was proposed by the Regular Session of the 1957 Oregon Legislature and was referred to the people for their approval or rejection in the general election to be held in November of 1958. Not a single vote was cast against this measure in either the House or Senate.

SCOPE OF INVESTIGATION

The committee interviewed Presiding Judge Charles W. Redding of the Circuit Court for Multnomah County, Leo F. Smith, District Attorney for Multnomah County and Robert Y. Thornton, Attorney General for the State of Oregon. In addition, the committee corresponded with the following persons: State Senator Carl H. Francis, who introduced this proposal in the Legislature; State Senator Warren Gill and State Representative Robert B. Duncan, Chairmen of the Senate and House Committees that considered this proposal; Winston L. Bradshaw, District Attorney for Clackamas County; Hattie J. Bratzel, District Attorney for Marion County; Francis W. Linklater, District Attorney for Washington County. The committee also examined pertinent portions of the House and Senate calendars, opinions of the Oregon Supreme Court and other relevant material.

WHAT THE AMENDMENT WOULD DO

This amendment to the Oregon Constitution would authorize future legislation setting up a procedure whereby more than one grand jury could function simultaneously in the same county. The Constitution as it now stands permits only one grand jury at a time in a county, and thus prevents the enactment of such legislation.

This is the only substantive change in the law contained in the proposed amendment. If the people adopt the proposed constitutional amendment, it will be necessary for the Legislature to enact appropriate statutes authorizing such procedure before more than one grand jury can actually be empaneled in a county. Such statutes could and perhaps should include conditions and limitations on the use of additional or special grand juries. This committee did not attempt to consider what conditions and limitations, if any, should be a part of the special grand jury procedure, as those questions are not before the people at this time. The committee limited itself to the precise question before the electorate, which is whether the Legislature should be empowered to create, if it sees fit, a procedure under which more than one grand jury could be utilized in a county at the same time.

The amendment also makes a purely formal change by consolidating into Section 5 of Amended Article VII of the Constitution the somewhat similar provision of Section 18, Original Article VII, and repealing the latter mentioned provision, thus eliminating some measure of duplication and confusion from the Constitution.
GENERAL BACKGROUND

It is important to keep in mind in considering this proposal that the grand jury is not the jury that participates in the trial of lawsuits, and decides the guilt or innocence of the accused in criminal cases. This more glamorous role is performed by a petit jury, sometimes called the trial jury. There is no constitutional limitation on the number of trial juries that may sit at the same time in a county, and it is common practice in Multnomah County and some of the other more populous counties of the state to have several trial juries sitting at the same time hearing different lawsuits.

The grand jury investigates, with the advice and assistance of the District Attorney, and where it finds reasonable cause to believe that an individual has committed a crime it indicts that individual. If the accused pleads not guilty to the indictment, then the case is tried in court of law before a judge and a trial jury.

In a number of states, either in conjunction with or in lieu of the grand jury procedure, the District Attorney or his counterpart can bring persons to trial on criminal charges whenever he in his discretion deems that sufficient cause exists. However in Oregon, with certain exceptions, a person cannot be tried for a crime except upon an indictment agreed upon by at least five of the seven members of a grand jury.

MULTNOMAH COUNTY VICE INVESTIGATION

The single grand jury system operated without great difficulty in Oregon until the Multnomah County vice investigation, which began in 1956. At that time serious accusations were made against the District Attorney, the Sheriff and other public officials in Multnomah County, and Governor Smith assigned Attorney General Thornton to take charge of the investigation. At first the Attorney General and the District Attorney were each permitted to have the grand jury part of the week, but this proved unworkable, and later the Attorney General was given full use of the grand jury. Because of the magnitude and complexity of the vice investigation, it proved to be impossible for one grand jury to handle the special vice investigation in addition to the normal volume of criminal matters. Priority was given to the vice investigation and other criminal matters got further and further behind.

When Leo Smith took office as District Attorney in May of 1957 there were prisoners in jail who had been arrested the preceding November and whose cases had not yet been presented to the grand jury. This should be contrasted with the present, normal situation in Multnomah County where persons arrested appear before the grand jury within a week or ten days after being arrested at the longest, and sometimes within one or two days.

COMMENT

In a free society such as we enjoy in this country, there can be no justification for a procedure under which it is possible for a person to spend several months in jail before the evidence against him can be considered to determine whether or not it warrants an indictment. The Legislature is powerless to remedy the situation by enacting a special grand jury procedure unless this amendment to the Constitution is adopted. When our state was less populated, and crimes were correspondingly less in number, the single grand jury system was able adequately to cope with all situations in all counties, but the Multnomah County vice investigation vividly demonstrated that at least in a county with the present population of Multnomah County, the single grand jury system can break down completely in an emergency.

