10-28-1960

Report on Docks Development Bonds (Municipal Measure No. 57); Special Tax for Traffic Signalization, Facilities (Municipal Measure No. 54) and Special Tax for Grade Separations (Municipal Measure No. 53), Report on Personal Income Tax Bill (State Ballot Measure No. 14), Report on Permitting Prosecution by Information or Indictment (State Ballot Measure No. 4)

City Club of Portland (Portland, Or.)

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REPORT

ON

DOCKS DEVELOPMENT BONDS

(Municipal Measure No. 57)

Charter amendment authorizing general obligation bonds not exceeding $9,500,000 to finance construction, reconstruction, acquisition, improvement, development and equipment of Commission of Public Docks property and facilities to serve maritime commerce, creating special fund.

TO THE BOARD OF GOVERNORS,

THE CITY CLUB OF PORTLAND:

ASSIGNMENT

Your Committee was asked to study and report on a municipal ballot measure for harbor facilities rehabilitation and modernization by a charter amendment which would read as follows:

AN ACT to amend an Act of the Legislative Assembly of the State of Oregon, entitled: "An Act to incorporate the City of Portland, Multnomah County, State of Oregon, and to provide a charter therefor, and to repeal all acts or parts of acts in conflict therewith," filed in the office of the secretary of state January 23, 1903, as subsequently amended by said Legislative Assembly and by the people of the City of Portland from time to time, and as recodified, revised, arranged and annotated pursuant to Ordinance No. 78832, by adding thereto a new section to be numbered Section 11-804 authorizing issuance of general obligation bonds, payable not more than thirty years from date of issuance, in a total sum not exceeding $9,500,000 and providing other matters relating to the issuance of said bonds, for the purpose of providing facilities and services for maritime commerce and shipping by the construction, reconstruction and/or acquisition of harbor improvements and facilities, creating a special fund and authorizing the Commission of Public Docks to expend money from said fund for said purposes.

NATURE OF THE COMMISSION OF PUBLIC DOCKS

The Commission of Public Docks was created by the City of Portland by amendment to the city charter in 1910, to foster and protect maritime commerce in and out of the city's harbor. The Commission itself is a board of five members who are appointed by the Mayor and serve without pay. The commissioners select an executive head as a general manager who administers the Commission's affairs.

The purpose of the Commission is two-fold: First, to provide and maintain adequate marine terminal facilities (dock, cranes, etc.) and, second, to promote and develop traffic through the port. In addition, the Commission has the responsibility of protecting the City's interest in the entire waterfront.

The Commission operates three separate terminal properties: Terminal No. 1, at 2100 N.W. Front Avenue; Terminal No. 2, 3630 N.W. Front Avenue, and Terminal No. 4, foot of N. Burgard Street. General offices of the Commission are at 3070 N.W. Front Avenue. Facilities at these places include berths for ocean-going vessels, pier warehouses, open areas, railroad spurs, cranes and other mechanical loading and unloading equipment. There is one floating crane for exceptionally heavy lifts. The Commission has property adjacent to the docks for lease to industry.

Aside from a tax levy of one-tenth of one mill (About $70,000 per annum), no public money is available for operating funds, and the Commission must rely on its revenues from wharfage and other charges. In May 1954, the voters of Portland authorized a $6,500,000 general obligation bond issue which, with a previous $2,000,000 revenue bond issue and the Commission's reserves, provided the Commission with more than $9,000,000 for modernization and improvement of its harbor facilities. Some existing docks were rebuilt or modernized, facilities were expanded, and many new facilities (such
as the bulk cargo pier) were added, giving Portland one of the most modern and efficient harbors on the Pacific Coast.

After all receipts from taxes and operating revenues, and all charges both in debt service and to operations, there is approximately only $300.00 currently, and this is insufficient to make the major capital expenditures required.

There are several maritime activities relating to harbor development and port operation in this area. This measure concerns only the Commission of Public Docks which is not to be confused with the Port of Portland, a separate entity.*

PREVIOUS CITY CLUB REPORT ON BOND MEASURE OF 1954

At the City Club meeting of May 14, 1954, a City Club Committee chaired by Clarence W. Walls reported on a ballot measure sponsored by the Commission of Public Docks and asking for $6,500,000 in bonds. Proposed plans of the Commission at that time were based upon a survey of 1952 made by Holbrook and Walstrom which resulted in a long range program of improvement and development to cost approximately $12,335,000, of which $600,000 would be supplied from current funds of the Commission and an additional $1,500,000 anticipated from future revenues. Total long range cost to the taxpayers at that time was estimated not to exceed $10,200,000. The total program was divided into three phases: First amounting to about $7,095,000; the second amounting to about $3,711,000; and the third to about $1,529,000. At that time, upon advice of the Multnomah County Tax and Conservation Commission, the Public Docks Commission decided to limit its request for enough money to complete only the first phase of the total project, and accordingly asked for $6,500,000.

During that study the Public Docks Commission made available to the City Club Committee a detailed, itemized tabulation showing the various areas where it proposed to use the money. Total amount of this tabulation was $7,095,000. The difference between the bond request of $6,500,000 and this latter figure was expected to be made up by money previously earmarked for such work and already on hand in the Commission’s treasury.

The City Club Committee of 1954 recommended approval of the Commission’s request, and the voters subsequently passed the bond issue.

RECORD OF DOCK COMMISSION IMPROVEMENTS SINCE 1954

Major capital improvements as a result of the 1954 program include:

(1) Conversion of the old lumber dock at Terminal 1 into a three-berth general cargo facility;

(2) Purchase and modernization of the old West Coast Terminal, thereby creating Terminal 2, a three-berth general cargo facility;

(3) Expansion of the grain elevator and grain handling facilities at Terminal 4, making Portland the Pacific Coast’s leading grain export port and providing Portland with the largest elevator on tidewater west of the Mississippi River; and

* The Port of Portland

The Port of Portland is an autonomous unit of the government of the State of Oregon. It was established by State legislation under provisions of State laws and the Constitution. The Port boundaries and tax area are contiguous with those of Multnomah County from 162nd Avenue West. The purpose of the Port of Portland is to promote the “maritime, shipping and commercial interest of the port in the manner as the Port is by law specifically authorized and empowered.” Specifically, the Port: Maintains ship repair yards, including outfitting wharves and two large dry docks, for use by private contractors; shares channel maintenance responsibility in the Willamette and Columbia Rivers with the Corps of Engineers; advances industrial development in waterfront areas; fills areas while carrying out dredging tasks; leases buildings and land for commercial and industrial use; and owns and operates Portland International Airport and Troutdale Airport, providing for the orderly development of aviation facilities.

In early deliberations, your City Club Committee pondered the question of the feasibility of combining the Port of Portland and the Commission of Public Docks in order better to co-ordinate the overall maritime activities of the port, but concluded after preliminary investigation that the matter is sufficiently complex to warrant a special study and further, is not within the scope of this Committee’s mandate. While adequate facts to indicate a definite course of action were not uncovered, your Committee believes it is of enough importance that the City Club might well investigate the desirability of making such study.
(4) Construction at Terminal 4 of the Pacific Coast's most modern bulk unloading facility, which will be operative early in 1961 and which will handle bulk imports at a rate of 900 tons an hour.

(Above data from "Summary of Commission of Public Docks Requirements for $9,500,000 Bond Issue," submitted to the Portland City Council, July 6, 1960.)

When the above record is compared with the summary of proposed expenditures submitted by the Chief Engineer of the Commission to the City Club Committee of 1954, covering the first phase of total development, it will be seen that only in one important area did the Commission's expenditures deviate materially from its program, and that is in relation to Pier B, Terminal 1. The program anticipated expenditures of $2,440,000 to replace rotted facilities, but this money instead was expended, apparently, upon Terminal 4, especially to improve bulk loading and unloading of items other than grain — steel scrap and ores being cited as examples. The Docks Commission explained this shift in expenditures by stating that markets in these and similar commodities opened with such unforeseeable suddenness and with such remunerative possibilities that it felt justified in making the change. The Commission is able to point out that as a result of these and other projects: (1) Portland is the leading dry cargo port on the Pacific Coast; (2) Portland ranks eleventh in the nation in ship calls; (3) Portland has assumed the stature of a world seaport; and (4) Harbor-generated business is the city's No. 1 economic asset. (Payroll to longshoremen and checkers in 1959 totaled $10,000,000. Direct payroll attributed to the waterfront is $35,000,000 annually. Additional indirect and secondary payroll leads to an annual figure of $60,000,000.) (Source: ibid.)

Your Committee points out that the Commission, under its constituted authority, is solely responsible for the manner in which its moneys are spent and, although it may make up tentative programs for future expenditures is not bound by law to follow such programs.

SCOPE OF COMMITTEE INQUIRY

The City Club staff supplied the Committee at the outset of its study with previous City Club reports and related material, with voluminous newspaper clippings on port conditions and world shipping matters as they relate to this problem, together with background data on the formation of the Commission as well as the Port of Portland. The staff was also helpful in outlining possible methods of procedure, without attempting to limit or prejudice the Committee's activities.

Committee members met with Mr. Thomas P. Guerin, manager of the Commission of Public Docks, and Mr. Fritz Timmens, public relations director for the Docks Commission on August 25, and after a thorough briefing on the general make-up of the Docks operations, visited the three terminals, observing all facilities, including new construction underway at Terminal 4, and the highly deteriorated facilities at Pier B, Terminal 1. Mr. Guerin provided the members with certain data on proposed improvements and a complete copy of the Portland Harbor Development Survey of 1959 made by Tippets-Abbott-McCarthy-Stratton (TAMS), an eastern engineering and architectural organization, upon which the Commission has based a ten-year docks development program totalling $20,000,000.

