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Sacramento, California
February 18, 1971

Honorable Alex P. Garcia
Assembly Chamber

Bank, Corporation and Insurer
Taxes: Two-Thirds Vote - #2829

Dear Mr. Garcia:

QUESTION

You have asked us whether the requirements of the California Constitution for a two-thirds legislative vote on bills relating to taxes paid by banks, corporations and insurers is constitutional.

OPINION AND ANALYSIS

As you know, this office is representing the Legislature in an action involving the exact question you ask, Cameron v. Senate and Assembly, No. 982576, L.A. Sup. Ct. Therefore, it would be inappropriate at this time for us to predict the outcome of that lawsuit. For that reason, we will limit our analysis to a discussion of the two issues raised in that lawsuit.

1. One Man One Vote

The first issue presented in the Cameron case is whether the two-thirds legislative vote requirements for bills relating to bank, corporation and insurer taxes violates the equal protection clause of the Fourteenth Amendment of the United States Constitution under the "one man one vote" decisions. Specifically, these requirements are as follows:

> "The legislature, two-thirds of all the members elected to each of the two houses voting in favor thereof, may by law change the rate or rates of taxes herein imposed upon insurers." (Insurer taxes; Sec. 14-4/5, subd. (i), Art. XIII, Cal. Const.)
>
> "Any tax imposed pursuant to this section must be under an act passed by not less than two-thirds vote of all the members elected to each of the two houses of the legislature." (Bank and corporation taxes; Sec. 16, subd. (3), Art. XIII, Cal. Const.)

The contention of the plaintiff in the Cameron case on this issue is "...that the requirement of a two-thirds majority is to give each legislator voting in opposition to a change in the tax rates or in opposition to the imposition of a tax upon said selected class of taxpayers, the equivalent of two votes as opposed to each single vote of a legislator voting in favor of such changes; [and] that this dilution of the vote of a legislator is an indirect abridgment and dilution of the right to vote and to have an equal vote of citizens and taxpayers of the State of California just as effectively as if such citizens or taxpayers were required to vote directly on such matters" (Cameron v. Senate and Assembly, paragraph 7 of the complaint).

The basis for this contention apparently lies in the recent landmark decision of the California Supreme Court in Westbrook v. Mihaly (1970), 2 Cal. 3d 765, declaring the requirement of a two-thirds vote for local bond elections unconstitutional under the "one man one vote" decisions. The petitioners in the Westbrook case contended that the two-thirds vote requirement, by giving to each negative voter twice the voting power of each affirmative voter, substantially diminished the effect of the votes of all persons who favored passage of propositions authorizing the incurring of bonded indebtedness (p. 773). The court stated that it was required to consider the facts and circumstances behind the law, the interests which the state claimed to be protecting, and the interests of those disadvantaged by the challenged classification (p. 774). The court considered such factors at length.

The court reviewed three principal contexts in which the courts are now enforcing the Equal Protection Clause in the "political thicket" (p. 779). The first category is state laws that exclude various groups from voting in all or certain elections (p. 779). The second area involves state geographical districting systems which dilute effectiveness of the franchise either directly or through the allocation of legislative representation (p. 780). The final area was described by the court as follows: "The third category of which we speak is less neatly defined. In a general way, it deals with the extent to which a state, through the political process, may impose on the interests of one group burdens which are significantly more onerous than those it imposes on similar interests of other groups." (p. 780) The court stated that the court decisions in these three areas fashion the doctrinal structure and delineate the basic principles that govern its decision in the case before it (p. 781).

The petitioners contended that the dilution of voting power, caused by the two-thirds vote requirement involved, constituted a denial of equal protection of the laws, absent a showing that the provision is necessary to promote a compelling state interest (p. 781). The court held that the requirement could be valid if, and only if, it could be shown necessary to promote a compelling state interest (p. 795).

The court stated, in the course of its opinion, that the inevitable result of any extraordinary majority requirement is to give one group of voters a greater influence on the outcome of an election than to another group of comparable size but opposite conviction (p. 782).

One of the respondents' arguments in the case was that the extraordinary majority requirement at issue was not unique and that there are many contexts in which governmental action is conditioned upon the ability of its proponents to secure the support of more than a bare majority (p. 797). The respondents compiled many such requirements, including those requiring two-thirds for General Fund appropriations and urgency statutes.

The court rejected the respondents' argument and stated that, since many of the extraordinary majority provisions apply solely to the internal procedures of legislative bodies, they involve no dilution of the individual exercise of the franchise as was the issue in that case (p. 798). The court noted that some of the legislative vote requirements were institutional arrangements of varied historical origin and specialized function (e.g., ratification of a treaty, p. 798), others were designed to avoid precipitate action in areas of particular importance or sensitivity (e.g., conviction of impeachment, p. 799), and others represent those basic allocations of power between branches of government which are at the heart of the "checks and balances" system established by the founding fathers (e.g., override of a veto, p. 799).

The court concluded the above discussion in the following words:

> "Finally, those extraordinary majority vote requirements which do apply outside the legislative process are by no means uniformly invalidated by our decision today. We emphasize that while it has not been demonstrated that a two-thirds vote requirement for approval of local general obligation bonds is necessary to promote a compelling state interest, similar provisions in other contexts may meet this standard. For example, it is common to insist upon a broad concensus before altering basic political documents. (See, e.g., U.S. Const., Art. V.) Documents such as constitutions exist partly to provide continuity and stability to the affairs of state. This

> is a goal of fundamental importance and one which can be achieved only by protecting such charters from the will of temporary majorities. We see no a priori reason to assume that other extraordinary majority provisions cannot be shown to be necessary to attain 'compelling' ends. Each must be judged on its particular facts. Those which serve no such end will fall, but our decision today commits us to no wholesale elimination of such laws. We, of course, express no opinion as to the validity of any of the foregoing provisions." (p. 799; emphasis added.)

Several points should be noted regarding the application of the Westbrook decision with regard to the two-thirds vote requirement for bills relating to taxes paid by banks, corporations and insurers.

First, it is clear that the latter requirement gives legislators who oppose a change in taxes paid by banks, corporations and insurers greater influence in the matter than legislators of equal number but opposite conviction, much the same as the court stated in the Westbrook case regarding voters who opposed a local bond issue (p. 782). However, the tax measure requirement may be distinguished from the local bond issue requirement in that the latter discriminated in favor of those opposed to raising revenue by means of local bond issues, while the former gives preference to neither those who wish to increase revenue raised by taxes on banks, corporations and insurers, nor those who wish to decrease such revenue. Rather, it favors those who wish to retain the status quo.

The court stated the following with respect to the two-thirds school bond requirement in this regard:

> "This justification for the extraordinary majority requirement rests on the premise that a decision to undertake a project such as the construction of schools and playgrounds is

> qualitatively different from a decision not to do so. This, in turn, is based on the assumption that spending money is a more serious matter than not spending it and, consequently, must be justified whereas frugality is self-justifying. A predisposition to thrift may serve a man well. It does not, however, justify governmental inertia, especially when government is faced with critical social problems demanding urgent and sometimes costly remedies. There is no presumption in favor of inaction, as the United States Supreme Court observed in Avery v. Midland County, supra, 390 U.S. 474, 484; '[W]e might point out that a decision not to exercise a function within [local government's] power - a decision, for example, not to build an airport or a library, or not to participate in the federal food stamp program - is just as much a decision affecting all citizens...as an affirmative decision.'" (p. 793; emphasis of the court.)

Second, the tax requirement may be distinguished from the bond issue requirement on the basis that it involves a legislative rather than a popular vote.

Thus, it could be argued that the Westbrook decision gives a two-thirds legislative vote requirement "legislative immunity" from the "one man one vote" doctrine, since there is no "dilution of the individual exercise of the franchise" involved. Even if the latter argument is not successful, the two-thirds legislative vote requirement for bank, corporation and insurer taxes would still be upheld if shown to be necessary to attain "compelling" ends.

In this regard it could be argued that the area of taxation of banks, corporations and insurers is one of particular importance and sensitivity, either by reason of the amount of revenue derived from such sources or by reasons of special interests of the state in encouraging and protecting commercial activity. A further argument

would be that a two-thirds vote requirement in such matters provides a "check and balance" which protects rather than weakens minority interests, by forcing a compromise between various factions of the Legislature in order to enact legislation. Thus, the legislative vote requirement could be distinguished from the popular vote requirement because of the creative nature of the legislative process as opposed to the "yes or no" nature of a vote on a local bond issue, and it could be pointed out in this regard that whereas it is fairly common to have a partisan majority in both houses of the Legislature, it would be quite unusual for one party or faction to be able to raise a two-thirds vote solely within its own ranks.

Finally, there is the possibility that the Westbrook case may be overruled. A petition for writ of certiorari to the United States Supreme Court has been filed in the Westbrook case, and the matter was docketed on September 2, 1970. The United States Supreme Court granted certiorari in the similar West Virginia case of Gordon v. Lance on March 30, 1970. The latter case involves a decision of the West Virginia Supreme Court invalidating a state constitutional requirement of a three-fifths vote for voter approval of bond issues and an increase in tax levies (Lance v. Board of Education of County of Roane, 170 S.E. 2d 783). Also, on August 14, 1970, the United States District Court for West Missouri ruled contrary to the decision in the Westbrook case, upholding Missouri's constitutional and statutory requirements for a two-thirds vote on local school tax levies and bond issues (Brenner v. Kansas City School District, 39 Law Week 2122).

2. Classification of Taxpayers

The second issue presented in the Cameron case is whether the two-thirds legislative vote requirement for bills relating to bank, corporation and insurer taxes violates the equal protection clause of the United States Constitution as an arbitrary discrimination between classes of taxpayers.

The contention of the plaintiff in the Cameron case on this issue is "that the above cited constitutional sections of the State of California [Secs. 14-4/5, 16, Art. XIII, Cal. Const.], insofar as they provide for an

extraordinary majority of the Legislature to affect laws changing the tax rate or to impose taxes upon the class of taxpayers specified therein, is an arbitrary discrimination between classes of taxpayers of the State of California." (Cameron v. Senate and Assembly, Para. 6 of the Complaint.)