The committee was unable to find any opposition to this amendment. The suggestion was made to the committee that there is a possibility that an unscrupulous person might gain control of the special grand jury and use it for political purposes, but a similar possibility necessarily exists as to the regular grand jury, and the committee feels that the Legislature can be relied upon to draw up the special grand jury procedure in such a way as to minimize this possibility. The fact that the Legislature approved this proposed constitutional amendment without a single negative vote demonstrates the non-partisan character of the proposal.

It is not unlikely that another time will come in this state when it will again be necessary for a grand jury to undertake an extended and time-consuming investigation. We should take steps now to see that when that time comes we have a system that can accommodate simultaneously the extended investigation and routine criminal matters. The first step is the approval of this constitutional amendment.
RECOMMENDATION

Your committee recommends that the City Club go on record as favoring the special grand jury constitutional amendment.

Respectfully submitted,

ROGER A. BACHMAN
JOHN F. CRAMER, JR.
ROSS H. HUGHES
PHILIP A. LEVIN
CARL M. SALTVEIT, JR.
JACK L. HOFFMAN, Chairman

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REPORT
ON
CONSTITUTIONAL AMENDMENT
AUTHORIZING CERTAIN TEMPORARY
APPOINTMENTS AND ASSIGNMENTS OF JUDGES
(STATE MEASURE No. 9)

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

The proposed amendment to the Constitution of Oregon under consideration would add the following section to Article VII:

"Section 2a. The Legislative Assembly or the people may by law empower the Supreme Court to:

"(1) Appoint retired judges of the Supreme Court or judges of courts inferior to the Supreme Court as temporary members of the Supreme Court.

"(2) Appoint members of the bar as judges pro tempore of courts inferior to the Supreme Court.

"(3) Assign judges of courts inferior to the Supreme Court to serve temporarily outside the district for which they were elected.

"A judge or member of the bar so appointed or assigned shall while serving have all the judicial powers and duties of a regularly elected judge of the court to which he is assigned or appointed."

SOURCES OF INFORMATION

Interviewed by the committee were Randall B. Kester, formerly a Justice of the Supreme Court of Oregon, presently in private legal practice; Gunther F. Krause, Attorney, and Chairman of the Legislative Interim Committee on Judicial Administration; Paul A. Sayre, Attorney, and Jonel C. Hill, Administrative Assistant to the Chief Justice, Supreme Court of Oregon. In addition, the annual administrative reports relating to the circuit courts of the State of Oregon were studied and several members of the bar were interviewed informally by members of the committee.

BACKGROUND OF MEASURE

The proposed amendment is in part intended to give additional sanction to procedures presently exercised, namely the temporary assignment of circuit judges to judicial districts other than their own and the appointment of members of the bar as temporary circuit judges (judges "pro tem" in the vernacular); and further to permit the temporary appointment to the Supreme Court of retired Supreme Court judges and also circuit court judges, the latter practice having been held to be unconstitutional under the present Constitution of Oregon. Actually, the amendment would not be self-exercising but merely would give the Legislature authority to empower in turn the Supreme Court to make the temporary assignments and appointments mentioned.

The temporary appointment and reassignment of circuit judges by the Chief Justice was authorized to help the courts work out temporary overloads. The volume of work constantly varies; hence, the normal complement of judges in a particular court may at times be inadequate to keep up with the load. Also, the regularly appointed judge or judges of a court may be incapacitated for a period because of illness. The result in either instance is delay to litigants unless some means can be provided to supply extra judges when required. An often repeated maxim is that "justice delayed is justice denied."

The use of circuit judges on the Supreme Court was authorized by the Legislature in 1953 (ORS 2.060) but was held to be unconstitutional in State ex rel Madden v. Crawford, 207 Or 76 (1956). The same Legislature also authorized the temporary reassignment of circuit judges and temporary appointment of members of the bar as judges of the circuit courts (ORS 3.100 and ORS 3.105, respectively). The constitutionality of these latter provisions has not been tested but is under some question in view of the fate of ORS 2.060. Thus, it is now proposed to amend the Constitution to authorize the Legislature to empower the Supreme Court to continue the three practices.
ARGUMENTS FOR

As mentioned above, the work load of the courts is constantly varying and regular judges may be incapacitated for one reason or another which may create delays in disposing of cases pending before a court. The use of pro tem judges and reassignment of judges is proposed for the purpose of providing temporary help when it is needed by a court. It is not intended that temporary judges can be used as a substitute for permanent judges where a permanent increase in a court’s business will justify a permanent judge.