On September 22nd, Committee members met at the Docks Commission offices with Mr. Raymond Kell, chairman of the Commission, and with members of his technical advisory staff to be briefed on some of the detail of the proposed ten-year program, specifically as they relate to the $9,500,000 bond issue.

Mr. Walter Smith of the Multnomah County Tax Supervising and Conservation Commission was interviewed, as were representatives of the Oregonian, and Portland Tax Savers, Inc.

Your Committee also polled opinion of representatives of several organizations in the community which have a direct interest in the well-being of harbor shipping facilities, among them five steamship companies, two stevedoring companies, two railroad associations, a private terminal company, the U.S. Maritime Commission, and the Portland Chamber of Commerce.

CURRENT TEN-YEAR PROGRAM OF PUBLIC DOCKS COMMISSION

As one result of the TAMS report of 1959, the Commission has outlined the following ten-year docks development program:
Ten-Year Docks Development Program
(Items (A) are of higher priority than items (B))

Terminal 1
Reconstruction of Pier B $ 5,500,000 (A) $ 5,500,000

Terminal 2
Additional cargo house space 350,000 (A)
Development of terminal facilities 250,000 (A)
Preparation of undeveloped WISCO site 800,000 (A)
Development of WISCO site 3,450,000 (B) $ 4,850,000

Terminal 4
Modernization, expansion of rail facilities 600,000 (A)
Development of terminal facilities 550,000 (A)
Container pier and equipment 1,400,000 (B)
Export bulk cargo plant 5,000,000 (B) $ 7,550,000

Modernization of heavy lift equipment 1,000,000 (A) $ 1,000,000

Containerization expansion 1,100,000 (B) $ 1,100,000

TEN YEAR TOTAL $20,000,000

Source of Funds for Ten-Year Program

1—Anticipated funds from Dock Commission’s Revenues in the ten-year period 1961-1970 inclusive $ 3,000,000
2—Estimated revenue bond financing 2,500,000
3—General obligation bonds 14,500,000

TOTAL $20,000,000

(The ten-year comprehensive Docks Development program will remain the goal of the Commission. The projects within the requested $9,500,000 bond issue are those with highest priority in the overall program.

(Top priority is for the construction of two modern, 600-foot long berths and supporting facilities at Pier B, Terminal 1, which now is largely condemned.

(The Commission will, to the best of its ability and as it has done the past six years, supplement the bond issue sum with earnings and revenue bond financing).

Source: “Summary of Commission of Public Docks Requirements for $9,500,000 Bond Issue (Before Portland City Council, July 6, 1960).

It will be noted that proposed expenditures for Pier B, Terminal 1, under the current ten-year program total $5,500,000 in relation to $2,440,000 estimated in the program of 1954. Part of this difference may be assumed to reflect increased building costs, and part in re-design of the facilities which will make possible accommodation of larger ships. Additional increases in the original figure may be attributed to inclusion of greater capacity cranes and elevators apparently not covered by the 1954 report.

Staff members of the Commission of Public Docks supplied your Committee with a detailed tabulation of all items (in both “A” and “B” categories) of the ten-year development program. Only top-priority items are of concern at this time since their total of approximately $9,500,000 is the substance of the city measure No. 57. For convenience, in connection with the following discussion, these “A” priority items and their totals are listed below:)
### "A" Priority Items in the Ten-Year Docks Development Program

**Terminal 1**
- Reconstruction of Pier B .................................. $5,500,000

**Terminal 2**
- Additional cargo house space ................................ 350,000
- Development of terminal facilities .......................... 250,000
- Preparation of undeveloped Wisco site ....................... 800,000

**Terminal 4**
- Modernization and expansion of rail facilities ............. 600,000
- Development of terminal facilities .......................... 550,000

**Modernization of heavy lift equipment** ........................ 1,000,000

**TOTAL OF "A" PRIORITY ITEMS** ................................ $9,050,000

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**COMMITTEE EVALUATION OF DATA COLLECTED AND ORGANIZATIONS SURVEYED**

The construction, maintenance and operation of harbor facilities for maritime commerce is one of the most complex segments of our economic community. The Commission of Public Docks as an operation is in competition with private terminals but is financed with public money. However, docking facilities in all major cities are kept operable through the same or similar methods of subsidy. In Portland, however, an added complexity is present in that the management of large public marine repair facilities is under the Port of Portland, a state agency; maintenance of proper depth channels to the sea is under both the Port of Portland and the U.S. Army Engineers, while all other harbor facilities are under a city department, the Commission of Public Docks. The program of financing, too, borders upon the Rube Goldberg: Part from operating profits; part from serial levy (1/10 of 1 mill); part from revenue bonds; part from general obligation bonds. Only the staff members of the Commission are on salary; the Commissioners themselves receive no salary. When the bond issue of 1954 was presented to the voters, the Commission based its request upon a "long-range program of improvement" totalling $12,500,000. Today, basing its request upon another even longer-range program, it is looking forward to possible expenditures of $20,000,000 during the next ten years. Government subsidies or withdrawal of subsidies in other phases of the country's activities, and mercurial worldwide market fluctuations make accurate forecast especially difficult.

One clear-cut impression has risen from your Committee's investigation: An intelligent review of methods of financing the public docking facilities is called for to bring the financial structure, like the physical structure, up-to-date so that Portland can maintain — even improve — its maritime position without the lost motion, possible time lag, and possible financial embarrassment to the Commission — and eventually, the community. The community is entitled to know how and where its money is going to be spent. But the Commission must be given sufficient leeway in planning and expending such money that shipping problems and opportunities can be met in a businesslike manner. This might mean combining the Docks Commission and all or part of the Port of Portland so that all maritime activities could be under one head.

**Interview Results**

The representatives of organizations and other individuals whom your Committee interviewed and who were in favor of this measure included those of: five steamship companies, two stevedoring companies, Multnomah Tax Supervising and Conservation Commission, the Freight Traffic Association, the Portland Chamber of Commerce and the Oregonian editorial staff (the measure was also evaluated and endorsed by the Oregon Journal subsequently). Mr. Edward T. Joste, area representative of the U.S. Maritime Administration, was also interviewed.

The summary of their reasons for supporting the measure is: A record of good performance by the Commission; need for modernization of certain facilities; increased
shipping volume generally; need for maintaining Portland's favorable competitive position with other West Coast ports; the fact that good dock facilities make possible good stevedoring relationships, and the favorable outlook for growth of Portland in the future.

Those organizations opposed to the measure were a private terminal company and the Portland Tax Savers, Inc., Joe Dobbins, President. Their reasons are in general that there is no need for additional facilities, that there is a desirability for abolishing the Commission as such and placing the operation under the City Council directly; they also protest a lack of control by the people over expenditure of the Commission's funds, as well as the method of financing through general obligation bonds.

Report by Tippets-Abbett-McCarthy-Stratton (TAMS)

The Commission of Public Docks asked TAMS to make an impartial appraisal of the existing facilities, potentialities and possible future needs of the Portland harbor operations. Based upon 1957 and 1958 data, TAMS, in an extensive report presented the following as its conclusions in August, 1959:

**SUMMARY**

By 1980, it is estimated that the commercial bulk cargo marine terminals in Portland Harbor will be called on to handle an average of 2,340,000 tons of waterborne commerce, as compared with the average of 1,459,000 tons these terminals handled during the period 1953-1957. Moreover, under extraordinary conditions such as occurred in 1957, these terminals might be required to handle as much as 5,150,000 tons of waterborne commerce by 1980, as compared with the 3,065,000 tons they handled in 1957. The presently existing facilities for handling grain, scrap, and molasses have adequate capacity to handle even the estimated upper limit of commerce. Additional facilities would be required, however, to handle the estimated upper limit of coal commerce even though the capacity of the existing facility is adequate to handle the average commerce forecast. The bulk unloading facility now under construction by the Commission of Public Docks will be needed to handle the average waterborne receipts of ores and concentrates expected since the capacity of the existing facility will not be sufficient to handle this commerce. The estimated capacity of this new facility, moreover, will be adequate to handle even the estimated upper limit of commerce.

By 1980, it is estimated that the general cargo marine terminals in Portland Harbor will be called on to handle an average of 1,735,000 tons of waterborne commerce, as compared with the average of 1,100,000 tons these facilities handled during the period 1953-1957. Because of the normal fluctuation of general cargo movements, these terminals might be required to handle as much as the 1,870,000 tons they handled in 1954, the peak year in the period 1953-1957. The existing general cargo terminals used for the handling of lumber and those used only for Hawaiian trade will be adequate for the estimated future upper limit of commerce. The commerce expected at the intercoastal and foreign trade terminals in Portland Harbor exceeds the capacity of these terminals, however, and the terminals operated by the Commission of Public Docks should be prepared to handle the excess commerce. The eleven general cargo berths operated by the Commission will be adequate to handle the commerce forecast through the year 1970, and, with the two additional general cargo berths resulting from the reconstruction of Pier B, Terminal No. 1, will provide adequate capacity to handle the commerce expected by the year 1980.

Excerpt from Commission of Public Docks' report on
**PORTLAND HARBOR DEVELOPMENT SURVEY,** August, 1959,
Tippets-Abbett-McCarthy-Stratton
Engineers and Architects, P. 153 et seq.

In light of the proposed program, at the request of the Commission of Public Docks, TAMS reviewed the facilities in June of 1960, and forwarded to the Commission a letter report of their findings and conclusions, from which we quote relevant portions:

"... The planning concept which forms the basis for the $20,000,000 10-year program is most commendable. The concept, in brief, is that the Commission of Public Docks desires to meet the needs of maritime commerce as such needs arise and to be able to attract commerce by having a flexible plan which can be promptly implemented, the promptness being due in no small measure
to the availability of funds which can be drawn upon for facility expansion, for equipment replacement and for handling specialized types of cargo.