It is a well settled general rule that the power of states to make classifications of persons for the purpose of taxation is very broad and in making such classifications every reasonable presumption in support of the classification will be indulged in to uphold if it can be reconciled on any reasonable or natural theory (Roth Drug, Inc. v. Johnson, 13 Cal. App. 2d 720, 733, 734). Tax schemes classifying taxpayers between corporations and individuals have been upheld as well as classifications for purposes of tax rates and exemptions (Home Ins. Co. v. New York, 33 L. ed. 1025; Stebbins v. Riley, 69 L. ed. 884; Bank of California v. San Francisco, 142 Cal. 276). The plaintiffs in the Cameron case contend that while California's system of taxing banks, corporations, insurers, and individuals is valid, the higher legislative vote required to change the bank, corporation and insurer taxes is discriminatory against individuals.

The legislative histories of the constitutional provisions requiring higher legislative votes to change the taxation of banks, corporations and insurers do not disclose the reasons therefor. In support of such requirement, however, it could be argued that the people of this state consider it desirable to encourage the formation and settling in this state of the business organizations subject to the bank, corporation and insurer taxes through providing stability and predictability in the existing tax system with respect to these organizations. It may thus be argued that just as the state may classify types of taxpayers with respect to the imposition of taxes and exemptions from taxation, it is not unreasonable to make it more difficult for the Legislature to change the existing taxation of particular classes of taxpayers, such as corporations, banks and insurers. In this regard, the United States Court of Appeals for the First Circuit in the case of Ballester v. Descartes, 181 F. 2d 823, at page 833, stated:

"The Legislature is not obliged to treat on an equality all the distinctive types of business organization, either taxwise or otherwise. Individuals contemplating the formation of one or another of these various types of business organization will take into account, as applied to their own individual situations, the advantages and disadvantages of the various choices offered them. From the point of view of tax consequences, one form of organization may have advantages over others; thus, if the insular income tax law remains as amended, it may furnish an incentive to persons to incorporate rather than to form partnerships, despite the more stringent regulation to which corporations are subjected."

Very truly yours,

George H. Murphy
Legislative Counsel

Clinton J deWitt

By
Clinton J. deWitt
Deputy Legislative Counsel

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Sacramento, California
March 3, 1971

Honorable Alex P. Garcia
Assembly Chamber

Constitutional Amendments - #2777

ACA 12

Dear Mr. Garcia:

QUESTION

You have asked whether the Legislature could submit two alternative constitutional amendments, one lowering the two-thirds vote requirement for insurance and bank and corporation taxes to a majority, the other raising the vote requirement for all other taxes to two-thirds; and if so, how it could be done.

OPINION AND ANALYSIS

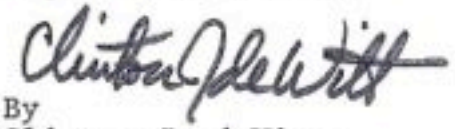
There is no provision of the constitution which would prohibit the Legislature from submitting to the people two constitutional amendments on the same subject, including two constitutional amendments relating to legislative vote requirements for tax measures. If the provisions of two or more constitutional amendments approved at the same election conflict, those of the measure receiving the highest affirmative vote prevail (Art. XVIII, Sec. 4, Cal. Const.).

Therefore, in our opinion, the Legislature could submit two constitutional amendments, one lowering the legislative vote requirement for insurance and bank and corporation taxes, the other fixing the legislative vote requirement for all taxes, including the income and bank and corporation tax, at two-thirds. If the

amendments are so drafted that they clearly conflict with each other in all respects, the amendments will, in effect, be alternatives, i.e., if both are approved, the amendment receiving the lower vote will have no effect.

Very truly yours,

George H. Murphy
Legislative Counsel



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Sacramento, California
March 4, 1971

Honorable Alex P. Garcia
Assembly Chamber

Bank and Corporation Tax
Law (A.C.A. 13) - #3392

Dear Mr. Garcia:

QUESTION

If Assembly Constitutional Amendment No. 13, as introduced in the 1971 Regular Session, is approved by the voters, could the Legislature increase taxes under the Bank and Corporation Tax Law by a majority vote if it did not otherwise amend the law?

OPINION AND ANALYSIS

Among other changes, Assembly Constitutional Amendment No. 13, as introduced in the 1971 Regular Session, deletes provisions of the California Constitution requiring a two-thirds vote to change the rates of taxation on banks, insurance companies, corporations and franchises and allows such changes by a majority vote. Although this removes an impediment to changing these tax rates by a majority vote, in the case of the Bank and Corporation Tax Law there is an additional complication because of subdivision (d) of Section 12 of Article IV of the California Constitution. This provision requires a two-thirds vote for any bill making an appropriation from the General Fund, except for appropriations for public schools. Due to the provisions of Sections 16100 and 16105 of the Government Code, any increase in taxes under the Bank and Corporation Tax Law automatically results in an appropriation and thus requires a two-thirds vote.

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Section 16100 of the Government Code requires that one-fourteenth of the revenue derived pursuant to the Bank and Corporation Tax Law (which revenue has been transferred to the General Fund under Section 26481 of the Revenue and Taxation Code) shall be transferred to the Property Tax Relief Fund. In turn, Section 16105 continuously appropriates the money in the Property Tax Relief Fund to the Controller to make payments to local government for losses of revenue they suffer because of reduction of the property tax on business inventories.

Since an increase in bank and corporation taxes will increase total revenue, it will increase the amount of money going to the Property Tax Relief Fund. This will result in an increase in the amount that is appropriated to the Controller under Section 16105 of the Government Code. Because of this appropriative effect, any bill raising the rate of tax under the Bank and Corporation Tax Law must be passed by a two-thirds vote to satisfy the requirements of subdivision (d) of Section 12 of Article IV of the California Constitution.

However, if the Legislature were to repeal the continuing appropriation in Section 16105 or provide by statute that the additional revenue accruing from any increase in the Bank and Corporation Tax will not go into the Property Tax Relief Fund or any other continuously appropriated fund, then a bill raising the rate under the Bank and Corporation Tax Law would only require a majority vote.

Very truly yours,

George H. Murphy
Legislative Counsel

By James Reichle
James Reichle
Deputy Legislative Counsel

JR:rt

Two copies to Honorable Leo T. McCarthy,
pursuant to Joint Rule 34.

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Sacramento, California
March 5, 1971

Honorable Alex P. Garcia
Assembly Chamber

Corporate Taxation
(A.C.A. 13) - #3383

Dear Mr. Garcia:

QUESTION

If Assembly Constitutional Amendment No. 13, as introduced at the 1971 Regular Session of the Legislature, is approved by the voters in its present form, would chartered cities or general law cities be able to tax corporate franchises or would this be otherwise prohibited?

OPINION AND ANALYSIS

Assembly Constitutional Amendment No. 13, as introduced at the 1971 Regular Session of the Legislature proposes, among other things, to amend Section 16 of Article XIII of the State Constitution in the following manner:

"Sec. 16. ~~1. (a) Banks, including national banking associations, located within the limits of this State, shall annually pay to the State a tax, at the rate to be provided by law according to or measured by their net income, which~~

~~shall be in lieu of all other taxes and licenses, state, county and municipal, upon such banks, or the shares thereof, except taxes upon their real property and, when permitted by the Congress of the United States with respect to national banking associations, motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the State upon vehicles, motor vehicles or the operation thereof.~~

"~~(b)~~ (a) The Legislature may provide by law for any ~~other~~ form of taxation now or hereafter permitted by the Congress of the United States respecting national banking associations; provided, that such form of taxation shall apply to all banks located within the limits of this State.

"~~2.~~ (b) The Legislature may provide by law for the taxation of corporations, their franchises, or any other franchises, by any method not prohibited by this Constitution or the Constitution or laws of the United States.

"~~3.~~ (c) Any tax imposed pursuant to this section must be under an act passed by not less than ~~two-thirds~~ a majority vote of all the members elected to each of the two houses of the Legislature."

As we understand it, the main purpose of the above proposed amendments is to allow the Legislature greater flexibility with respect to the taxation of banks and national banking associations to conform to recent amendments by Congress to Section 548 of Title 12 of the United States Code (P.L. 91-156; see also Sec. 23181, R.& T.C.). As applied to corporations, the proposed constitutional amendment does no more than allow the Legislature to tax corporations by a majority, rather than a two-thirds, vote of all the members elected to each of the two houses.

Thus, whatever power cities now have to tax corporate franchises will not be affected by this proposed change. However, precisely what powers the cities do have under existing law to tax corporate franchises is unclear.

Section 14 of Article XIII of the State Constitution provides for the manner of assessing and taxing public utility property for purposes of property taxation. The section goes on to provide:

> "All companies herein mentioned and their franchises ... shall be taxed in the same manner and at the same rates as mercantile, manufacturing and business corporations and their franchises are taxed pursuant to Section 16 of this article; provided, that nothing herein shall be construed to release any company mentioned in this section from the payment of any amount agreed to be paid or required by law to be paid for any special privilege or franchise granted by any political subdivision or municipality of this State ... ." (Emphasis added.)

As may be seen, the above provision does not define "franchise" or "special franchise." However, the courts have stated that a franchise is a special privilege granted by the state directly or through one of its mandatories (Crocker v. Scott (1906), 149 Cal. 575, 597).

Whenever a corporation is legally formed, the right to be and exist as such, and as a corporation to do the business specified in its articles, whether it be a banking business, grocery business, or the operation of a railroad, or any other business in which individuals may function without grant from the state, is a grant by the sovereign power, a valuable right which is generally known as the corporate franchise (Bank of California v. City and County of San Francisco (1904), 142 Cal. 276, 279). A franchise is deemed to be property under the laws relating to property taxation (Art. XIII, Sec. 1, Cal. Const.; San Jose Gas Company v. January (1881), 57 Cal. 614, 616).

The Legislature has provided for the taxing of corporate franchises under the Bank and Corporation Tax Law provided for in Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

The franchise tax is a tax imposed upon a corporation for the right or privilege of being a corporation or of doing business in a corporate capacity, and differs materially from property taxes (The Pacific Company, Ltd. v. Johnson (1931), 212 Cal. 148, 154, 155). The tax is not imposed on the privilege of doing business, but on the privilege of doing business as a corporation (Edward Brown and Sons v. McColgan (1942), 53 Cal. App. 2d 504, 508). It is imposed on the privilege of using the corporate mechanism, with its consequent advantages over other forms of doing business in this state (Id.).

Although the Bank and Corporation Tax Law is administered by the Franchise Tax Board (Sec. 26422, R.& T.C.), the State Board of Equalization has duties imposed upon it under such law (see Sec. 26077, R.& T.C.). As used in the law, "Franchise Tax Board" is used to designate that body, while use of the single word "board" refers to the State Board of Equalization (Sec. 23031, R.& T.C.).