At the present time, the dockets of all of the circuit courts of Oregon are reasonably current. The use of pro tem judges and the reassignment of judges in the past five years is credited as being primarily responsible in their being current. Only the continued use of these practices, it is felt, will keep the courts up to date.

The Supreme Court, on the other hand, is about two years behind in its work. The normal increase in volume of work has brought about efforts to increase the number of judges in the Supreme Court so that it may keep up with its increased volume of cases. The further problem of catching up remains. The use of temporary judges in the Supreme Court is advocated primarily for this purpose. However, their use would also help the court in the future whenever the load begins to get out of hand.

Statistical studies indicate that decisions of pro tem circuit judges have been appealed in about the same ratio as those of regular circuit judges and the ratio of affirmances to reversals is also almost identical.

ARGUMENTS AGAINST

Opposition to the proposed Constitutional amendment is centered on the authorization of members of the bar to sit as judges pro tempore in the circuit courts. Minor objection has been voiced to the use of circuit judges as temporary members of the Supreme Court, but no objection was mentioned to the assignment of circuit judges to serve temporarily outside the district for which they were elected.

Objection to the appointment of members of the bar as judges pro tem is based mainly upon the long established ethical rule that a judge shall not practice law. It is felt that this rule would be infringed since a lawyer temporarily appointed to a judgeship could not completely disassociate himself from his regular practice.

It is also felt that the use of appointed judges is contrary to another section of the Constitution of Oregon, Article 7, Section 1, which provides that judges shall be elected.

Further, it is feared that practicing lawyers temporarily acting as judges could not throw aside the prejudices and perhaps one-sided views they may have developed as advocates.

Another objection leveled is that a lawyer who sat as a judge one day and appeared as counsel the next might unconsciously be favored by the judge with whom he had shared the bench just the day before.

While in general previous appointments of pro tem judges were approved by persons interviewed, objection was voiced that certain of the appointees in the past have not been qualified.

Also, it was felt that certain individuals have sought pro tem appointments as a stepping stone to election to the bench.

In addition, it was pointed out that no other state uses pro tem judges.

DISCUSSION

The committee has carefully considered the arguments for and against the amendment, and it is the committee’s conclusion that the merits outweigh any negative factors.¹

¹ Third Annual Administrative report relating to the Circuit Courts of the State of Oregon.

² The Oregon State Bar in its 1957 Convention endorsed the proposed amendment, and in its 1958 Convention just adjourned, approved enabling legislation under this amendment.
As indicated earlier, no opposition whatsoever was found to paragraph (3) of the amendment authorizing judges of inferior courts to be assigned temporarily to serve outside the district for which they were elected. The only objection noted to paragraph (1), authorizing the temporary appointment to the Supreme Court of retired Supreme Court judges and judges of inferior courts, was a suggestion that this might result in a lower quality of work. Our subsequent discussion will, therefore, be directed to the arguments concerned with paragraph (2) relating to the temporary appointment of lawyers as judges pro tem in the lower courts.

First of all, it must be observed that pro tem judges have been used in the lower courts for five years with apparently excellent results. As indicated previously, the appeal record on cases tried before pro tem judges is about identical with that of cases tried before regular trial judges.

It would appear that some conflict in the Constitution would occur if the present measure is passed permitting appointment of temporary judges, since Article 7, Section 1, stipulates that judges shall be elected. Perhaps it would have been preferable if an appropriate amendment to Article 7, Section 1 had been included. Nevertheless, it is felt that by rules of statutory interpretation the proposed amendment, if passed, would be controlling.

Though the basic ethical principle that one who acts as a judge shall not also appear as an attorney is incorporated in the Oregon Statutes (ORS 1.220), this law is, of course, subject to change if it would conflict with the Constitution if amended.

The purpose of the principle is to assure that a judge's views will be as impartial as possible and not prejudiced by a client's interests. However, it is not believed that lawyers appointed as pro tem judges would permit their prejudices to control their decisions. Your committee has faith that most men are basically fair-minded, and it believes it reasonable to assume that lawyers sitting temporarily as judges would strive to the utmost to be impartial. Moreover, any litigant who fears a judge pro tem assigned to hear his case may not be impartial can move that the judge pro tem can be disqualified. The wide acceptance by lawyers of pro tem judges in the last five years indicates the bar's general faith in their impartiality.