"The 10-year program is of such a nature that it cannot be completely delineated at this time but its merit is by no means curtailed by its flexibility. Some items in the program, however, are quite specific. Included in this category is the reconstruction of Pier B at Terminal No. 1, at an estimated cost of $5,500,000. The need for the replacement of this pier is unquestionable, and our Development Survey of August 1959 clearly indicates that the replacement or reconstruction of Pier B should be undertaken in the near future. Another example of a specific item in the 10-year program is the modernization of heavy-lift equipment. The equipment now in use is primarily war surplus. The modern equipment which is being planned by the Commission, including 2 automotive cranes, 2 locomotive cranes, and a high-capacity waterborne crane, will cost an estimated $1,000,000. The less specific items in the program, including terminal expansion and area development at Terminals 2 and 4 at an estimated cost of $5,400,000, modernization and expansion of rail facilities at Terminal 4 at an estimated cost of $600,000, development of container operations at Terminal 4 at an estimated cost of $1,400,000 and also possibly at Terminal 1 or 2 at an estimated cost of $1,100,000, and the possible installation of a high speed bulk loader at Terminal 4 at an estimated cost of $5,000,000, complete the presently anticipated 10-year plan. It is possible that certain of these items will be eliminated and others added in order to develop the Commission's facilities parallel with the needs of marine commerce.

"The established pattern of growth of Portland Harbor and the expected increase in waterborne commerce demonstrates the need for continued expansion of Portland's capability to handle this commerce. The importance of waterborne commerce to Portland and the resulting direct income to the City's residents is ample justification for the timely development of the Commission's marine terminal facilities and services.

"The impressive lead which Portland has established in dry cargo tonnage on the West Coast will be challenged more intensely each year by the other major West Coast ports. Expansion programs at Seattle, Los Angeles, San Francisco, Oakland and Tacoma, have been instituted within the last year. It is therefore incumbent upon the Commission of Public Docks to take aggressive action to institute a sound long-range development program. The basic program outlined herein fulfills this definite need."

CONCLUSION

Your Committee believes that the cumbersome financial structure under which the Commission of Public Docks is operating should be reviewed with an eye to up-dating it, even though this might involve as well reappraisal of both the Docks Commission and The Port of Portland as separate entities in whole or in part.

Your Committee believes the Docks Commission has made a strong case for the major part of its $9,500,000 request, but also believes that a careful analysis of the TAMS report recommendations (which are serving the Docks Commission as a guide for its future program) may cast a shadow on some of the Commission's program currently being given "A" priority.

However, your Committee does not believe it is qualified to direct Docks Commission expenditures, because it lacks experience and knowledge, because such direction is not within the purview of its report, because the Docks Commission has evidenced good stewardship of the moneys entrusted to it, because granting of the bonds will not necessarily mean immediate — or even future — expenditure of the money should the Commission deem otherwise, and finally, because the Commission must be given leeway to shift monetary expenditures where it thinks they will be most useful to the community's greatest good.

In addition, your Committee is aware of the favorable position of Portland's harbor facilities, especially in comparison with those in the Puget Sound area. It also is aware that Seattle port authorities are out to correct this inequality. And finally, your Committee believes that the momentum in improvement of Portland docking operations should not be interrupted.
RECOMMENDATION

Therefore, it is the unanimous recommendation of your Committee that the City Club go on record in favor of this measure and that the proposed amendment to the Charter of the City of Portland should be approved by voting No. 57 “Yes.”

Respectfully submitted,

Donald D. Casey
James L. Haseltine
Charles R. Ward, Jr.
David M. Wood
John D. Nichols
K. E. Richardson, Chairman.

Approved October 17, 1960 for transmittal to the Board of Governors.

Received by the Board of Governors October 21, 1960, and ordered printed and submitted to the membership for discussion and action.
SPECIAL TAX FOR TRAFFIC SIGNALIZATION, FACILITIES
(Municipal Measure No. 54)

and

SPECIAL TAX FOR GRADE SEPARATIONS
(Municipal Measure No. 53)

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND

ASSIGNMENT
Your Committee was appointed to study and report on two amendments to the Charter of the City of Portland. Each of these amendments provide for a special continuing tax levy outside constitutional limitations as provided by Section 11 of Article XI of the Constitution of the State of Oregon, and both amendments would provide funds for the handling of city traffic.

SOURCES OF INFORMATION
The sources of information your Committee has consulted are William A. Bowes, Commissioner of Public Works, who administers the Bureau of Traffic Engineering; D. E. Bergstrom, Assistant Traffic Engineer, and Fred Fowler, Highway Co-ordinator for the City of Portland; James Van Galder of the Multnomah County Tax Supervising and Conservation Commission; J. Barbee of the Oregon State Highway Department; Joe Dobbins of the Portland Tax Savers, Inc.; Walter W. R. May, editor and publisher of the Oregon Voter; and representatives of various railroad companies, the League of Women Voters, and the Oregon State Motor Association (AAA).

The Committee has also studied the annual financial reports of the City of Portland; the budgets of the Bureau of Traffic Engineering; and also past City Club reports on traffic problems. The Committee has reviewed the measures and studies on the increase in city tax base as proposed to the voters in 1954 and in 1960; the Capital Improvement measure proposed in 1958, and the report prepared in 1959 for the City of Portland by the Public Administration Service (PAS), a prominent firm of consultants on municipal affairs.

GENERAL HISTORY
These two measures were incorporated in the capital improvement measure proposed in 1958, and, without specification, were part of the justification for the increased tax base requests of 1954 and 1960. These measures were defeated at the polls. It is stated by Commissioner Bowes that the adoption of any of the above measures would have eliminated the need for the present proposals. The last major authorization of funds by the electorate for city functions generally, whether by bond issue or special levy, was made by the voters in 1954.

Ballot Measure No. 54
SPECIAL TAX FOR TRAFFIC SIGNALIZATION, FACILITIES
Charter amendment providing for special continuing five year tax levy outside constitutional limitations of $100,000 per year for engineering, acquisition and installation of traffic signals and control devices and facilities; authorizing property acquisition, street alterations, extension or relocations; authorizing use of matching funds or grants.

Purpose of Levy
The Charter Amendment would supplement the funds currently available for the acquisition and installation of traffic signals, control devices and facilities. More specifically, the measure provides for installation of “traffic signals and other traffic control devices”; installation of “traffic separators, dividers, and other means of channeling
traffic”; reconstruction of streets “where present turns or curves are found to be hazardous”; and the acquisition of necessary real property.

The Bureau of Traffic Engineering has indicated to your Committee the following specific applications of the first year’s levy:

<table>
<thead>
<tr>
<th>Application</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic Signals</td>
<td>$57,500</td>
</tr>
<tr>
<td>School Signals</td>
<td>4,500</td>
</tr>
<tr>
<td>One-way couplets</td>
<td>33,000</td>
</tr>
<tr>
<td>Intersection Revision</td>
<td>5,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$100,000</td>
</tr>
</tbody>
</table>

It is stated that the foregoing traffic improvements could not be accomplished from normal budgeted funds during that year. It is also said that it would be extremely difficult to formulate definite plans for the subsequent years. However, the future application of funds is suggested when it is considered that traffic signal equipment has a maximum dependable age of fifteen years. The status of equipment at presently signalized intersections is as follows:

- 20 years or over: 34
- 15 to 20 years: 30
- 10 to 15 years: 162
- 5 to 10 years: 151
- 0 to 5 years: 118

495

The Bureau of Traffic Engineering has estimated that it can anticipate an additional 100 new installations during the next five years. The volume of needed new signalized intersections in addition to replacement of worn or obsolete signals indicates a need for signals alone of approximately $600,000. In addition to these major costs are the less apparent costs of streetmarking, channelization, signs and other traffic control devices.

**Effect of Levy**

This serial levy would result, based on the 1960-61 valuations, in a tax increase of $.12 per $1,000 of assessed valuation per year for each of the five years.

**Available Funds**

The receipts from parking meters and related operations (except parking fines) are set aside in a fund entitled “Parking Meter Fund” and must by ordinance be kept separate and apart from other funds within the City.

Receipts for the Parking Meter Fund for the fiscal year 1960-1961 are estimated at $723,800. In the past the Bureau of Traffic Engineering has been financed from the parking meter fund, but such fund is no longer sufficient to meet the Bureau requirements. The inadequacy of this fund is caused by increased needs over receipts, and by budgeting some of the fund for payment of meter maid salaries without reimbursement from the general fund as was previously done.

The Parking Meter Fund finances the activities of three divisions: Traffic Safety Commission, Division of Parking Meter Maids, and the Bureau of Traffic Engineering. The latter is the division for which the major part of the expenditures is budgeted. After providing for salaries, and operation and maintenance of the Bureau, there is available for the year 1960-1961 the amount of $51,500 for traffic control facilities.

When required, the Bureau of Traffic Engineering has had supplemental funds budgeted from state gasoline tax receipts apportioned to the City. The Committee is advised that $30,000 of estimated gas tax receipts for the fiscal year 1960-1961 is presently available for the Bureau, but has not yet been so budgeted. It has been indicated to the Committee that this sum will be budgeted to the Bureau of Traffic Engineering for the purposes sought to be met by this measure.

From the foregoing, it would appear that there is presently available for traffic control facilities for the year 1960-1961, the following sums:

<table>
<thead>
<tr>
<th>Budget</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Initial Bureau</td>
<td>$51,500</td>
</tr>
<tr>
<td>Supplemental</td>
<td>30,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$81,500</td>
</tr>
</tbody>
</table>
If reimbursement for meter maid salaries had been provided from the general fund, as has been done historically, the Bureau of Traffic Engineering funds would have been increased by the sum of $76,083 to make a total of $157,583.

**Previous and Current Requests for Funds**

1. **1958. City Measure No. 52. (defeated)**
   
   Ten-year capital improvement program included an item of $750,000 for new city signal lights.