The corporate franchise tax is imposed under Chapter 2 (commencing with Section 23101) of Part 11 of Division 2 of the Revenue and Taxation Code. Within this chapter, Section 23154 provides:

> "23154. The tax imposed under this chapter is in lieu of all ad valorem taxes and assessments of every kind and nature upon the general corporate franchises of the corporations taxable under this chapter but is not in lieu of any taxes or assessments upon special franchises owned, held or used by said corporations. All such special franchises shall be assessed annually by the board, at their actual value, in the same manner as is provided for the assessment of other property to be assessed by said board under Section 14 of Article XIII of the Constitution of this State, and shall be subject to taxation to the same extent and in the same manner as other property so assessed by said board."

As may be seen, the above provision speaks in terms of ad valorem property taxes and assessments of every kind and nature imposed upon general corporate franchises. This

language is the type employed in property taxation, rather than the franchise tax. It is noted that the section does not state that the franchise tax is in lieu of a local excise tax on the privilege of doing business by a corporation.

Moreover, the section goes on to provide that "special franchises" shall be assessed annually by the State Board of Equalization in the same manner as other property assessed by the board under Section 14 of Article XIII of the State Constitution. As noted earlier, the State Board of Equalization presently assesses public utility property under that constitutional provision for purposes of property taxation.

Although the above provision has been a part of the law since 1935 (see subd. (7), Sec. 4, Bank and Corporation Franchise Tax Act; Ch. 353, Stats. 1935), the section has not been construed as prohibiting the imposition of license taxes on corporations for revenue purposes by chartered cities under their charters (see West Coast Advertising Company v. City and County of San Francisco (1939), 14 Cal. 2d 516). For that matter, Section 37101 of the Government Code grants the following power to the legislative bodies of cities governed by general laws:

> "37101. The legislative body may license, for revenue and regulation, and fix the license tax upon, every kind of lawful business transacted in the city, including shows, exhibitions, and games. . . ."

In addition to the foregoing, for purposes of the Personal Income Tax Law, which is provided for in Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, an "individual" is defined to mean a natural person (Sec. 17005, R.& T.C.). "Person," on the other hand, is defined as including individuals, fiduciaries, partnerships, and corporations (Sec. 17007, R.& T.C.).

Section 17041.5 of the Revenue and Taxation Code then goes on to provide as follows:

> "17041.5 Notwithstanding any statute, ordinance, regulation, rule or decision to the contrary, no city, county, city and

> county, governmental subdivision, district, public and quasi-public corporation, municipal corporation, whether incorporated or not or whether chartered or not, shall levy or collect or cause to be levied or collected any tax upon the income, or any part thereof, of any person, resident or nonresident.
>
> "This section shall not be construed so as to prohibit the levy or collection of any otherwise authorized license tax upon a business measured by or according to gross receipts." (Emphasis added.)

Since "person" is defined as including "corporations," we think the above provision would prohibit the imposition of a local income tax in most cases, even though the provision is located in the Personal Income Tax Law and corporations are taxed under the Bank and Corporation Tax Law.

As a final point, it should be noted that subdivision (a) of Section 5 of Article XI grants the following power to chartered cities:

> "(a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. . . ."

The grant of authority to chartered cities over their municipal affairs has been held to include the power to impose taxes for municipal purposes unaffected by general laws on the same subject (West Coast Advertising Company v. City and County of San Francisco, supra, at pp. 521, 524). The courts have held that the state has preempted the field of alcoholic beverage taxes to the exclusion of taxes imposed by chartered cities (Century Plaza Hotel Company v. City of Los Angeles (1970), 7 Cal. App. 3d 616, 626), but there is no case so holding with respect to the corporate franchise tax.

Thus, if Assembly Constitutional Amendment No. 13, as introduced at the 1971 Regular Session, is approved by the voters in its present form, we think chartered cities and general law cities will have the same power to impose a corporate franchise tax as they now have, which is to say as follows:

1. There is no provision prohibiting cities from imposing a tax for revenue purposes upon the right or privilege of doing business in a corporate capacity. However, since general law cities may only impose taxes pursuant to legislative authorization (Art. XIII, Sec. 37, Cal. Const.), and there is no such authorization with respect to a franchise tax, they could not impose such a tax. As for chartered cities, unless otherwise prohibited by charter or constitutional provision, the courts have held that they may impose taxes without specific legislative authorization. However, in the case before us, the Constitution clearly provides that the Legislature may provide for the taxation of corporations or their franchises. Thus, without legislative authorization, there is doubt that even chartered cities could impose a franchise tax. This question has not, as yet, been presented to the courts. Any question could be resolved, of course, by an appropriate amendment to the measure.

2. Neither chartered nor general law cities may impose a property tax upon general corporate franchises (Sec. 23154, R. & T.C.; Art. XIII, Sec. 14, Cal. Const.).

3. Both general law cities and chartered cities, unless otherwise prohibited by charter provision, may license businesses, including corporations, for revenue purposes (Sec. 37101, Gov. C.; West Coast Advertising Company v. City and County of San Francisco, supra).

4. Cities are prohibited from imposing an income tax on corporations (Sec. 17041.5, R. & T.C., supra). As applied to general law cities, this prohibition is superfluous, since they could only impose such a tax pursuant to legislative authorization and no such authorization has been enacted.

The application of the prohibition to the imposition of such a tax on corporations by a chartered city has not as yet been tested in the appellate courts of this state.

Very truly yours,

George H. Murphy
Legislative Counsel

By Russell L. Sparling
Russell L. Sparling
Deputy Legislative Counsel

RLS:say

Two copies to Honorable Leo T. McCarthy, pursuant to Joint Rule 34.

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DEPUTIES

Sacramento, California
March 1, 1971

Honorable Alex P. Garcia
Assembly Chamber

Appropriations - #3451

Dear Mr. Garcia:

QUESTION

With respect to continuing appropriations from specified tax funds, you have asked what vote would be required for the Legislature to amend the appropriation, so that the amount so expended would not exceed the amount of revenue derived under the existing level of taxation.

OPINION

In our opinion, such a limitation could be enacted by a majority vote of the membership of each house of the Legislature.

ANALYSIS

We are here discussing an appropriation of the type contained in the Cigarette Tax Law, which is provided for in Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code. At the present time, this tax is imposed at rate which produces 10 cents in gross revenue for each package of cigarettes distributed (Sec. 30101, R. & T.C.), and 30 percent of the net revenue derived from the tax is continuously appropriated to make subventions to counties and cities (Sec. 30462, R. & T.C.).

The general rule with respect to vote requirements for enacting legislation is contained in subdivision (b) of Section 8 of Article IV of the State Constitution, which provides, in part:

> "(b) The Legislature may make no law except by statute and may enact no statute except by bill. . . . No bill may be passed unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs."

Thus, unless it falls within one of the exceptions to the general rule, a bill requires a majority vote for enactment. One such exception is found in subdivision (d) of Section 12 of Article IV of the Constitution, which provides as follows:

> "(d) . . . Appropriations from the general fund of the State, except appropriations for the public schools, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring."

To constitute an appropriation it is not necessary to use the word "appropriation" or any other particular language. It is sufficient if the intention of the Legislature to authorize an expenditure of a definite sum of money from a specified fund can be ascertained from the entire statute (Humbert v. Dunn (1850), 84 Cal. 57, 59; Riley v. Johnson (1933), 219 Cal. 513, 519; Meyer v. Riley (1934), 2 Cal. 2d 39, 43).

Thus, let us assume that the Legislature at its 1971 Regular Session determined to enact a statute providing that no greater amount of cigarette tax revenues would be used for subventions to counties and cities in the 1971-1972 fiscal year and fiscal years thereafter than were used for such subventions in the 1970-1971 fiscal year.

This would not authorize the expenditure of a greater sum of money or provide for subventions to different recipients. It would merely limit the total amount which could be expended under an existing appropriation.

In our opinion, such an enactment would not constitute an appropriation and could, therefore, be enacted by a majority vote of the membership of each house of the Legislature.

Very truly yours,

George H. Murphy
Legislative Counsel

By Russell L. Sparling
Russell L. Sparling
Deputy Legislative Counsel

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Sacramento, California
April 8, 1971

Honorable Alex P. Garcia
Assembly Chamber

The Conservation Bill of Rights
(A.C.A. 26) - #6393

Dear Mr. Garcia:

You have directed our attention to the provisions of Assembly Constitutional Amendment No. 26 of the 1971 Regular Session of the Legislature.* In the limited time available to us for the preparation of this opinion we have treated the following questions, which we shall state and discuss in series, as adequately as possible.

QUESTION NO. 1

If enacted, would the provisions of A.C.A. 26 be self-executing?

OPINION AND ANALYSIS NO. 1

A.C.A. 26 would add Section 27 to Article I of the California Constitution, as follows:

> "Sec. 27. The conservation and protection of the natural resources and scenic beauty of the state are hereby declared to be policies of the state and rights of the people of the state. The Legislature shall make adequate provisions therefor, including,

---

* Hereinafter referred to as A.C.A. 26.

> but not limited to, abatement of the pollution of the waters and air and of excessive and unnecessary noise, protection of agricultural lands, wetlands, parklands, shorelines, and the development and regulation of water resources. The Legislature shall provide for the acquisition and dedication of lands, including structures thereon, now owned or hereafter acquired which, because of their natural beauty, wilderness character, or geological, ecological or historical significance, shall constitute the state nature and historical preserve and shall be preserved and administered for the use and enjoyment of the people. Properties so dedicated shall not be taken by any authority, public or private, or otherwise disposed of, except by statute enacted by the Legislature. The Legislature shall also provide for the acquisition of rights to unappropriated water not needed for beneficial uses, for use in connection with the state nature and historical preserves; but use of water for such purpose shall not preclude the subsequent appropriation of all or any part thereof for any reasonable and beneficial use.
>
> "This section shall be known as 'The Conservation Bill of Rights.'"

Traditionally, a constitutional provision has been considered self-executing if no legislation is necessary to give effect to it, and if there is nothing to be done by the Legislature to put the provision into operation (16 Am. Jur. 2d, Constitutional Law, Sec. 94).

There is authority for the proposition that modern constitutional provisions are presumed to be self-executing (16 Am. Jur. 2d, Constitutional Law, Sec. 96; Winchester v. Howard, 136 Cal. 432). However, this rule is based upon a situation in which the constitutional provision has a statutory character.

In Winchester v. Howard, supra, at p. 440, the court characterized such provisions as "constitutional statutes" which must be held self-executing when they can be given reasonable effect without the aid of legislation, unless a contrary intent is shown. A contrary intention might be expressly stated or apparent when only a general principle or policy is declared. In the Winchester case, the court declared self-executing a constitutional provision of statutory character which made corporate directors and joint stock trustees liable to creditors and stockholders for embezzlement or misappropriation caused by company officers.