The observations made above are believed applicable to the objection that a regular judge may unconsciously favor the lawyer who may have sat with him as a judge not long before. Permanent judges often try cases with no apparent favoritism where one of the lawyers has been a close personal friend of long standing. Though the amendment under consideration places no limitations on the place of appointment, it has been the practice in the past to appoint attorneys as pro tem judges in courts other than those in which the attorney generally practices, unless the appointed attorney has retired from active practice. The wisdom of this practice is so apparent that your committee has no doubt it will be followed in the future and the feared situation should seldom arise.

A serious objection made is that certain appointees in the past have not been qualified. The objection, however, appears centered on a very few individuals who were appointed during the initial use of pro tem judge and general, if not universal, satisfaction was expressed with those who have served as pro tem judges since that time. The situation does, however, serve as a warning that the selection of pro tem judges must be carefully considered to assure that the appointees are fully competent. It should be noted that under the measure the appointments will be made by the Supreme Court, whereas under the present law the appointments are being made only by the Chief Justice. The selection by the entire court should result in adequate screening.

That attorneys may utilize pro tem appointments as stepping stones to a permanent appointment is in the eyes of your committee not necessarily a fault of the system. A pro tem appointment will disclose an appointee's abilities and give an opportunity not otherwise possible to assess his capabilities as a judge.

Although Oregon is at present the only state utilizing lawyers as judges pro tem in the trial courts, other states have shown an interest in the procedure as a possible solution to the congestion in their own courts. Furthermore, there is no indication that the idea has been considered and rejected by any other state.

It may be observed in passing that pro tem judges have not been assigned to criminal cases in the past. This appears to your committee a practice to be commended and one that it is hoped will be continued.

In summation, it appears to your committee that the use of assigned and temporary judges, which would be permitted under the proposed Constitutional amendment, would
not impair the rights of any litigant to a fair trial and impartial hearing. Your committee believes it would, instead, give litigants greater assurance of a speedy trial and would help the courts "catch up" and "keep up."

RECOMMENDATION

Your committee recommends that the City Club go on record as favoring the proposed Constitutional amendment and urges a vote of "No. 9 Yes."

Respectfully submitted,

HOWARD E. ALLEN, M.D.
STANTON W. ALLISON
RALPH W. BASSETT
KENNETH KLABQUIST, Chairman

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REPORT
ON
FINANCING URBAN REDEVELOPMENT PROJECTS
(STATE MEASURE No. 5)

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

This is a proposal to amend the Constitution of the State of Oregon to provide an additional method of financing urban renewal. It creates a new section to be added to and made a part of Article IX. The new section is to read as follows:

“Section 1c. The Legislative Assembly may provide that the ad valorem taxes levied by any taxing district in which is located all or part of an area included in the redevelopment or urban renewal project may be divided so that the taxes levied against any increase in the true cash value as defined by law of property in such area obtaining after the effective date of the ordinance or resolution approving the redevelopment or urban renewal plan for such area shall be used to pay any indebtedness incurred for the redevelopment or urban renewal project. The Legislature may enact such laws as may be necessary to carry out the purposes of this section.”

The purpose of the proposed amendment is set forth in the official ballot title as follows:

“Makes possible for property taxes levied against property included in an urban redevelopment or renewal project to be divided so that taxes levied against any increase in value of such property shall be used to pay any indebtedness incurred in carrying out the project.”

Because this measure is an enabling act of long range and statewide significance, the committee did not direct its study to any specific plan. Instead it concentrated on the general provision that the increased taxes brought in by improvement through urban renewal should be used to pay indebtedness incurred on the urban renewal project.

The committee found neither organized opposition nor voluntary vocal opponents to this measure during its study. The measure was discussed in interviews with Mr. Herman Kehrli, Executive Secretary of the League of Oregon Cities; Mr. Walter W. R. May, editor of The Oregon Voter; Mr. John Kenward, Executive Director of the Portland Development Commission; Mr. Verne Dusenbery, legal counsel for the Housing Authority of Portland, and Miss Marian Rushing, Deputy City Attorney of Portland.

Mr. Kehrli and Mr. May are members of a three-man committee selected to write an explanation of the proposal for publication in the Oregon Voters Pamphlet. Mr. Dusenbery gave counsel and advice in the drafting of the proposed amendment.

BACKGROUND

This measure, if approved, would provide the means for an additional method—over and above direct taxation, sale of property and general obligation bonds—of allaying the local costs of an urban renewal project. This additional method would be available to all municipalities within the state, but no municipality would be required to use this method of financing their redevelopment project. Any statute which the Legislature might enact under this enabling legislation would not be self-enacting; any plan would have to be submitted to the voters before bonding obligations of any nature could be incurred.