2. **1960 (May). City Measure No. 52. (defeated)**
   
   A proposed city tax base increase included as partial justification a request for $3,000,000 for funds for traffic control and grade separations.

3. **1960 (November) City Measure No. 54.**
   
   In July, 1960, the Bureau of Traffic Engineering requested the City Council for a special serial levy of $100,000 per year for 10 years, or $1,000,000. This was reduced by the City Council to $100,000 for 5 years, or $500,000.

**ARGUMENTS IN FAVOR OF THE MEASURE**

Proponents of the measure claim that:

1. This is a primary city function. This job must be done.
2. This money is necessary to be expended in order to provide for the needed additional traffic control facilities.
3. The amount of money initially budgeted for traffic control facilities for the fiscal year 1960-1961 is inadequate to provide for the necessary improvements.
4. The City Council has contended that since 1954 these traffic control improvements could not be provided within the 6% property tax increase limitation as legally imposed.
5. An interest-free continuing special levy is more economical than an interest-bearing bond issue.

**ARGUMENTS AGAINST THE MEASURE**

1. This measure involves the appropriation of funds for minor capital improvements which historically have been and should be provided for within the 6% limitation.
2. There are sufficient available funds to meet traffic control needs.
3. The history of budgeting parking meter funds indicates ample revenue to undertake these specific projects and therefore this serial levy must be viewed as a budgetary device to release funds for other unidentified projects.
4. A review of past and present requests shows lack of correlation between needs and requests for funds.

**DISCUSSION AND CONCLUSIONS**

Your Committee recognizes that traffic control is necessary, and that it is properly one of the primary functions of the City. From our consultations with City officials and their traffic engineers, it is apparent to us that they are dedicated to providing the City with a soundly conceived system of traffic control facilities. Adequate funds must obviously be available for the maintenance, operation, and improvement of these facilities. The growing traffic density will require additional funds for improved and new facilities.

Should the costs of traffic control be financed from a general tax levy, from earmarked revenues, i.e. parking meter receipts, from special tax levy, or from a bond levy for capital improvements? It is the opinion of the Committee that ordinary operating expenses should be met from normal regular revenue, and that large, extraordinary capital expenditures be met from bond issues or special levies.

The proposed expenditures for traffic control facilities, while perhaps classifiable as capital expenditures by accounting conventions, amount to little more than carrying out the normal functions of the Bureau of Traffic Engineering. It is the opinion of the Committee that these expenditures are more in the nature of minor capital improvements and deferred maintenance which have been and should be provided for within the 6% limitation. (It is interesting to note that the budgeting for prior years, as well as the fiscal year 1960-61, classified this type of expenditure under “operation and main-
The costs of traffic safety and control have prior claim upon ordinary revenues, inasmuch as they are necessary to the health and welfare of the general public. If their inclusion necessitates the exclusion of less necessary expenditures, then such other expenditures should be presented to the voters for a test of popular appeal.

It has been impossible for this Committee to differentiate all the primary and secondary functions of the City as budgeted within the 6% limitation. As a primary city function costs of traffic control should have preferential budget treatment.

There is no single administrative authority within the City's Budgetary Committee to assign relative weight to the distribution of available funds. Under ideal circumstances, city functions would be assigned a priority according to need. Under the present system, the budgeting process resolves itself into a matter of horsetrading among administrative heads of departments.

Although the Committee is primarily concerned with the nature of the proposed expenditures and their proper places in the budget, it must not overlook the fact that for the current year 1960-61, there is available the sum of $81,500, which, if augmented as in the past by reimbursement of meter maid salaries from the general fund, would make a total of $157,583 available.

The experience of the Committee in this study points up the need for a permanent City Club Committee to study and report on the city budgets and budget procedures, so that committees assigned to report on individual measures in the future may have the proper perspective in relating their special problem to the financial picture as a whole. We respectfully urge the creation of such a committee.

**RECOMMENDATION**

In view of the foregoing discussion, this Committee has no choice but to endorse traffic control as a primary city function and to suggest that it be provided for in the budget within the 6% limitation. The Committee therefore recommends that the City Club go on record against the measure, and urges a vote of No. 54 “No”.

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**SPECIAL TAX FOR GRADE SEPARATIONS**

*(Municipal Ballot No. 53)*

Charter amendment providing for special continuing ten year tax levy outside constitutional limitations of $700,000 per year for separation by underpass or overpass or different levels for street and railroad intersections or street intersection, authorizing property acquisition, engineering and construction; providing cost sharing; authorizing matching funds, acceptance of grants.

**Purpose of Levy**

The current measure will provide $700,000 per year for ten years, as a serial tax levy, grossing $7,000,000. The measure directs the proceeds to be expended for “elimination of street and railroad crossings at the same grade by underpass or overpass”; “the separation of two or more different street levels of street intersections” when there is “heavy traffic congestion”; and the acquisition of real property incidental thereto.

In discussion with your Committee Commissioner Bowes listed the following presently contemplated projects, with estimates of cost and possible contributors to cost:

<table>
<thead>
<tr>
<th>Project —</th>
<th>Possible Contributors</th>
<th>City Engineers Estimated Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.E. 39th-N.E. Sandy Blvd. Grade Separation</td>
<td>State</td>
<td>$1,500,000</td>
</tr>
<tr>
<td>Bybee-McLoughlin Interchange</td>
<td>Railroad</td>
<td>380,000</td>
</tr>
<tr>
<td>Tacoma Avenue Cloverleaf</td>
<td>State</td>
<td>1,500,000</td>
</tr>
<tr>
<td>E. Burnside-12th Ave.-Sandy Blvd.</td>
<td>Railroad and State</td>
<td>1,500,000</td>
</tr>
<tr>
<td>S.E. 17th-S.E. Powell Blvd. Interchange</td>
<td>County</td>
<td>800,000</td>
</tr>
<tr>
<td>33rd &amp; Columbia Blvd. improvement overpass system</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

$6,880,000
These projects as outlined are by no means a commitment under this ballot measure, but your Committee is advised that priority would be assigned to the E. Burnside-12th-Sandy Blvd., and S.E. 17th-Powell Blvd. interchanges.

These projects were studied and reported upon by a subcommittee of the Portland Traffic Safety Commission, the members of which are to be complimented for their voluntary efforts. On the basis of the studies, which included consideration of traffic volume, accident records and other traffic engineering techniques, it was concluded that these projects were necessary. It is significant to note that no like major improvements have been made requiring extensive city participation within the past 33 years or more.

The City Bureau of Traffic Engineering is emphatic in its opinion as to the immediate and continuing necessity for these improvements. The intersection at 12th Avenue and Sandy Blvd, was stated to have the highest accident record of any intersection within the city.

**Effect of Levy**
This serial levy would result, based on the 1960-61 valuation, in a tax increase of $.84 per $1000 of assessed valuation per year for each of the ten years.

**Other Available Funds**
Your Committee is advised that there is no assurance of any moneys from State or Railroad, except by negotiation. The State is in a position to deny any responsibility for capital improvement, other than paving, to any alternate State Highway route within the city. City officials do not presently feel that federal aid will be available for the contemplated projects. As to state and railroad participation, it appears that there is no empirical formula for contribution to cost of the projects.

The Committee inquired if some advance commitment could be obtained from state or railroad officials as to a contribution to the cost of the improvements. State Highway Department officials have advised your Committee that under certain circumstances they have negotiated with other communities for participation in a city highway joint venture, subject to the city's ability to provide its portion of the costs. It is apparent to the Committee that the City would be in a better negotiating position if it had authorized funds at its disposal.

At one of the priority interchanges, certain real property improvements were destroyed by fire a few years ago. If the City had had funds available at that time, this specific real property could have been acquired for approximately one-tenth of its present worth as now improved.

**Previous and Current Requests for Funds**
1. The ten-year capital improvement program, City Measure No. 52, proposed and rejected in 1958, requested (as a portion of a $16,305,000 bond issue) $6,705,000 for traffic separation systems at seven intersections.
2. In May 1960 the City Tax Base Increase measure included, as partial justification of need for additional funds "for traffic and grade separations", the amount of $3,000,000.
3. The subject ballot measure requests a special serial levy of $700,000 per year for ten years, or $7,000,000.

**ARGUMENTS FOR THE MEASURE**
1. Past studies by the City and the State indicate that some substantial form of interchange and/or separation is necessary at these intersections.
2. The handling of the flow of City traffic at these or other intersections is a primary city function, and pyramiding traffic volume will aggravate an already apparent problem.
3. As a serial levy, this is a “pay as you go” measure, with no interest cost.
4. The City should have available funds in order to most effectively negotiate for contributing funds, either Railroad or State, and to acquire necessary real property at the most advantageous period of time.

**ARGUMENTS AGAINST THE MEASURE**
1. There has been no additional consideration of the validity of the several proposed projects since the Planning Commission's study of early 1958.
2. Federal-State completed freeway systems and proposed systems may well relieve congestion at a majority of the proposed improvement locations.

3. The State Highway Commission has no obligation beyond pressure of negotiation to participate in any of these typical projects outlined, and the costs are excessive for the City alone.

4. There is no commitment in the measure that any of the suggested projects will be undertaken.

5. The authorization for expenditure of funds should be broadened to include street widenings or other more urgently needed street system improvements.

**DISCUSSION AND CONCLUSIONS**

The initiative of the City in undertaking these projects is to be commended and represents a unique situation as far as State-City joint participation is concerned for projects of this magnitude.

The Committee is satisfied that there is need for these or similar improvements. The City engineers and others have carefully studied these projects and have assigned them priority under present conditions, with a general projection to 1970. It is objected that no studies have been made since 1958. However, the City traffic engineers have advised the Committee that there is no evidence of any alleviation of the hazardous conditions at these several intersections since the original engineering studies.