However, a more generally recognized guideline for testing a constitutional provision is that when the provision merely lays down general principles, it is not self-executing; but if the provision supplies a sufficient rule by means of which the right which it grants may be enjoyed and protected, or the duty which it imposes may be enforced, without the aid of a legislative enactment, then the provision is self-executing (16 Am. Jur. 2d, Constitutional Law, Sec. 97; People v. Western Airlines, Inc., 42 Cal. 2d 621, app. dism., 99 L. ed. 677; Winchester v. Howard, supra). And a constitutional provision which contemplates and requires legislation is not self-executing (16 Am. Jur. 2d, Constitutional Law, Sec. 94; Duncan v. Gabler (Tex.), 215 S.W. 2d 155).

As the court stated in Spinney v. Griffith, 98 Cal. 149, 151:

> "This declaration of a right, like many others in our constitution, is inoperative except as supplemented by legislative action.
>
> "So far as substantial benefits are concerned, the naked right without the interposition of the Legislature is like the earth before the creation, 'without form and void,' or to put it in the usual form, the constitution in this respect is not self-executing."

In the Spinney case, quoted above, the court held that a provision creating mechanics' liens which stated, in part, that "the Legislature shall provide by law for the speedy and efficient enforcement of such liens," was not, as far as substantial benefits were concerned, self-executing (see also Bailey, etc., Iron Co. v. Goldschmidt, 33 Cal. App. 661).

Thus, we think it is clear that the provisions of A.C.A. 26, if enacted, would not be self-executing so far as creating enforceable rights. In our opinion the language of the measure indicates the intention that supplemental and complementary legislation would be expected. Furthermore, we think that the general principles and mandates contained in A.C.A. 26 do not provide a sufficient rule by means of which the rights granted could be enjoyed or protected.

QUESTION NO. 2

If enacted, could the Legislature be compelled by judicial action to comply with the provisions of A.C.A. 26?

OPINION NO. 2

We do not think that the courts could compel the Legislature to comply with the provisions of A.C.A. 26 if it were enacted.

ANALYSIS NO. 2

Generally, the courts have no power to enforce the mandates of the constitution which are directed at the legislative branch or to coerce the legislative branch to obey its duty, no matter how clearly or mandatorily imposed on it, with respect to its legislative functions (16 Am. Jur. 2d, Constitutional Law, Sec. 226).

In Myers v. English, 9 Cal. 341, 349, the court said:

> "It is within the legitimate power of the judiciary, to declare the action of the Legislature unconstitutional, where that action exceeds the limits of the supreme law; but the courts have no means, and no power, to avoid the effects of non-action."

(See also French v. Senate, 146 Cal. 604; Monarch Cablevision, Inc. v. City Council, 239 Cal. App. 2d 206).

Thus, in view of the above discussion we think it is clear that the courts could not compel the Legislature to comply with the provisions of A.C.A. 26 if it were enacted.

QUESTION NO. 3

Would the provisions of A.C.A. 26, if enacted, create a right in the people to legal relief?

OPINION AND ANALYSIS NO. 3

We do not think that A.C.A. 26, if enacted, would in itself create in the people any right to legal relief which they do not now have. We think it clear that a general statement of policy such as contained in A.C.A. 26, above, would not be taken by the courts to establish any new cause of action or to provide for any new procedural right with respect to litigation in the absence of legislative action. However, A.C.A. 26 expressly directs the Legislature to enact implementing legislation, and such legislation could give to the people a right to sue which they do not now have.

QUESTION NO. 4

If enacted, would the provisions of A.C.A. 26 increase the Legislature's power with regard to charter cities?

OPINION AND ANALYSIS NO. 4

As discussed above, A.C.A. 26 would declare that the conservation and protection of the natural resources and scenic beauty of the state are policies of the state and rights of the people of the state. It would mandate the Legislature to enact legislation relating to such conservation and protection, including, but not limited to, abatement of the pollution of the waters and air and of excessive and unnecessary noise, protection of agricultural lands, wetlands, parklands, shorelines, and the development and regulation of water resources. It would also mandate the Legislature to enact legislation providing for the acquisition and dedication of lands of natural beauty, wilderness character, or of geological, ecological, or historical significance to be preserved and administered for the use and enjoyment of the people as state nature or historical preserves. Properties so dedicated could not be taken by any public or private authority or disposed of without a legislative enactment. It would further mandate the Legislature to provide for the acquisition of rights to unappropriated water not needed for beneficial uses, for use in connection with the state nature and historical preserves; provided, that the use of water for such purpose would not preclude the subsequent appropriation of all or any part thereof for any reasonable and beneficial use.

It is basic that the California Constitution, in contrast with the United States Constitution, is not a grant of power but rather a limitation upon the powers of the Legislature (Fitts v. Superior Court, 6 Cal. 2d 230, 234), and it is competent for the Legislature to exercise all legislative powers not forbidden by the California Constitution, delegated to the federal government, or prohibited by the Constitution of the United States; and that an act of the Legislature will be held void only when its repugnance to the State or Federal Constitution is clear beyond a reasonable doubt (People v. Coleman, 4 Cal. 46, 49; Collins v. Riley, 24 Cal. 2d 912, 916; Dean v. Kuchel, 37 Cal. 2d 97, 100).

Pursuant to such legislative powers, substantial legislation has been enacted for the purpose of protecting and enhancing the environment, for example, in the areas of air pollution and quality control (see Div. 26 (commencing with Sec. 39000), H. & S.C., the Mulford-Carrell Air Resources Act) and water pollution and quality control (see Div. 7 (commencing with Sec. 13000), Wat. C., the Porter-Cologne Water Quality Control Act)), and for the acquisition of real property (which would include lands and water rights) for beaches and parks, including nature and historical preserves (see Secs. 5001.5, 5006, P.R.C.).

We do not think that A.C.A. 26's declaration of policy with respect to the "conservation and protection of the natural resources and scenic beauty of the state," and its direction to the Legislature to "make adequate provisions therefor" and to provide for the acquisition and dedication of lands and water rights for nature and historical preserves, would, in the final analysis, broaden the present very considerable powers of the Legislature to enact laws covering a wide range of environmental concerns.

You have directed our attention to the fact that a city which has adopted a charter pursuant to the provisions of Article XI of the California Constitution has the power of home rule over all matters of local or internal concern and is not subject to general laws concerning such municipal affairs (City of Pasadena v. Paine, 126 Cal. App. 2d 93, 98).

We observe, however, that state statutes control over local ordinances enacted by a city pursuant to charter provisions with respect to matters which are not exclusively municipal affairs (Bishop v. City of San Jose, 1 Cal. 3d 56, 61-62).

The concept of "municipal affairs" is not a fixed or static quantity but changes with changing conditions, and what may at one time have been a matter of local concern may at a later time become a matter of statewide concern controlled by general law (Pac. Tel. Co. v. City & County of S.F., 51 Cal. 2d 766, 771). It is therefore necessary for the courts to decide, under the facts of each case, whether a matter is of municipal or statewide concern (Bishop v. City of San Jose, above, at p. 62).

We believe that the Legislature presently has broad powers to enact legislation for the protection and enhancement of the environment which would control over local ordinances of charter cities because of the statewide interest involved in such legislation. Since A.C.A. 26 would expressly declare that the conservation and protection of the natural resources and scenic beauty of the state are policies of the state and rights of the people of the state, legislation enacted to implement such constitutional declaration of policy would clearly control over local ordinances of charter cities and thus remove any question in that regard.

Very truly yours,

George H. Murphy
Legislative Counsel

By Dennis W. De Cuir
Dennis W. De Cuir
Deputy Legislative Counsel

DWDeC:rt

Two copies to Honorable Edwin L. Z'berg,
pursuant to Joint Rule 34.

LEGISLATIVE COUNSEL

REQUEST OF Assemblymap Alex P. Garcia
Per Edward B. Lozowicki

From a letter by Edward B. Lozowicki on behalf of Assemblyman Alex P. Garcia, dated March 23, 1971:

"May I ask your opinion on the following legal questions:

"1. Are the provisions of ACA 26 self-executing?

"2. Could the Legislature be compelled to comply with the provisions of ACA 26 by legal action?

"3. Does ACA 26 create a right to legal relief for real or threatened infringement of or damage to a person's "conservation rights"?

"4. Would ACA 26 increase the Legislature's regulatory power over the areas of regulation described in the bill vis-a-vis charter cities and counties? If so, would the Legislature's power then be plenary?

"Since ACA 26 is now before our committee for consideration, I would appreciate having your opinion by Monday, April 5.

"Thank you for your cooperation.

No. 6393

Any question with respect to this request may be directed to Mr. DeCuir, to whom it has been assigned.

Requester Assemblyman Alex P. Garcia
Per Edward B. Lozowicki

Received 3/24/71

Subject ACA 26 (Op.)

This will acknowledge your request on the subject indicated. Our file number is shown on this receipt.

GEORGE H. MURPHY
Legislative Counsel

No. 6393

Alex - side Const Amdm

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COMMITTEES
ELECTIONS AND REAPPORTIONMENT
FINANCE AND INSURANCE
GOVERNMENTAL ORGANIZATION

Assembly
California Legislature

PAUL PRIOLO
ASSEMBLYMAN, SIXTIETH DISTRICT
CHAIRMAN
PLANNING AND LAND USE COMMITTEE

April 8, 1971

TO: ALL MEMBERS OF THE ASSEMBLY

FROM: PAUL PRIOLO

Attached is the Legislative Counsel's Opinion regarding recision of constitutional amendments. As you will recall, this was mentioned during the floor debate on the 18-year old vote.

Essentially, the opinion points out that in 1966 the Legislature enacted a statute which provides for the withdrawal and/or revision of a proposed constitutional amendment after its adoption by both houses (1966, 1st Ex., Ch. 57).

Such recision can be effected:

(1) at any session prior to next statewide election;

(2) by law or concurrent resolution adopted by two-thirds of each house;

Upon a finding that public health, safety and welfare require a recision, the Legislature may direct the Secretary of State to revise the amendment or to remove the measure from the ballot.

The Legislative Counsel is of the opinion that the statute is constitutional and that, "...the Legislature has the power to withdraw a constitutional amendment (and, if desired, place a revised constitutional amendment on the ballot)..."