The enabling statute would give specific authority to the taxing body to turn over to the Urban Redevelopment Commission that portion of the tax resulting from the increase in property valuation after redevelopment for the purpose of meeting the local costs of the project. This would not involve a change in the method of levying and assessing taxes on the property, but simply provide for division of the tax money after collection.

The division of taxes levied on redeveloped property would be determined as follows: The value of the property in the redevelopment area would be ascertained at
the time the urban renewal plan was approved. After the redevelopment cycle, that portion of the tax allottable to the value as established on approval of the plan would be distributed to the taxing bodies in the usual manner. The remainder of the tax funds (resulting from the increased valuation) would be used to pay off the local costs of the project. After such costs have been retired, all tax funds would be distributed in the usual manner.

It should be understood that the portion of the taxes going to pay for the local cost of such a program would actually be going to retire income-type bonds which would be sold to finance the redevelopment initially. This particular type of bond has been referred to as a Tax Allocation Bond. Tax allocation bonds originated in Sacramento, California, in 1956. The California constitution was amended to permit tax allocation bonding; legislation was enacted to permit the allocation of taxes; the bonds were given approval by the Bond Counsel employed by the City of Sacramento, and thereafter a bond issue was successfully marketed. So far as your committee was able to determine, the Sacramento issue is the only one marketed to this time.

CONSIDERATIONS

In any urban renewal program there is a period between acquisition of the blighted property and its resale when the property under redevelopment is removed from the tax rolls and all municipal agencies are thereby deprived of revenue from such property for this period. This measure would provide that once the property is restored to the tax rolls, there is a ceiling on the tax revenues realized by the other agencies for the time required to retire the indebtedness incurred in redevelopment.

It must be recognized that, in part, the long range objective of redevelopment is to prevent the loss of income due to a decline of value in blighted areas. The increased value of the renewed area will, it is contemplated, ultimately make up for the taxes lost during the demolition and reconstruction period. In addition, the other agencies are guaranteed a base for tax revenue during a period which otherwise would be subject to decline in value. While the increased revenues are temporarily withheld from the taxing bodies, such revenues would have been non-existent but for the redevelopment.

The tax allocation bonds payable solely out of increased taxes derived from the project area will necessarily require payment of higher interest rates than would general obligation bonds; therefore, it is an expensive means of financing. Since there is no guarantee as to the degree of appreciation in the redevelopment area, the bonds are somewhat speculative and may be difficult to market, and unless an area enjoys a favorable credit rating, the bonds will not be attractive to prospective purchasers.

The Federal Housing and Home Finance Agency will finance two-thirds of the project cost; the other one-third must be raised by the community. Since cities and towns are usually hard-pressed for funds, the difficulty of raising the local community's share is the chief obstacle to progress in the urban renewal field. While the tax allocation bond method may be the most expensive, it may be the only means by which the municipality can take advantage of renewal opportunities. Experience as to appreciation of property value within the development area has been favorable. In fact, reports from other communities with urban renewal projects have shown 25% to 33-1/3% of improvement cost has been met from resale of the property.

There is some question as to whether the Legislature needs the authority of this amendment to enact the enabling legislation. It is suggested that the power to levy taxes and to make use of the proceeds for the public's benefit is inherent in existing law.

In Oregon there is precedent for seeking the basic authority in matters of this nature. An example of this is in the use of constitutional amendment procedures in the collection and allocation of gasoline and highway use taxes (Article IX, section 3, Constitution of Oregon). In addition, the State of California obtained constitutional authority before enactment of legislation for the disposition of taxes on urban renewal properties. Another consideration is that specific constitutional authority would strengthen the marketing of tax allocation bonds.
CONCLUSIONS

The committee feels that the mechanics and mathematics of this method of financing are easily understood and appear financially sound in all respects. A question had been raised as to whether enactment of the amendment would permit the issuance of bonds without further authority from the electorate. It is our conclusion that no such blanket authority is contained in the proposed amendment nor is such broad authority likely to appear in any legislation enacted pursuant to authority under the proposed amendment.

An indication of the type of statute, the formalities and procedures, which would afford the checks and balances preceding the issuance of tax allocation bonds may be found in House Bill 781, introduced in the last Legislative Assembly, but not voted upon.

RECOMMENDATION

The committee therefore recommends that the City Club of Portland go on record in favor of the proposed amendment and urge a vote of 5 X Yes.

Respectfully submitted,

ARCHIE E. WOODLIFF
KENNETH TODD
VOLNEY PRATT
ARTHUR MARKEWITZ
PAUL BOLEY
GEORGE S. WOODWORTH, Chairman

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