It is also objected that possible changes in the state or federal freeway system may relieve conditions at the contemplated intersections. The Committee is advised that nationwide studies indicate that the traffic problem at critical load intersections is generally temporarily relieved by the freeway system in the vicinity, but that there is shortly a return to the same or worsened condition that existed prior to the opening of the freeway. It was further pointed out to the Committee that this Charter Amendment does not commit to any specific project, and if prior urgency develops the moneys will be expended for that most needed. It appears to the Committee that in this regard the measure has one substantial weakness, in that if the most urgent improvement develops to be the widening of certain street systems, these funds cannot be expended for this purpose, according to the wording of the Charter Amendment.

The further objection is made that should the state fail to participate, the City should not be empowered to proceed alone with projects of this magnitude. The Committee is advised that the major arteries involved in three of the projects under consideration, namely Sandy Blvd., McLoughlin Blvd. and S.E. Powell Blvd., are state highways, and it is reasonable to anticipate that some contribution of state funds will be made. It is also reasonable to assume that some contribution of railroad funds will be imposed. Aside from the probability of such contribution, we ask if the City can ignore its obligations to provide safe thoroughfares for its citizens. We think not. It should also be kept in mind that the City has made no such major expenditure for city traffic for 33 years. We believe that the City is obligated to face its responsibilities to meet growing traffic problems, and to build up a substantial fund for that purpose.

Since the appropriation of money is designated for major unusual capital improvements, the Committee believes a serial levy outside the 6% limitation to be an appropriate means of finance.

**RECOMMENDATION**

By reason of the foregoing, the Committee recommends that the City Club go on record in favor of Ballot Measure No. 53 and urges a vote of "yes" on the Charter amendment.

Respectfully submitted,

John A. Carlson
Owen P. Cramer
Frederick Reinecke, Sr.
Howard E. Roos
James M. Stewart, Chairman.

Approved October 19, 1960, by the Research Board for transmittal to the Board of Governors.

Received October 21, 1960, by the Board of Governors and ordered printed and submitted to the membership for discussion and action.
REPORT
ON
PERSONAL INCOME TAX BILL
(State Ballot Measure No. 14)


(ESTIMATE OF COST: If Ballot Measure 14 (HB 670) is approved by the electorate the increase in state revenue from personal income tax will be approximately $6,400,000 per annum, based on present level of personal income.)

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND

ASSIGNMENT

Your Committee was assigned to study and report on the state ballot measure entitled “Personal Income Tax Bill”. This measure originally passed as House Bill No. 670 in the 1959 Legislative Assembly, was referred to the voters by referendum petition filed in the office of Secretary of State August 4, 1959. Due to the referral by petition, the bill was never put into effect.

EXPLANATION OF THE MEASURE

The bill provides for additional tax revenues by eliminating the deduction for Federal income taxes allowed under the present Oregon personal income tax law. The increase in taxes is partially offset by a reduction in the tax rates. The net effect of the elimination of the Federal income tax deduction and the reduction in tax rates under the referred bill is expected to result in an increase in Oregon personal income tax revenues of approximately $6,400,000 per annum.

The bill also makes certain other minor changes in the present income tax law, including liberalization in the rules with respect to travel by taxpayers away from home; providing a simplified optional tax return for taxpayers with income consisting primarily of salaries and wages and who take the standard deduction; eliminating the maximum amount limitation on medical expenses, and permitting nonresidents and persons residing for less than 12 months in Oregon to use the standard deduction. It also would permit farmers to withhold from their employees at the rate of 2% of wages rather than the present 2.25%.

SCOPE OF INVESTIGATION

Because the major purpose of the measure is to increase state revenues and because the method used to accomplish this is the elimination of the Federal income tax deduction, partially offset by a reduction in rates, your Committee has limited its study and recommendations to these features of the measure. The other minor changes the bill would make in the present income tax law have been listed above, and no further comment upon them will be made.

Sources of Information

In the course of its investigation, your Committee contacted, among others: Dean Ellis, member of the Oregon State Tax Commission; Attorney General Robert Y. Thornton; Labor Commissioner Norman O. Nilsen; Walter W. R. May, editor and publisher, the Oregon Voter; Richard H. Lucke, Chairman, Chamber of Commerce Tax Committee; Joe Dobbins of Portland Tax Savers, Inc., and representatives of the Oregon Society of Certified Public Accountants, Oregon Grange, Oregon Farm Bureau, Oregon State Bar
Committee on Taxation, Committee on Political Education AFL-CIO, the *Oregonian*, the *Oregon Journal*, the *Reporter*, and the League of Women Voters.

Your Committee could find no organized support for the measure.

**BACKGROUND**

House Bill 670 was passed in the closing days of the 1959 Oregon Legislature after various other attempts at compromise had failed. At that time it was estimated that the existing income tax law would not provide sufficient revenue to sustain contemplated expenditures during the 1959-1961 biennium. The bill was expected to produce approximately six million dollars additional revenue from personal income taxes per annum. The petition for the present referendum prevented the bill from becoming law.

Instead of the deficit predicted in 1959 when House Bill 670 was passed, the revenues under existing law have exceeded expectations, and a surplus of approximately thirty-five million dollars is now expected.

**History of Federal Income Tax Deduction in Oregon**

On the fourth day of November, 1930 the voters cast their ballots on “An act providing for property tax relief by the levying, collecting and paying of taxes on incomes; . . . ” which act had been referred to the people by petition. There were 105,189 votes cast for the measure and 95,207 cast against the measure.

This act provided that deductions be allowed in computing net income and among those deductions were “Taxes, paid during the tax year imposed by the State of Oregon or any of its political subdivisions or by the authority of the United States and allocable to the State of Oregon; . . . ”

The above provision permits the deduction of federal income taxes on income which is also taxed by the State of Oregon and this deduction has been retained until the present time.

**ARGUMENTS FOR THE MEASURE**

Your Committee could find no organized group in favor of the passage of this measure, however, the following arguments have been advanced for the feature of the bill which eliminates the Federal income tax deduction:

1. The elimination of the Federal income tax deduction is a step toward the simplification of the Oregon personal income tax statutes and eliminates the problems many taxpayers have of determining the proper portion of Federal income taxes allocable to income taxed by the State of Oregon.

2. The allowance of the deduction of Federal income taxes on Oregon tax returns creates an unnecessary Federal income tax differential in favor of those income tax states which do not allow deduction of the Federal tax on the State return.

3. As long as the Federal income tax deduction exists, the state is at a disadvantage in its fiscal planning, in that the revenues received by the State of Oregon from the personal income tax are affected by changes made in the Federal income tax laws by the Congress of the United States. An increase in Federal taxes would reduce the income taxable to Oregon and the Oregon tax collected. A decrease in Federal taxes would increase the Oregon tax collections.

4. By eliminating the Federal income tax deduction, the maximum published rate of Oregon income tax is reduced from 9.5% to 7.5% which would make Oregon rates appear more favorable in comparison with tax rates of other states.

**ARGUMENTS AGAINST THE MEASURE**

1. This bill was passed to provide additional revenue to meet a deficit forecast for the current biennium. Such deficit did not develop; instead, collections under the existing law have resulted in surpluses, and the increased taxes that would be provided by this measure are not needed.
2. The Attorney General has ruled that the effective date of the measure, if approved, will be November 8, 1960. If the measure is approved, serious legal and administrative problems will result.

3. Such major changes in our income tax structure should be considered on their own merits and not be tied directly to a measure increasing revenues.

4. This bill discriminates between those cash basis taxpayers who paid their Federal tax before the effective date of this measure and those who paid it after the effective date.

5. The mechanics of the proposed bill would result in a shift of the tax burden among individuals within every given tax bracket with no apparent pattern in the shift.

6. The nondeductibility of the Federal income tax in effect results in a tax on a tax and, if rates were increased, could result in the total of Federal and state income taxes exceeding a person’s net income.

**DISCUSSION**

The elimination of the federal income tax deduction would simplify the reporting and computation of taxable income on the Oregon returns. While your Committee is in favor of simplifying the income tax statutes, it is not in favor of disguising substantive changes, such as those included in the proposed measure, with the cloak of simplification.

We can find no support for the argument that the allowance of the Federal income tax deduction creates an unnecessary Federal income tax differential in favor of the income tax states which do not allow deduction for Federal income taxes. Such an argument is applicable to a measure wherein the tax burden is shifted from lower income groups to higher income groups, and where rates, particularly in the upper income levels, are increased. Your Committee found no evidence that the proposed measure does either one of these things and therefore, irrespective of the merits or demerits of this premise, it is not applicable to this measure.

The argument that as long as the Federal income tax is deductible, Congress can disrupt the state’s fiscal planning through changes in Federal income tax rates may be answered by stating that changes in the Federal income tax rates in the past have been infrequent and the procedures generally applied before Congressional action is taken give the State Legislature adequate warning as to pending changes in Federal laws. The Legislature has many factors that are more difficult to evaluate than possible Congressional action.

There may be some merit to the argument that the appearance of lower tax rates could be a public relations device useful in attempts to attract industry to Oregon. However, the public relations aspect of the appearance of lower rates does not justify a shift of Oregon income taxes from one taxpayer to another. Further, since this measure increases income taxes, the ultimate public relations aspect could be negative.

The most common argument against approving this measure is that whereas the Legislature passed the bill to meet a forecasted deficit, such a deficit has not materialized, and present estimates indicate a surplus of approximately $35,000,000. This appears to be the principal reason for the absence of any support for the measure.

The argument has been advanced that when a need arises for additional revenue, the financial solvency of the state should not be tied to a major substantive change in the tax structure. Your Committee agrees.