PP/ds
Attachment

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CHIEF DEPUTY

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DEPUTIES

Sacramento, California
April 7, 1970

Honorable Paul Priolo
Assembly Chamber

Withdrawal of Constitutional Amendments - #7910

Dear Mr. Priolo:

QUESTION

You have asked if the Legislature may withdraw or amend a constitutional amendment once it has been adopted by both houses; and, if so, how it is done.

OPINION AND ANALYSIS

When the Legislature submits constitutional amendments, it acts under the power conferred upon it by Section 1 of Article XVIII of the State Constitution. That section provides that an amendment may be proposed in the Senate or Assembly and if two-thirds of the members elected to each of the two houses vote in favor thereof, the amendment is entered on their journals. The section then provides that it is the duty of the Legislature to submit the proposed amendment to the people in such manner, and at such time, and after such publication as may be deemed expedient.

While there is no provision of the Constitution for amending, rescinding or withdrawing a constitutional amendment after it has been adopted by the two houses, the Legislature has enacted a statute to provide for such withdrawal (66 1st Ex., Ch. 57).

Legislature has the authority generally to enact legislation to facilitate the exercise of any power directly granted by the Constitution, even though the constitutional provision is, as here, self-executing, so long as the Legislature does not modify, curtail or abridge the power granted (People v. Western Air Lines, Inc. (1954), 42 Cal. 2d 621, 637; Chesney v. Byram (1940), 15 Cal. 2d 460, 463).

Under such authority, we think that the Legislature can enact legislation designed to secure a vote on a proposed constitutional amendment by an informed electorate and to avoid possible uncertainty (see Penrod v. Crowley (1960 - Id.), 356 Pac. 2d 73, 80).

Although there are no judicial precedents in California which would directly uphold such a legislative act, the Colorado Supreme Court in 1958 considered the question involved under provisions of the Colorado Constitution which are similar to those found in the California Constitution in this regard. The court in an advisory opinion without discussion in In re Senate Concurrent Resolution No. 10 (Colo. - 1958), 328 Pac. 2d 103, answered the question affirmatively so as to permit prior to the submission to the people, the amendment of a constitutional amendment at a special session immediately following the general session in which it was adopted, where technical amendments were necessary.

Support for the position of the Colorado case can be found in several Alabama cases, one rendered in 1963, in which the Supreme Court of Alabama held that the portion of a proposed constitutional amendment which specified the date on which the amendment was to be submitted to the electorate could be changed at a session subsequent to the one in which adopted so long as the same Legislature was involved. The basis for the holding was that, unlike laws, a constitutional amendment proposed by the Legislature is ineffective for any purpose until

present in A.C.A. 8. A.C.A. 8 was replaced on the ballot by Assembly Constitutional Amendment No. 1 of the First Extraordinary Session of 1966 (Res. Ch. 26, Stats. 1966, 1st Ex. Sess.). Similarly to the experience of 1909-1910, no litigation arose from such proceedings.

We think such legislative precedents would be given great weight by our courts as a legislative construction of the constitutional provision involved (see Carter v. Com. on Qualifications, Etc. (1939), 14 Cal. 2d 179, 185).

In view of the foregoing, it is our opinion that our California courts, if confronted with the issue under consideration, would hold that the Legislature has the power to withdraw a constitutional amendment (and, if desired, place a revised constitutional amendment on the ballot) and that Section 1 of Chapter 57 of the Statutes of the First Extraordinary Session of 1966 would therefore be constitutional.

Very truly yours,

George H. Murphy
Legislative Counsel

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By
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GEORGE H. MURPHY

Sacramento, California
May 10, 1971

Honorable Alex P. Garcia
Assembly Chamber

Voting: Naturalized Citizens - #10827

Dear Mr. Garcia:

QUESTION

You have asked whether the provisions of Section 1, Article II of the California Constitution requiring a ninety-day waiting period before naturalized citizens may vote, constitutes a denial of equal protection within the meaning of the Fourteenth Amendment to the United States Constitution.

OPINION

While the New York Court of Appeals upheld an identical ninety-day waiting period provided in New York law in 1965, in our opinion, if the provision in question were to be considered by the courts at the present time, it would be held to be unconstitutional.*

ANALYSIS

The portion of Section 1 of Article II of the California Constitution to which you refer, reads as follows:

> "Section 1. Every native citizen of the United States of America, every person who shall have acquired the rights of citizenship under and by virtue of the Treaty of Queretaro,

---

* In a prior opinion, this office has questioned the constitutionality of California's constitutional provision requiring a ninety-day waiting period before naturalized citizens may vote, but concluded on the basis of the New York case that it would be sustained on the basis of the then existing law.

> and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of 21 years, who shall have been a resident of the state one year next preceding the day of the election, and of the county in which he or she claims his or her vote ninety days, and in the election precinct fifty-four days, shall be entitled to vote at all elections which are not or may hereafter be authorized by law;" (Emphasis added.)

Generally, the power to prescribe the qualifications of electors for both federal and state elections resides in the states (29 C.J.S., Elections, Sec. 13). Under that power, the states may impose age, residence and other requirements on the right to vote in state and federal elections, but only so long as such requirements do not discriminate against any class of citizens by reason of race, color or other invidious ground and so long as such requirements are not so unreasonable as to violate the equal protection clause of the Fourteenth Amendment (Drueding v. Devlin, 234 F. Supp., 721; aff. 380 U.S. 125, 13 L. ed. 2d 792).

In addition, this power of the states is also subject to the rights of Congress to prescribe qualifications in federal elections (see Oregon v. Mitchell, 27 L. ed. 2d 272 upholding Congress's establishment of minimum voting age of 18 in federal elections and the abolition of state residency requirements in presidential elections).

Under our state Constitution a naturalized citizen is not entitled to vote in elections in this state until ninety days following his naturalization. The issue presented is whether this distinction between naturalized citizens and other citizens constitutes an unreasonable discrimination between classes of citizens, in violation of the Fourteenth Amendment, which reads in part:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall ... deny to any person within its jurisdiction the equal protection of the laws."

The Fourteenth Amendment does not prohibit the Legislature from classifying persons and affording them different treatment by the effect of its laws, but it does require that there be a reasonable basis for each classification. If any set of facts can reasonably be conceived that would sustain the Legislature's determination, the classification will not be held invalid as a denial of equal protection (Azevedo v. Jordan, 237 Cal. App. 2d 521). There is a presumption in favor of the existence of such a state of facts and when a legislative classification is questioned, the burden of showing arbitrary action rests with the one assailing it (Great Lakes Properties v. City of Rolling Hills Estates, 225 Cal. App. 2d 525).

The apparent purpose behind adoption of the provision in question is disclosed by the following statement by a delegate to the Constitutional Convention of 1878-1879, at which the provision was adopted:

> "Mr. Chairman. In my judgement, sir, this section is intended to correct abuses growing out of the practice of rushing to the Courts a few days before elections by persons seeking to become citizens." (Debates and Proceedings of the Constitutional Convention of the State of California, pg. 1017).

A provision related to that in the California Constitution is contained in Title 8, U.S.C.A., Sec. 1447, which prohibits the oath given naturalized citizens from being administered within 60 days preceding any general election held within the court's jurisdiction. The prececessor of Section 1447 was enacted by Congress in 1906 (34 Stat. 596, Sec. 6). Debates recorded in the Congressional Record indicate that the statute's proponents were, like the delegates to California's Constitutional Convention concerned with the practice, then prevalent, of naturalizing large numbers of people just before an upcoming election (see U.S. Con. Rec. 1906, p. 3643). Unlike the states, however, Congress, in enacting laws dealing with immigration and naturalization, need not be concerned with "equal protection" considerations.

In determining the constitutionality under the equal protection clause of a state constitutional or statutory provision, the usual test applied is whether no reasonable basis exists for distinguishing one class of persons from another in respect to their differential treatment under state law.

Thus, in order to conclude that the provision of the California Constitution under discussion is invalid, it would appear to be necessary to show that no reasonable basis exists for distinguishing between naturalized citizens and other citizens for purposes of voting.

In this regard, a 1965 decision of the New York Court of Appeals applied this test in upholding a provision of the New York Constitution identical in its effect to that contained in the California Constitution. The plaintiff having fulfilled the five-year residency requirement and other requisites was naturalized as a United States citizen. Pursuant to the New York constitutional provision, he was not allowed to register for a forthcoming election to be held within 90 days of his naturalization. He challenged the validity of the constitutional provision on equal protection grounds. The lower court held the provision void. On appeal the Court of Appeals reversed, saying:

> "It is not hard to find a reason for a stipulation that 90 days must elapse between naturalization and participation in the voting process as a citizen. Originally (1846 to 1894) the waiting period was 10 days, extended to 90 by the Constitutional Convention of 1894. The idea--or one of the ideas--back of it was to give the newly made citizen at least a short time to consider his new responsibility and how to exercise it. The resulting classification between newly naturalized citizens and others cannot be called purely arbitrary. At least four other states (Pennyslvania, Minnesota, Utah and California) have similar laws and the Minnesota statute has been upheld as to constitutionality by the State's highest court.

> "We find here no serious conflict between Federal and State law. The primary power to establish vote qualifications rests with the States, except as specifically limited (U.S. Const., art. I, § 1). The State may impose qualifications 'within limits' and such restrictions are permissible as are designed to promote intelligent use of the ballot and are not merely arbitrary or unduly oppressive. New York State, having not irrationally concluded that a citizen should be such for at least 90 days before he votes, has not violated any of the prohibitions of the Federal Constitution nor has it entered into a pre-empted field. Setting voting qualifications is still the business of the States." (Van Berkel v. Power, 209 N. E. 2d 539, citations omitted.)

Admittedly, this decision, as the only judicial pronouncement directly in point, would seem to justify a finding of constitutionality as regards the 90-day naturalization period prior to voting required by the California Constitution, (but see Oregon v. Mitchell, supra, as to power of Congress to prescribe voter qualifications, as to federal elections).

However, decisions of the United States Supreme Court and the federal courts strongly suggest that there is very little basis generally for a statutory distinction between naturalized and native citizens. In addition, a recent United States Supreme Court decision dealing with state residency requirements imposed on welfare recipients (Shapiro v. Thompson, 22 L. ed. 2d 600) and a recent California decision overturning the one year residence requirement for voting (Keane v. Mihaly, 11 Cal. App. 3d 1037) indicate that waiting periods which are prescribed for certain classes of persons as a precondition to exercising certain rights are no longer to be judged for the purposes of equal protection by the usual test but rather are to be judged by whether the statutory (or state constitutional) classification promotes a "compelling state interest."

In connection with the review of proceedings to revoke an individual's naturalization, the U.S. Supreme Court and federal courts have, on various occasions, made the following statements regarding the status of naturalized citizens:

> "Under the Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency." (Luria v. United States, 58 L. ed. 101, 105; Baumgartner v. United States, 88 L. ed. 1525, 1531).
>
> "Citizenship obtained through naturalization is not a second class citizenship... [I]t is plain that citizenship obtained through naturalization carries with it the privilege of full participation in the affairs of our society, including the right to speak freely, to criticize officials and administrators, and to promote changes in our laws including the very Charter of our Government. Great tolerance and caution are necessary lest good faith exercise of the rights of citizenship be turned against the naturalized citizen and deprive him of the cherished status." (Knaur v. United States, 90 L. ed. 1500, 1503; Bridges v. United States, 199 F. 2d 845, 846.)
>
> "Once a man is admitted to citizenship he must be accorded exactly the same rights as every other citizen of the United States." (United States v. Hugg, 51 F. Supp. 397, 399.)

In a suit in which a federal statute, providing for revocation of citizenship of naturalized citizens who returned to and resided in a foreign country, was held unconstitutional, the court stated:

> "We start from the premise that the rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive." (Schneider v. Rusk, 12 L. ed. 2d 218,220.)

In view of these pronouncements of the U.S. Supreme Court and federal courts that naturalized citizens stand on the same footing as, and are to be afforded the same rights as other citiznes, we are of the opinion that a court would conclude that despite Van Berkel v. Power, supra, the stated objective behind enactment of the California constitutional provision, i.e., to discourage naturalizations just prior to an election, is insufficient to justify the distinction made between naturalized and native-born citizens for purposes of voting. That objective seems particularly inappropriate today since under our voter registration laws a newly naturalized citizen may not vote sooner than 53 days following his naturalization in any event (see Secs. 203, 207 and 208, Elec. C.).

We think this conclusion is strengthened by the recent United States Supreme Court decision of Shapiro v. Thompson, supra, and the recent California decision of Keane v. Mihaly, supra, imposing a stricter test for judging state regulations under the equal protection clause.

In the case of Shapiro v. Thompson, supra, the United States Supreme Court held that a durational residence requirement for public assistance violates the equal protection clause of the Fourteenth Amendment by imposing a discriminatory classification on applicants for public assistance which impinges on their constitutional right to travel.

The appellants sought to justify the classification on the applicants on what the court admitted were permissible state objectives. However, in rejecting these objectives as sufficient to justify the classification, the court stated, at page 615:

* * *

> "At the outset, we reject appellants' argument that a mere showing of a rational relationship between the waiting period and these four admittedly permissible state objectives will suffice to justify the classification. The waiting-period provision denies welfare benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction. But in moving from State to State or to the

> District of Columbia appellees were exercising constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional... ." (Citations omitted.)

In our opinion, there is equal justification for requiring the showing of a compelling state interest where the classification to be tested under the equal protection clause distinguishes between native and naturalized citizens in the assertion of a constitutional right deemed fundamental to a democratic system--the right to vote. (See also the Fifteenth and Nineteenth Amendments, U.S. Constitution, regarding the right of citizens to vote).

Consistent with the view that any classification which excludes certain citizens from the franchise when tested against the requirements of equal protection must be judged as to whether it is necessary to promote a compelling state interest, a California court in the recent decision of Keane v. Mihaly, supra, invalidated the California constitutional provision that a voter is ineligible to vote unless he has resided in the state for at least one year. The court stated, at pages 1041, 1042, and 1043:

> "The standard of equal protection as applied to cases involving the right of citizens to vote, as established in recent years by the United States Supreme Court, and as firmly expressed by the Supreme Court of this state, is that the exclusion from franchise must be necessary to promote a compelling state interest. (Kramer v. Union Free School Dist., 395 U.S. 621 [23 L. Ed. 2d 583, 89 S. Ct. 1886]; Cipriano v. City of Houma, 395 U.S. 701 [23 L. Ed. 2d 649, 89 S. Ct. 1897]; Otsuka v. Hite, 64 Cal. 2d 596 [51 Cal. Rptr. 284, 414 P. 2d 412]; Castro v. State of California, 2 Cal. 3d 223 [85 Cal. Rptr. 20, 466 P. 2d 244].)
>
> "The standard now prevailing has superseded the older one which still obtains in many matters of less fundamental importance; that regulatory distinctions among persons established by state constitutions or statutes must be sustained against equal protection challenge unless they amount to an irrational or unreasonable discrimination... .

> "...It was not until 1965, in Carrington v. Rash, 380 U. S. 89, 95 [13 L. Ed. 2d 675, 679, 85 S. Ct. 775], that the Supreme Court held that the equal protection clause applies to state qualifications for voting. The standard of necessity for a compelling state interest was set down in 1969 in Kramer v. Union Free School Dist., 395 U.S. 621 [23 L. Ed. 2d 583, 89 S. Ct. 1886], and Cipriano v. City of Houma, 395 U.S. 701 [23 L. Ed. 2d 649, 89 S. Ct. 1897].
>
> * * *
>
> "...Respondents argue that the new standard applies only when the classification is of the 'suspect' kind, a motive for unfair discrimination being discernible. But in Castro v. State of California, 2 Cal. 3d 223 [85 Cal. Rptr. 20, 466 P. 2d 244], the Supreme Court of this state remarked (at pp. 229-230) that its consideration of the motives which brought about the literacy test, although relevant to an understanding of the court's conclusion, was in no way crucial to that holding. (Emphasis added.)

We think it important to recognize that the court rejected the notion that the constitutionality of a classification affecting the franchise depended upon motives of unfair discrimination.

It is equally important to mention that the court rejected the two general reasons suggested by the respondents for upholding the residency rule: (1) the need for an informed electorate and (2) the need for preventing fraudulent or false declarations of residency (Keane v. Mihaly, supra, at 1043-1045), inasmuch as these reasons are not unlike the main reason on which the court relied in the VanBerg case, supra, and the reason enunciated in the California Constitutional Convention, supra, as the basis for California's provision.

In view of the above discussion, it is our opinion that the state constitutional provision imposing a 90 day waiting period before naturalized citizens may vote, constitutes a denial of equal protection within the meaning of the Fourteenth Amendment to the United States Constitution inasmuch as the permissible objectives of this provision are adequately met by existing residency requirements applicable to all citizens and hence are not necessary to promoting a compelling state interest.

Very truly yours,

George H. Murphy
Legislative Counsel

By James A. Marsala
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Sacramento, California
May 18, 1971

Honorable Alex P. Garcia
Assembly Chamber

Constitutional Amendments - #11462

Dear Mr. Garcia:

You have asked the following two questions regarding constitutional amendments, which we shall answer in sequence.

QUESTION NO. 1

If a number of constitutional amendments are passed by the Legislature which all amend the same provision of the Constitution, how could the measures be consolidated to present one comprehensive amendment to the voters?

OPINION AND ANALYSIS NO. 1

Article XVIII, Section 1 of the Constitution authorizes the Legislature to amend or withdraw constitutional amendments proposed by it. Thus, should the Legislature adopt several measures affecting the same section of the Constitution, it could subsequently withdraw them for the purposes of amendment.

After withdrawal, to the extent the individual constitutional amendments involved are compatible, i.e., they amend different parts of the same provision and do not conflict in substance, they may then be combined into one measure or

each measure may be revised by adding provisions incorporating the changes made by each other measure in the event of its adoption by the voters. If the measures are combined, the individual proposals are either all adopted by the voters or all rejected. If the measures are revised to incorporate each other, each measure is voted on separately, and each measure adopted is incorporated into the constitution. To the extent one or more constitutional amendments conflict, they can neither be combined nor revised to incorporate each other. In such event, the measure receiving the highest affirmative vote will prevail (Art. XVIII, Sec. 4, Cal. Const.). The latter result will also occur if two compatible measures affecting the same section are voted upon separately and have not been revised to incorporate each other.

QUESTION NO. 2

What legislation is necessary to place a constitutional amendment on the June 1972 direct primary ballot?

OPINION AND ANALYSIS NO. 2

The requirement that measures submitted to the people by the Legislature appear on the ballot at the first general election occurring at least 150 days after passage is statutory (Sec. 3527, Elec. C.). Thus, a different result, such as placing a constitutional amendment on the 1972 direct primary ballot, may be achieved by a statute to that effect (Sec. 9605, Gov. C.).

Very truly yours,

George H. Murphy
Legislative Counsel

Clinton J deWitt

By
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Sacramento, California
May 28, 1971

Honorable Alex P. Garcia
Assembly Chamber

Age of Majority (A.C.A. 2 and A.C.A. 12) - #2626

Dear Mr. Garcia:

QUESTION

Assembly Constitutional Amendments 2, as introduced, and 12, as amended March 16, 1971, of the 1971 Regular Session each proposes the addition of a Section 27 to Article I of the California Constitution that would make 18 years the age at which a person reaches his majority.

You have asked whether the state, a local governmental agency, or a private person will be prevented from requiring that a person be of a specified minimum age greater than 18 in order to qualify or become eligible for any conferred or granted rights, benefits, or privileges, if either proposal is presented to and approved by the electorate.

OPINION AND ANALYSIS

The Section 27 proposed by A.C.A. 2, as introduced, for addition to Article I of the California Constitution, reads as follows:

> "Sec. 27. The age of majority in California is 18 years. This section shall become operative January 1, 1972."

The Section 27 proposed by A.C.A. 12, as amended March 16, 1971, for addition to Article I of the California Constitution, reads as follows:

> "Sec. 27. The age of majority is 18 years. No person having reached the age of majority shall be denied the rights and privileges of a citizen of this state on the basis of age.
>
> "All statutory provisions relating to age of majority which are in effect at the time of voter approval of this amendment shall, unless otherwise repealed by normal statutory process, remain in effect until the 61st day after the final adjournment of the second annual (or first, if biennial) Regular Session of the Legislature after such approval and thereafter shall have no force or effect. Except as otherwise provided by Section 1 of Article II [relating to the age required to be attained in order to vote], the Legislature may by general law increase the age at which a person shall be an adult for any purpose."

A.C.A.'s 2 and 12 would also amend Section 1 of Article II of the California Constitution to lower the voting age from 21 to 18; and would amend and renumber the Section 22 of Article XX of that instrument relating to alcoholic beverages by lowering from 21 to 18 years (1) the age below which a person may not enter and remain on described public premises where alcoholic beverages are sold, on other than lawful business, (2) the age of a person to whom alcoholic beverages may be legally sold or given, and (3) the minimum age of a person who may legally purchase such beverages.