A weak point in the drafting of the measure results in the disallowance of a Federal tax payment made after the effective date of the law. If approved by the voters, this measure would permit a cash basis taxpayer to deduct those federal tax payments made on his 1960 declaration of estimated tax prior to November 8, 1960 and would not permit him to deduct those made after that date. It would also appear that an accrual basis taxpayer would not be permitted to deduct any of his 1960 federal tax on his 1960 Oregon return because that tax would accrue on December 31, 1960 which is after the effective date of the law. Your Committee believes that these features of the measure are in fact inequitable.
Although the bill provides that it applies to tax years commencing after December 31, 1958, the Attorney General has issued an opinion that, the effective date of the act (if approved by the voters), will be November 8, 1960. While the Tax Commission presently indicates a recognition of the effective November date, it is possible that this question may have to be decided by the courts in the event that one or more taxpayers decide to challenge the ruling and take the position that the effective date stated in the bill govern. Such a challenge in the courts could cause an additional period of uncertainty as to the status of our tax statutes. In addition to possible court challenges, the State Tax Commission will be faced with the problem of administering a split-rate schedule if the effective date is November 8, 1960. The State Tax Commission has indicated a solution to the problem would be to ask for legislation making the effective date of the measure January 1, 1961; however, such legislation would leave serious problems unsolved.

That certain taxpayers will have their taxes increased more than others has been indicated by various sources. Your Committee was unable to obtain a clear picture of where the shifts would occur, but did not consider such determination necessary for arriving at its conclusion.

The problem of a “tax on a tax” needs no discussion in that this measure does not result in the total of Federal and Oregon income taxes exceeding a taxpayer’s income.

The elimination of a basic deduction such as the Federal income tax deduction should not be made in hastily passed legislation with opponents forced to compromise because of an anticipated need for additional revenue. During the last two years, the Legislative Interim Taxation Committee has made a study, conducting hearings, and has now come up with recommendations affecting the major tax policies of the State (including a recommendation that all non-business deductions be eliminated, including the Federal income tax deduction). This program seems similar to that which the Governor and his advisors appear to be advocating. In view of the impending legislative consideration of major changes in the tax statute, the proposed measure is ill-advised.

CONCLUSION

Because the increase in revenue which the proposed measure was designed to produce is not now needed, and in view of other weaknesses in the measure as discussed in this report, your Committee concludes that this measure is not needed and should be defeated.

RECOMMENDATION

Therefore, your Committee unanimously recommends that the City Club go on record as opposed to this measure and urges a vote of No. 14 “No”.

Respectfully submitted,
Walter H. Daggett
Don C. Frisbee
Milton Lankton
Henry Spivak
John S. Crawford, Chairman.

Approved October 21, 1960, by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 24, 1960, and ordered printed and submitted to the membership for discussion and action.
REPORT
ON
PERMITTING PROSECUTION BY INFORMATION OR INDICTMENT
(State Ballot Measure No. 4)

Purpose: To amend Constitution to permit district attorney to commence criminal prosecutions by filing written charges (called an "information") or by grand jury indictment as now provided.

TO THE BOARD OF GOVERNORS,
THE CITY CLUB OF PORTLAND

ASSIGNMENT

The Committee to which was referred House Joint Resolution No. 10, Measure No. 4 on the ballot, proposing to amend the Constitution of the State of Oregon to provide for prosecution of criminal charges by information as well as by indictments, submits herewith its report:

INTRODUCTION

The Legislature, by House Joint Resolution No. 10, has submitted to the voters a proposed amendment to the Constitution of the State of Oregon adding Section 10a to Article I and amending Section 5 of Article VII (amended).

The proposed new Section 10a provides that offenses heretofore required to be prosecuted in the Circuit Court by indictment may be prosecuted in that court by information or by indictment "as shall be provided by law". In the second sentence it is provided that "until otherwise provided by law" the information shall be substantially in the form provided by law for indictment and the procedure after the information is filed shall be as provided by law upon indictment.

The amendment of Section 5 of Article VII (amended) deletes from the section the following:

"No person shall be charged in any circuit court with the commission of any crime or misdemeanor defined or made punishable by any of the laws of this state, except upon indictment found by a grand jury; provided, however, that any district attorney may file an amended indictment whenever an indictment has, by a ruling of the court, been held to be defective in form. Provided further, however, that if any person appear before any judge of the circuit court and waive indictment, such person may be charged in such court with any such crime or misdemeanor on information filed by the district attorney. Such information shall be substantially in the form provided by law for indictments, and the procedure after the filing of such information shall be as provided by law upon indictment."

ANALYSIS

The effect of the proposed amendment is to give to the district attorney discretion respecting the procedure in charging an accused in the Circuit Courts with a felony or misdemeanor. He may present the matter to a grand jury or file an information in the Circuit Court. The requirement for an indictment is applicable only to charges in the Circuit Courts.

1. The "information" contemplated by the proposed amendment is an allegation or statement which the District Attorney could sign and file, charging a person with a crime, and upon which the accused could be brought to trial.

2. An "indictment" is written accusation, against one or more persons of a crime, presented to and preferred upon oath or affirmation by a grand jury.
The proposed amendment is ambiguous. In the initial part of the amendment it provides that offenses may be prosecuted “by information or by indictment as shall be provided by law.” From this it would appear that the amendment is not self-executing — that it expressly contemplates legislative action and is no more than an enabling provision. If the proposed amendment had stopped at that point, there would be no ambiguity. However, it goes on to provide that “until otherwise provided by law the information shall be substantially in the form provided by law for the indictment and the procedure after the filing of the information shall be as provided by law upon indictment.” The two provisions are not harmonious and raise doubts concerning the use of filing an “information” in lieu of an “indictment.”

It is also ambiguous as to what is contemplated as to the form that the information should take. The language is “shall be substantially in the form provided by law for the indictment.” A form of indictment in Oregon statutes (ORS 132.550) does not require a list of the witnesses appearing before the grand jury as a part of the indictment. However, there is another provision of our law (ORS 132.580) which requires the names of witnesses to be inserted at the foot of the indictment or endorsed thereon before it is presented to the court. Does the amendment mean that filing an information by the district attorney without names of witnesses on the information would be “substantially in the form provided by law”? Only a court can answer that.

WITNESSES APPEARING BEFORE COMMITTEE

The Committee has held four meetings, two of them to hear witnesses, and two of them executive sessions. Messrs. Leo Smith, former District Attorney; Oscar Howlett, Deputy District Attorney; Glenn Guertz, Deputy District Attorney; George Van Hoomissen, State Representative and former Deputy District Attorney; John D. Nichols, formerly Assistant Attorney General; Walter H. Evans, Jr., formerly Assistant Attorney General and Deputy City Attorney, and David Robinson, Jr., Assistant United States Attorney, appeared as witnesses, Messrs. Smith, Van Hoomissen and Robinson in support of the proposed amendment, and Messrs. Howlett, Guertz, Nichols and Evans in opposition.

ARGUMENT FOR THE MEASURE

The argument for the amendment is to the effect that the grand jury system has outgrown its usefulness; that while originally adopted as a protection to an accused, as a practical matter it no longer functions as a safeguard; that a grand jury is always under the control of a district attorney and indicts or refuses to indict as may be recommended by the district attorney; that while under existing laws if a complaint is filed before a committing magistrate the accused is entitled to a preliminary hearing, such preliminary hearing may be avoided by taking the charge directly to the grand jury and an indictment returned without a preliminary hearing, and for that reason an accused is not assured of a preliminary hearing under present law. It was also pointed out that an indictment is not required in any charges made in the District Courts or in the Justice Courts.

ARGUMENT AGAINST THE MEASURE

The argument against the measure is that the grand jury does provide protection to an accused; that it operates under the direction of the court; that in voting as to whether an indictment should be returned the district attorney is not permitted to be in the room with the grand jury; that it is an instrument to prevent corruption of officials and to make widespread investigations; and that the amendment would give too much power to one man.

HISTORY AND BACKGROUND

In considering the measure, the Committee concluded that a study of the history of the grand jury system and how it has functioned, the articles that have been written about it and the changes that have been made over the years would be helpful to the Committee in reaching a conclusion as to the recommendation it should make.

The records which your Committee has examined indicate that there was consider-
able sentiment in the Constitutional Convention in 1857 not to include the grand jury system. However, in the final draft, provision was made for grand juries and for the charge of a criminal offense to be made by indictment. However, there was added a provision that gave to the Legislature the right to modify or abolish the grand juries. This provision read as follows:

"but the legislative assembly may modify or abolish grand juries."

There was no change until 1899, when the Legislature authorized criminal prosecution by information.

This remained the law until 1908 when the Constitution was amended to provide that no person could be charged, in the Circuit Courts, with commission of a crime or misdemeanor except upon indictment found by a grand jury. The requirement of indictment by grand juries in Circuit Courts has not been changed since.

The argument in favor of the amendment then under consideration stressed the protection of an accused and much reliance was placed upon the fact that it was long the practice in England. There was submitted no statistical material and nothing presented of abuses arising from the use of information procedure during the time it was in effect. England, since 1933, prosecutes without the intervention of a grand jury.

In 1933, the same year England adopted the information system, the Legislature submitted to the voters a proposed amendment to do the same thing in Oregon. Oregon didn’t go along with England. That proposed amendment did contain a provision reading:

"The Legislature may modify the grand jury system."

The measure now under consideration, except by interpretation, has no such provision.

The grand jury system of initiating criminal charges was included in the Magna Carta signed by King John in the thirteenth century. Many historians claim that it goes back much farther. In any event, it was established at that time because the Crown was judge, prosecutor and jury and filed criminal charges against those who stood in its way. It was intended to protect people from unfounded criminal charges and was expected to be a bulwark between the Crown and the individual. It was a part of the common law which we adopted when we attained our independence and the States generally have fallen in line. It must be recognized, however, that even then the conditions here were not like those in England at the time of King John, and we adopted the system more because it was a part of the great common law than because of any real need for the safeguards it was assumed such practice provided, although there was a wholesome fear of government tyranny.