The California Constitution is "the fundamental and supreme law of this state as to all matters within its scope" (Dye v. Council of the City of Compton (1947), 80 Cal. App. 2d 486, 490); its provisions are mandatory and prohibitory, unless declared, by express words, to be otherwise (Sec. 22, Art. I, Cal. Const.); and statutes that are inconsistent with and contrary to them cannot stand (Hatfield v. Peoples Water Co. (1914), 25 Cal. App. 502, 504). Consequently, the Section 27 proposed by A.C.A. 2 would, if approved by the electorate, on January 1, 1972, supersede, and thereafter prevent, the enactment, by either the Legislature or a local governmental agency, of any statute or ordinance making the age of majority greater than 18 years; and the approval of the Section 27 proposed by A.C.A. 12, as amended, would, as of and following the 61st day after the final adjournment of the second annual (or first, if biennial) Regular Session of the Legislature following such approval, have the same effect as A.C.A. 2, subject to authority in the Legislature, by general law, to increase the age at which a person shall become an adult (i.e., attain majority) for any purpose other than that of entitlement to vote. This conclusion is bolstered with respect to A.C.A. 12, as amended, by virtue of the inclusion in the Section 27 that it would add to Article I of language explicitly so providing.

Particularly affected by each proposal would be Section 25 of the Civil Code, which declares that, with stated exceptions, all persons under 21 years of age are minors. The exceptions include a person 18 years of age or older who has contracted a lawful marriage and a person under 18 who contracts a legal marriage and thereafter reaches that age. In each such case, the age of 18 is expressly made the age of majority for the purpose of entering into contracts or entering into any engagement or transaction respecting his property or estate. A.C.A.'s 2 and 12 would clearly supersede the general provision in Section 25 in specifying that "the age of majority is 18 years."

Also affected by each proposal would be numerous provisions elsewhere in the statutory law that presently expressly restrict the granting of rights, benefits, or privileges to persons who have reached the age of 21 years, the current age of majority, where the specification of that age is the equivalent of, or has the same meaning as, the age of majority. (This is generally, although not necessarily, the case. See Gates v. Shaffer (1913-Wash.), 130 Pac. 896; and see, also, discussion in 43 C.J.S., Infants, Sec. 2.) Many of these provisions are evidently contained in Assembly Bill 81 of the 1971 Regular Session of the Legislature, which is to become operative only upon the approval by the electorate of A.C.A. 2. The bill will, if enacted, and in the event of such approval, expressly substitute "18" for "21" in those provisions. We think that the effect would be similar if A.C.A. 12, rather than A.C.A. 2, should be approved by the voters even though the Legislature should fail to enact legislation similar to A.B. 81 contingent upon the approval of A.C.A. 12.

If the changes made by A.C.A. 2 rather than A.C.A. 12 become effective, neither the Legislature nor any local governmental agency would, in view of the amendments it would also make in Section 1 of Article II and in Section 22 of Article XX of the State Constitution, have any authority to increase the voting age to any age above 18 or increase to an age in excess of 18 the applicable minimum age pertaining to sales and purchases of alcoholic beverages or entry and presence in public places where alcoholic beverages are sold. For any other purpose, however, it is our opinion that neither the Legislature nor a local governmental agency would be precluded from requiring that persons be of a specified minimum age greater than 18 in order to qualify or become eligible for rights, benefits, or privileges conferred or granted by the state or the local agency, provided that the requirement is not constitutionally discriminatory against any person of an age between 18 and the specified minimum, or is otherwise constitutionally sustainable.*

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* As to local governmental agencies, we assume they would not be prevented from imposing such a requirement by reason of preemption of the field by the state or otherwise.

In providing that the age of majority is 18 years, the Section 27 that A.C.A. 2 proposes for addition to Article I of the State Constitution will constitute a finding or determination by the electorate that a person who has reached that age has the maturity and wisdom necessary to enable him to perform properly the responsibilities and other functions of adulthood. Thus, if A.C.A. 2 rather than A.C.A. 12 is adopted, the Legislature, in our opinion, would be prevented from denying any person of the age of 18, 19, or 20 any rights, benefits and privileges that it may give to adults generally. In other words, if the conferring or granting of rights, benefits, or privileges is predicated exclusively on the attaining of the maturity and wisdom associated with adulthood, a person who has reached the age of 18, 19, or 20 could not be excluded by the Legislature from enjoying them simply because he has not reached the age of 21.

On the other hand, we think that any legislation enacted after the operative date of A.C.A. 2 that should establish an age discrimination against persons of the age of 18 or more in the conferring or granting of rights, benefits, or privileges might be sustained if the discrimination is for a reason other than the attainment of the maturity and wisdom associated with adulthood, and is based on a classification that is reasonable and neither arbitrary nor capricious (see In re Cavanaugh (1965), 234 Cal. App. 2d 316, 322; People v. Turville (1959), 51 Cal. 2d 620, 638; and Ames v. City of Hermosa Beach (1971), 16 Cal. App. 3d 146, 153).

We note in this regard the case of In re Herrera (1943), 23 Cal. 2d 212, in which the court, in sustaining a provision fixing the age of 23 as the maximum age for the commitment of a law offender to the Youth Authority against the contention that it was discriminatory, and thus violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and comparable provisions of the California Constitution (Article I, Secs. 11 and 14), stated (at p. 212):

* * *

". . . This contention must be considered in the light of the established rule that the power of the Legislature to classify carries with it a wide discretion. 'The authority and the duty to ascertain the facts which will justify classified legislation must of necessity rest with the legislature, in the first instance, to whom has been given the power to legislate and not to the courts and the decision of the legislature in that behalf is ordinarily conclusive upon the courts. Every presumption is in favor of the validity of the legislative act and the legislative classification will not therefore be disturbed unless it is palpably arbitrary in its nature and neither founded upon nor supported by reason.' [Citations omitted.]

* * *"

In the application of these principles, the adoption of A.C.A. 2 would not, for example, as we see it, prohibit the Legislature from making special provision relative to facilitating the employment of unemployed persons in an age bracket between 40 and 65 who may have greater difficulty in obtaining employment because of their age than persons in lower age brackets (see Sec. 2072, U.I.C.); from granting public financial assistance to persons 65 and over who are in need of such assistance (Sec. 12050, W.& I.C.); or from giving property tax relief to senior citizens at least 65 years of age who are in need of such help in order to make both ends meet (see Sec. 19505, R.& T.C.).

In the event that the changes made by A.C.A. 12, rather than those made by A.C.A. 2, are written into the State Constitution, the Legislature would nevertheless have authority, expressly vested in it by A.C.A. 12, to increase by general law the age at which a person is an adult for any purpose other than voting. This authority would enable the Legislature to make some age greater than 18 the age of majority, and make that increased age the

one which a person would have to attain as a condition for eligibility for specified rights, benefits, or privileges conferred or granted by the state or a local governmental agency, subject, however, to the constitutional requirements concerning classification (see In re Cavanaugh and In re Herrera, supra).

Also to be considered in connection with A.C.A. 12 is the provision in the Section 27 that it proposes for addition to Article I of the State Constitution reading "No person having reached the age of majority shall be denied the rights and privileges of a citizen of this state on the basis of age."

Uncertainty exists as to what "the rights and privileges of a citizen of this state" are, since there is no law that enumerates or catalogues such rights and privileges. Some indication of their scope might, however, be drawn from the language of Section 1 of Article I of the California Constitution, which reads:

> "Section 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness."

Another possibility as to the scope of the rights and privileges of a citizen of this state is to be found in Blake v. McClung (1898), 43 L. ed. 432, in which, in reference to the clause in Section 2 of Article IV of the United States Constitution declaring that the "citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and after observing that it had "never undertaken to give any exact or comprehensive definition of the words 'privileges and immunities' as so used," the United States Supreme Court said (at p. 436):

* * *

> "One of the leading cases in which the general question has been examined is Corfield v. Coryell, decided by Mr. Justice Washington

at the circuit. He said: 'The inquiry is, What are the privileges and immunities of citizens in the several states? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several states which compose this Union from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one state to pass through or to reside in any other state for the purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state,--may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise as regulated and established by the laws or Constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens of each state in every other state was manifestly calculated (to use the expression of the preamble to the

> corresponding provision in the old Articles of Confederation) "the better to secure and perpetuate mutual friendship and intercourse among the people of the different states of the Union."' [Citations omitted.]
>
> * * *" (Court's emphasis.)

If either this description of the rights of state citizenship or the scope of the declaration of rights provision in Section 1 of Article I of the California Constitution quoted above is indicative of the rights and privileges of a citizen of this state contemplated by the provision under consideration in proposed Section 27 of Article I of A.C.A. 12, we doubt that the Legislature, following the adoption of such proposal, would be precluded from enacting legislation granting or conferring the right to exercise or enjoy particular rights or privileges only by those of a minimum age in excess of 18, unless the restriction should be grounded solely on the lack of maturity and wisdom associated with adulthood. Where an age restriction should otherwise be reasonably necessary for the protection of the public, we think that legislation incorporating it could be sustained, assuming, of course, that all other constitutional requirements are fulfilled (see Blake v. McClung, supra; Graves v. Minnesota (1926), 71 L. ed. 331; Dent v. State of West Virginia (1888), 32 L. ed. 623; Roystone Co. v. Darling (1915), 171 Cal. 526; Whitcomb v. Emerson (1941), 46 Cal. App. 2d 263; Matter of Yun Quong (1911), 159 Cal. 508).

There is finally to be considered the question whether a private person would be prevented from requiring that a person be of a specified minimum age greater than 18 in order to qualify or become eligible for any rights, benefits, or privileges conferred or granted by such private person, if either A.C.A. 2 or A.C.A. 12, as amended on March 16, 1971, is presented to and approved by the electorate.

We are of the opinion as to this question that in the absence of another constitutional provision or a statutory provision implementing either proposal to the extent of making it applicable to private persons, or unless the conduct of such persons should, in a sense, constitute governmental action, it is doubtful that either proposal would have any legally enforceable effect on those persons (see James v. Marinship Corp. (1944), 25 Cal. 2d 721, 731; Stevens v. Watson (1971), 16 Cal. App. 3d 629, 639-640; Reitman v. Mulkey (1967), 18 L. ed. 2d 830; and Secs. 51-54, incl., Civ. C.).