Grand Jury System Much Criticized

The imposition of a grand jury investigation as a prerequisite to an indictment has been criticized by large groups of people, many of whom have given special study to the problem. The Oregon Law Review, published by the University of Oregon Law School, in 1931 contained an article, written by Wayne L. Morse, then Dean of Law, giving the results of a survey made by the School of Law, in collaboration with Raymond Moley, then Professor of Law at Columbia University. The article was entitled, “A Survey of the Grand Jury System.” The authors agreed that a dual system which provides for prosecution on information or indictment was an improvement over the present system.

The American Law Institute, at its meeting in Philadelphia in 1930, adopted by unanimous vote a recommendation that all offenses theretofore required to be prosecuted by indictment should be prosecuted by indictment or information.

Mr. Austin F. Macdonald, Professor of Political Science, University of California, in his book “American State Government and Administration” (1960), at page 475, says:

“Information has proved quite satisfactory in those states that have given it the most thorough trial. By saving time and money and eliminating unnecessary technicalities it has demonstrated its superiority over the older method of fact-finding by amateurs.”

Mr. Rollin M. Perkins, Professor of Law, University of California at Los Angeles,
in an article appearing in The Foundation Press, Inc., Brooklyn, entitled “Cases and Materials on Criminal Law and Procedure,” in 1952, made this statement:

“There has been a definite trend in modern times, with the aid of statutes and constitutional amendments, to make an increasingly larger use of the information. This is entirely proper. The grand jury served a very important function in the transition from the rough and ready ‘justice’ of the Hue and Cry to modern criminal procedure. It was also one of the safeguards of the subject against the King. But at the present time it should be reserved as a body to be called upon in emergencies rather than one whose action is needed in every felony prosecution.”

Mr. James P. Whyte, Professor of Law at the College of William and Mary in Virginia, in an article in the Virginia Law Review of April 1959, entitled “Is the Grand Jury Necessary,” came to this conclusion at page 491:

“The great majority of criminal prosecutions, however, have become routine in nature. The police make speedy and efficient investigations of reported crimes and hand the evidence over to the prosecutor, who shapes it for trial. The prosecutor seldom has any personal interest in a case, seldom can be accused of trying suspects for malicious reasons, and is always better qualified to determine whether there is ground for prosecution than a group of laymen. There is no good reason why an information system with its money and time-saving features should not be used in such cases. The grand jury, on the other hand, could be used for cases having policy considerations, and can always be utilized to check the rarely-found prosecutor who has forgotten his oath of office.”

He also points out that the reasons for hailing the grand jury as a protector of the innocent are more historical than factual.

Attacks upon the grand jury arose early in the colonies. Many argued that the oppressions which had caused the grand jury to be established were not possible or present under a republican form of government where the courts and the prosecutor were responsible to the citizens.

In 1837, a great legal scholar, Francis Wharton, stated that while grand juries may have been important at one time as a barrier against “frivolous prosecutions” by the state, in the United States they were more useful as restraints upon “the violence of popular excitement and malice of private prosecutors.”

In 1849, Edward Ingersoll, prominent member of the Pennsylvania Bar, contended the grand jury was incompatible with American constitutional guarantees of freedom. Ingersoll violently objected to the grand jury’s power to indict without affording the accused an opportunity to be heard. He said that such practice was “in variance with all modern English theory of judicial proceedings.”

In the same year the Code Commissioners of New York, headed by David Field, the architect of code pleading, favored the complete abolishment of the grand juries in New York.

In 1850 the “U.S. Monthly Law Magazine” advocated that American judges take an active stand against the requirement of indictment by grand juries. In that year the Michigan State Constitutional Convention voted to the same effect.

In 1859 the Judiciary Committee of the Michigan Assembly characterized the grand jury as “a crumbling survivor of fallen institutions — more akin to the Star Chamber,” and went so far as to urge its abolishment as “dangerous to individual liberty.”

In 1920 the American Judicature Society, a venerable and respected study and research body made up of members of the United States Bar, advised delegates attending the Illinois Constitutional Convention that grand juries were of little value except to cause delay.

In 1922 Judge Roscoe Pound, later to become Dean of the Harvard Law School,
and Felix Frankfurter, later a Justice of the Supreme Court, reported that grand juries were inefficient and unnecessary.

The Model Code of Criminal Procedure, adopted by the American Law Institute in 1930, provides in Section 113 “All offenses heretofore required to be prosecuted by indictment may be prosecuted either by indictment or by information.” Work on the model code was commenced in 1925 at the request of the American Bar Association, the American Association of Law Schools, and the American Institute of Criminal Law and Criminology. The code was adopted by unanimous vote at the annual meeting of the Institute.

This gives a cross section of the trend, for more than a century, not only for a modification of the doctrine that the grand jury should be the exclusive arm of the court to charge an accused with the commission of a crime, but that the system should be abolished. However, it is apparent that the sentiment in the United States is fairly well crystallized to retain the grand jury but to give to prosecuting officers the right to initiate prosecution by filing an information rather than to hold only to indictment by a grand jury. This is fully reflected in the action by the American Law Institute in 1925 referred to above.

There were submitted to the Committee copies of letters from eighteen judges from the various courts in the State expressing their attitude towards the amendment. Generally they endorsed the amendment and expressed the opinion that it would expedite the handling of criminal business and would not do violence to basic constitutional rights. One indicated the right of preliminary hearing should be preserved.

The Oregon State Bar, at its meeting held at Gearhart in 1960, recommended the passage of the constitutional amendment.

Your Committee has been informed that twenty-seven states of the United States have the dual system. In none of them has the grand jury been abolished, but has been reserved for making such investigations and studies as might be necessary in the public interest, but that most criminal charges are just as well handled by filing an information by the district attorney as would be the case if an indictment was required. The State of Washington has the dual system. In one of their counties your Committee has been advised that there has not been a grand jury session in forty-two years. The practice of filing an information and not an indictment is universally followed. Our neighboring states also permit the filing of an information, and Oregon is the only state in the western part of the Union that does not permit that practice.

**DISCUSSION**

The proposed amendment does not abolish the grand jury system and it may function for any purpose that a judge considers essential in the public interest. Most crimes are of a routine character, the guilt readily apparent and the defendant without valid defense. In such cases it does not appear to be expeditious to require that witnesses be called and the time of the grand jury, district attorney and witnesses be required before a charge can be filed.

The proposed amendment does not specifically require a preliminary hearing prior to the filing of an information except as the phrase “as shall be provided by law” may of itself require legislation before the amendment is effective. In that case the Legislature can provide for it.

**MAJORITY CONCLUSION**

The Committee is of the opinion that permission to file an information in lieu of an indictment would tend to simplify and expedite the criminal business of our courts without jeopardy to the rights of anyone charged with crime. The Committee feels, however, that there should be legislation requiring preliminary hearing, something which can now be avoided by direct submission to a grand jury.

In this connection it should be pointed out that prosecution in the District and Justice Courts is by information. Neither has grand juries. The Committee has received no information of any movement to change the procedure in those courts.
The Committee is genuinely concerned about the ambiguities already pointed out. It has no doubt they can be cured by legislation. Such legislation can make it clear that the names of witnesses examined by the district attorney must be inserted in the information before it is filed, and provide such other safeguards as may be necessary to protect the innocent and the rights of anyone charged with a crime. Until supplementary legislation is passed it is doubtful that district attorneys would use the information procedure except when the defendant waives indictment, as may be done under existing law. The Committee also recognizes that district attorneys are officers of the law and are slow to take chances in following a course that might lead to questionable charges and reversals in the courts.

The Committee feels that the ambiguities in the proposed amendment and its lack of safeguards are important matters and should not be lightly overlooked. However, the Committee recognizes that the objective of the amendment is a forward-looking step in the handling of criminal matters. With appropriate legislation it will expedite and simplify criminal procedure without the sacrifice of the rights of the accused. Because of that factor, the majority of your Committee believes that it is desirable that this amendment be passed now in order that the next legislative session may be in a position to enact such laws as are necessary to cover the matters referred to in this report and to enable district attorneys to proceed by information with due safeguards for those accused of crime.

RECOMMENDATION

Therefore, on the basis of its analysis of the proposed measure and the study that it has made, the majority of your Committee recommends that The City Club go on record as favoring the passage of the proposed constitutional amendment and that the vote on No. 4 be “YES”.

Respectfully submitted,
Robert L. Bothwell
Ivan Congleton
George P. Haley
Randall S. Jones
Thomas J. Tobin
Allan A. Smith, Chairman
for the majority.

MINORITY DISCUSSION AND CONCLUSION

I respectfully dissent from the majority conclusion and wish to go on record as opposing the adoption of the proposed constitutional amendment doing away with grand juries.

I realize that the amendment as worded does not literally “do away” with grand juries, but I note that in King County, Washington, where the information system is authorized, there has been only one grand jury called in the last thirty-odd years; and I am sure that from a practical standpoint, even the sponsor would agree that it would “do away” with the grand jury.

Among my reasons for opposing the amendment are the following:

First, I believe the Committee has misunderstood its purpose and assignment. It is my understanding that we were asked to express an opinion on the specific proposal known as “State Ballot Measure No. 4,” and not on what a majority of the Committee thought the Legislature would probably do if such constitutional amendment were approved by the people. The majority report clearly recognizes the weakness of this proposal and its inherent dangers and threats to our personal and constitutional liberties when it states in part:

“The Committee is genuinely concerned about the ambiguities already pointed out. It has no doubt they can be cured by legislation . . .

“The Committee feels that the ambiguities in the proposed amendment and its lack of safeguards are important matters and should not be
lightly overlooked. However, the Committee recognizes that the objective . . . is a forward-looking step . . . With appropriate legislation it will expedite and simplify criminal procedure without the sacrifice of the rights of the accused. Because of that factor, the majority of your Committee believes that its desirable . . ."

I do not view proposed erosion of our constitutional guarantees as lightly as do the majority of the Committee, and I sincerely feel that the passage of this amendment would constitute the opening of Pandora's box and be but the first step in the dilution and decay of the Bill of Rights which has distinguished this country from all others in the world. I, too, believe that the Legislature could correct the inadequacies of the proposed legislation, but my point is that the amendment does not cure these inadequacies and I do not concede that the proposition before this Committee was whether or not we "had confidence in the Legislature" or whether or not we should give blanket authority to the Legislature to overhaul our present criminal procedure. On the contrary, I felt and still feel that the duty of this Committee was to pass on the proposed amendment without addition thereto or subtraction therefrom and for this reason alone I am unalterably opposed to it.

Second, I would like to comment briefly on the majority report. The analysis of the legislation is, in my opinion, accurate as far as it deals with the matter. The arguments for the measure, I believe, substantially restated the testimony before this Committee but at this juncture I must point out that the arguments advanced for the measure are all, in effect, criticisms of the District Attorney, i.e., the contention that the grand jury is "always under the control of a District Attorney and indict or refuses to indict as may be recommended by the District Attorney . . ." (with which statement I respectfully disagree), and yet the measure approved by the majority report seeks to cure this supposed evil by giving the District Attorney more power. Under the amendment he could indict or not indict at his pleasure and his pleasure alone.

Next, I note that in the majority report there has been no discussion of how it happened that first in 1899 the Legislature authorized prosecution without an indictment and nine years later the Constitution was amended to reinstate the requirement of indictment. What evidence is there that times have changed so that our experience for the next nine years would be any different from that of the 1899-1908 period?

Next, the Committee points out that the indictment has been abolished in England and impliedly holds forth the English system as a model system. I frankly do not think that the English system in its entirety would work in this country and, unless it is adopted in its entirety, I am most reluctant to single out one small portion and approve it as a panacea. I agree:

"there was submitted no statistical material and nothing presented of abuses arising from the use of information procedure during the time it was in effect."

May I also point out that there was submitted no statistical material and nothing presented of abuses arising from the use of grand jury procedure during the much longer time it has been in effect.

I have the greatest respect for the learned professors and our Senior Senator from Oregon who are quoted or summarized in the majority report. Frankly, however, I would be, and have been, more impressed by the statements of practicing lawyers, certain District Attorneys and ex-District Attorneys and men like Robert F. Maguire and the late Judge James Alger Fee, all of whom sincerely oppose the abolition of the grand jury.

I feel also impelled to point out that the Oregon State Bar, as reported in the majority report, did recommend the passage of the report at a morning session when, due to press of business, debate was limited; and the vote was 62 in favor and 60 against. The Oregon State Bar has a present active membership of about 2,500 so it would appear that less than 5 per cent expressed an opinion on the proposal. This is certainly not an overwhelming endorsement.

In my opinion, all that would be necessary to accomplish the end sought by the sponsors of this measure would be the change of one word in the Constitution of the State of Oregon, namely, to change the word "may" to "shall" in Amended Article VII,
Section 5, quoted in the majority report, in the language immediately following the last proviso so that it reads that when any person waives indictment "such person shall be charged in such court . . . on information filed by the district attorney."

The only other comment I care to make on the majority report is to point out that in my opinion the argument that this should be adopted because at the present time proceedings in our district court and justice of the peace courts are by information is obviously begging the question. Neither of these courts has any jurisdiction over felonies and, in my opinion, the felony case in which the accused does not wish to waive indictment is the very case in which the grand jury should be called.

You probably recall that our original federal Constitution provided for trial by jury but did not preserve indictments or grand juries. "Although this provision of a trial by jury in criminal cases was thus constitutionally preserved to all citizens, the jealousies and alarms of the opponents of the Constitution were not quieted. They insisted that a bill of rights was indispensable upon other subjects, and that upon this, further auxiliary rights ought to have been secured. These objections found their way into the State conventions, and were urged with great zeal against the Constitution. They did not, however, prevent the adoption of that instrument. But they produced such a strong effect upon the public mind that Congress, immediately after their first meeting, proposed certain amendments, embracing all the suggestions which appeared of most force; and these amendments were ratified by the several States, and are now become a part of the Constitution. They are contained in the fifth and sixth articles of the amendments, and are as follows:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger." (Pages 561 and 562, Story on The Constitution, 5th Ed.)

The iniquity of the crown prosecutor and the continental information system were fresh in the minds of our founding forefathers when these provisions were adopted. I believe they should be fresh in our minds when we consider this proposal.

No one has seriously suggested, so far as I know, that this requirement of an indictment of a grand jury be eliminated from our Bill of Rights. Indeed, many think the federal system should be a model for the state courts. Our own Oregon Supreme Court, in a case passing on qualifications of a grand juror (State v. Carlson, 39 Or. 19 at page 25) made the following observation (in December, 1900):

". . . the terrors of the Inquisition, and the arrest and imprisonment of persons from private malice or for entertaining different opinions from the ruling power respecting political and religious matters, induced the adoption of the Fifth Amendment to the Constitution of the United States . . ."

Our government is founded on the principle of checks and balances. The placing of power in any one man, even the President of the United States, has been kept to an absolute minimum. I know of no protection for the rights of an accused and for the rights of the State equivalent to a grand jury under the proposed amendment. Neither in law nor in fact are the grand jurors subject to the control of the District Attorney. They are under the control of the Circuit Court and no one but the grand jury themselves, and this means no one, can be present when they are deliberating or voting on a matter before them.

As a part of the instructions given every grand jury in this county, jurors are directed that they shall receive only evidence such as might be given on the trial and that if they have reason to believe that other evidence within their reach would explain away the charge, they should order such evidence to be produced in order that the entire matter may be considered. They have the right of subpoena and are specifically instructed by the Court that if they are in doubt as to whether the facts shown constitute a crime, they can and should apply to the Court by presentment, without mentioning names, and ask the Court for instructions concerning the law.

Every grand jury is also instructed that it is its duty to inquire into the condition
and management of every prison and of the offices pertaining to the courts of justice in the county and it is entitled to free access at all times to such places and to examine without charge all public records of the county, and also that it is its duty to inquire into all crimes triable within the county whether reported by officers or not. These instructions are more than matters of form and, I believe, are not to be taken lightly. Who would perform these important additional duties in the absence of a grand jury?

From a practical standpoint it seems obvious to me that in a populous center like Multnomah County, the District Attorney himself could not possibly investigate and pass judgment on all the "informations" that would be required. Of necessity he would be forced to delegate this responsibility to most or all of his fifteen deputies. I do not regard this as an adequate substitute for the judgment of five of the seven grand jurors necessary to return an indictment or a "not true" bill.

I would like to pose the question as to whether or not the majority thinks the grand jury or a single district attorney (or his deputies) would be more susceptible to political and publicity pressures than a grand jury? In our own United States Senate political "in-fighting" is presently holding up the appointment of some fifty badly needed additional federal judges. We can recall the desire of the President of the United States to "pack" the Supreme Court to influence its political and social philosophy. Within our own recent memories, we can also recall the serious questions that were raised concerning the conduct of our own District Attorney's office (which admittedly was operating under a grand jury system). Nonetheless, the majority of this Committee proposes to give the District Attorney more power. The modus operandi of corrupt and sinister influence is to proceed covertly and secretly, and to rarely expose itself to the searching sunlight of public knowledge. In my opinion, there is far greater opportunity for such a modus operandi when the grand jury system has been abolished. I would like to pose the question as to whether or not the majority thinks the grand jury or a single district attorney (or his deputies) would be more susceptible to political and publicity pressures than a grand jury? In our own United States Senate political "in-fighting" is presently holding up the appointment of some fifty badly needed additional federal judges. We can recall the desire of the President of the United States to "pack" the Supreme Court to influence its political and social philosophy. Within our own recent memories, we can also recall the serious questions that were raised concerning the conduct of our own District Attorney's office (which admittedly was operating under a grand jury system). Nonetheless, the majority of this Committee proposes to give the District Attorney more power. The modus operandi of corrupt and sinister influence is to proceed covertly and secretly, and to rarely expose itself to the searching sunlight of public knowledge. In my opinion, there is far greater opportunity for such a modus operandi when the grand jury system has been abolished. I believe the grand jury system (acting under the aegis of the Circuit Court) is both a restraint upon the unjust prosecution of the innocent and upon the failure to prosecute the guilty.

Although not mentioned in the majority report, it was urged by the Committee that the grand jury system was expensive. In my opinion the expense of the grand jury is trifling when balanced with the potential loss of this portion of our Bill of Rights.

The Committee quotes from Professor Whyte who refers to the great majority of criminal prosecutions as being "routine in nature." I respectfully suggest that the only "routine criminal proceeding" is that which does not involve you, your family, or your friends. The principles embodied in the Bill of Rights are noble, dedicated to great ends. However, they are mere idle words if the citizens grow too busy to treasure them and too indifferent to maintain them.

What some men died for others must live for.

I have probably already been too prolix but in closing I would like to point out that, although critical of the majority report, I have the greatest respect for the sincerity of the members signing it as well as for the sponsors of this measure, and it would be much easier for me to simply say "I dissent." I believe this too important a matter, however, to remain silent and hope that perhaps on more mature reflection the dangers in the proposed amendment will be more apparent.

"...The security to accused persons consists in the popular character of the tribunal, in the fact that they meet, receive, and sift the evidence independently of the prosecuting authorities, and in their own way, and are therefore not likely to be swayed or influenced by the passions, desires, or interests of those in authority, or of malignant prosecutors."

(Cooley on Constitutional Law, page 362)
MINORITY RECOMMENDATION

I would recommend against the proposed amendment and that the vote on No. 4 be "No".

Respectfully submitted,

Paul R. Harris
for the minority.

Approved October 19, 1960, by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors October 24, 1960, and ordered printed and submitted to the membership for discussion and action.