Very truly yours,

George H. Murphy
Legislative Counsel

By
Brian L. Walkup
Deputy Legislative Counsel

BLW:st

Two copies to:
Honorable John V. Briggs,
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pursuant to Joint Rule 34.

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Sacramento, California
June 23, 1971

Honorable Alex P. Garcia
Assembly Chamber

School Districts (A.B. 472 and A.C.A. 31) - #14295

Dear Mr. Garcia:

QUESTION NO. 1

If Assembly Bill No. 472 of the 1971 Regular Session, as amended May 13, 1971, is enacted, why is the adoption of Assembly Constitutional Amendment No. 31, as amended May 13, 1971, also necessary?

OPINION AND ANALYSIS NO. 1

A.B. 472, as amended May 13, 1971, would provide, in pertinent part, that governing boards of all school districts shall have the power to initiate and carry on any educational programs which are consistent with the laws and purposes for which school districts are established, and which are not specifically prohibited by law. It also would provide that such provision would not become operative (in 1973) unless Assembly Constitutional Amendment No. 31 of the 1971 Regular Session is adopted by the people.

Thus, A.B. 472, as amended May 13, 1971, would, if enacted and made operative, give school district governing boards wide-ranged powers.

A.C.A. 31, as amended May 13, 1971, would, by amending Section 14 of Article IX of the State Constitution, add to the Constitution language comparable to that proposed in A.B. 472.

Under the present form of the State Constitution, school districts are creatures of statute and possess only those powers specifically conferred upon them by statute or which are necessarily implied from the powers so expressly conferred (Paterson v. Board of Trustees (1958), 157 Cal. App. 2d 811, 818; Pasadena School District v. Pasadena (1913), 166 Cal. 7). There is no authority in the Constitution for the Legislature to delegate to school districts powers without controls and standards or "legislative" powers (see Houghton v. Austin, 47 Cal. 646; Davis v. County of Los Angeles, 12 Cal. 2d 412, 425; and 11 Cal. Jur. 2d 481). Hence, such authorization can be afforded only by amendment of the State Constitution (Sandstrom v. Cal. Horse Racing Board, 31 Cal. 2d 401, 412). In this regard, although the Constitution contemplates that the public school system shall be administered locally by school districts (Cal. Const., Art. IX, Secs. 5, 6; and see Bay View School Dist. v. Linscott, 99 Cal. 25, 29), there is nothing in the Constitution which permits the Legislature to delegate to school districts powers such as are proposed by A.B. 472.

We think that A.B. 472 would constitute an unconstitutional delegation of legislative power to a school district unless the Legislature provided a sufficiently definite standard for the exercise of the power or adequate safeguards (Davis v. County of Los Angeles, above, at 425; Kugler v. Yocum, 69 Cal. 371, 381-382; and see Holloway v. Purcell, 35 Cal. 2d 220, 231). A delegation of "absolute legislative discretion" to school districts governing boards is improper and void (Wooton v. Bush, 41 Cal. 2d 460, 468; Davis v. County of Los Angeles, above; Holloway v. Purcell, above; and see 2 Cal. Jur. 2d, Administrative Law and Procedure, Secs. 49 and 50).

We think, therefore, in line with these cited cases, that the adoption of A.C.A. 31 would be essential to render A.B. 472 constitutional.

QUESTION NO. 2

If Section 14 of Article IX of the State Constitution were repealed, what would the result be? We assume, by your question, that you are concerned with whether the Legislature would continue to have power to provide for the incorporation and organization of school districts.

OPINION NO. 2

In our opinion, if Section 14 of Article IX of the State Constitution were repealed, the Legislature would still have the power to provide for the organization and incorporation of, and otherwise regulate, school districts.

ANALYSIS NO. 2

Section 14 of Article IX of the State Constitution provides:

> "Sec. 14. The Legislature shall have power, by general law, to provide for the incorporation and organization of school districts, high school districts, and junior college districts, of every kind and class, and may classify such districts."

This section was adopted in 1926.

In the early days of the state's existence the Constitution contained provisions specifying that the public school system included not only schools established by the Legislature but schools established by municipal or district authority (Sec. 6 of Article IX, as added in 1879). This language was still in the Constitution in 1926, when Section 14 was added to Article IX, but was eliminated by amendment of Section 6 of Article IX in 1946.

It is a fundamental principle that the Legislature has all legislative power not expressly or by necessary implication denied to it by the Constitution, and that constitutional restrictions on the Legislature's powers should be strictly construed. Any doubt as to the Legislature's powers to act should be strictly construed and resolved in favor of the action (Dean v. Kuchel, 37 Cal. 2d 97, 100).

Such general power of the Legislature is usually referred to as the police power, which is the power to enact legislation for the promotion of the order, safety, health, morals, and general welfare of society (In re Ramirez, 193 Cal. 633, 649-650).

Section 1 of Article IX of the Constitution directs the Legislature to encourage the promotion of intellectual, scientific, moral, and agricultural improvement by all suitable means. Furthermore, Section 5 of Article IX provides:

> "Sec. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

Hence, there is also express authority for the Legislature to deal with the subject of the public school system.

Prior to the adoption of Section 14 of Article IX (in 1926), the provision in question, the California Supreme Court held that the Legislature under its general legislative powers, had the power to legislate with respect to school districts (see Hughes v. Ewing, 93 Cal. 414, 417 (1892); and Bay View School Dist. v. Linscott, above, pages 27 and 29 (1893)).

Thus, in our view, the Legislature would retain its power to provide for and regulate school districts even if Section 14 of Article IX of the State Constitution were repealed.

Very truly yours,

George H. Murphy
Legislative Counsel

By Edward Bershatsky
Edward Bershatsky
Deputy Legislative Counsel

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Two copies to Honorable John Vasconcellos, pursuant to Joint Rule 34.

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Sacramento, California
July 1, 1971

Honorable Alex P. Garcia
Assembly Chamber

Redevelopment: A.B. 2947 - #14582

Dear Mr. Garcia:

QUESTION

You have asked if Assembly Bill 2947, as amended in Assembly June 30, 1971, is enacted, would Assembly Constitutional Amendment 76, as amended in Assembly June 22, 1971, be necessary.

OPINION AND ANALYSIS

A.B. 2947, as amended June 30, 1971, would provide that a city, county, or city and county, by resolution of its legislative body, may guarantee the payment of principal and interest on existing and future bonded or other indebtedness of a redevelopment agency. It would also establish the State Redevelopment Bond Insurance Fund, to be administered by the Director of Housing and Community Development, under regulations promulgated by the Commission of Housing and Community Development, for the purpose of insuring tax allocation bonds issued by local redevelopment agencies to finance community redevelopment projects, and would set forth standards for the insurance of such bonds.

A.C.A. 76, as amended June 22, 1971, would add a new Section 19.5 to Article XIII of the California Constitution which would specifically authorize the Legislature to provide for a guarantee by the state, or by a taxing agency with the consent of its governing body, of the payment of debt incurred by a redevelopment agency.

We assume that the indebtedness which it is intended to guarantee or insure would not be repaid in the fiscal year in which it is incurred.

With respect to the creation of an indebtedness on the part of a city, county, or city and county, Section 40 of Article XIII of the California Constitution provides as follows:

> "Sec. 40. No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the qualified electors thereof, voting at an election to be held for that purpose ... ."

It has been held that the object of Section 40 of Article XIII is to proscribe incurring an indebtedness in one fiscal year that will be an obligation against the general funds of the city, county, or city and county for future years, except by a two-thirds vote of the electors thereof (County of Tehama v. Sisson (1907), 152 Cal. 167, 172; City of Palm Springs v. Ringwald (1959), 52 Cal. 2d 620, 627; McBean v. City of Fresno (1896), 112 Cal. 159, 164; Ruane v. City of San Diego (1968), 267 Cal. App. 2d 548, 556).

If, therefore, the guarantee of payment of principal and interest on existing and future bonded or other indebtedness of a redevelopment agency is to be an obligation against the general funds of the city, county, or city and county during future years, the guarantee would violate Section 40 of Article XIII of the California Constitution. In such event, the adoption by the people of either A.C.A. 76, or a constitutional amendment similar

to A.C.A. 76, would be necessary in order to authorize such a guarantee.

We note that A.B. 2947 would specify that no such guarantee shall constitute an indebtedness of the community within the meaning of any constitutional or statutory debt limitation or restriction. Such provision, however, could clearly not authorize the incurrence of an indebtedness in violation of Section 18 of Article XIII of the California Constitution, nor could it extend or limit the definition of indebtedness as the term is used in such constitutional provision (Forster Shipbuilding Co. v. County of Los Angeles (1960), 54 Cal. 2d 450, 456).

With respect to the creation of indebtedness on the part of the state, Section 1 of Article XVI of the California Constitution provides, in part:

> "The Legislature shall not, in any manner create any debt or debts ... which shall ... exceed the sum of three hundred thousand dollars ... until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of the votes cast ... ."

The Supreme Court of this state has considered this debt limitation upon a number of occasions. Under such decisions, it is clear that in the absence of approval by the electorate, the Legislature is prohibited from creating a debt in any way which by itself or in the aggregate with previous debts and liabilities of the state incurred without such approval exceed the sum of $300,000 (People v. Johnson (1856), 6 Cal. 499). The debt or obligation, of course, must be one which obligates the credit of the state generally. Thus, if the debt or obligation is limited to payment out of an existing appropriate fund without otherwise obligating the general fund, there is no debt or obligation within the prohibition (In re California Toll Bridge Authority (1931), 212 Cal. 298; California Toll Bridge Authority v. Kelly (1933), 218 Cal. 7).

A.B. 2947 would create in the State Treasury the State Redevelopment Bond Insurance Fund and would make money appropriated to the fund available without regard to fiscal years for the administrative expenses incurred in carrying out the proposed provisions relating to state insurance of redevelopment bonds and for the insurance of

bonds issued by community redevelopment agencies for redevelopment purposes. The bill, however, would also direct the Director of Housing and Community Development to insure the payment of principal and interest on specified redevelopment bonds if he determines that all of certain conditions exist.

If only such funds as are appropriated to the State Redevelopment Bond Insurance Fund are intended to be available for the purpose of insuring such payment of principal and interest, there would be no obligation within the meaning of Section 1 of Article XVI of the California Constitution since the obligation would be limited to payment out of a special fund and to the amount appropriated for such purpose by the Legislature (Riley v. Johnson (1933), 219 Cal. 513, 520).

The provisions of A.B. 2947, however, do not specify that the obligation of the state is to be limited to such amounts as shall be appropriated to the State Redevelopment Bond Insurance Fund. To the extent, therefore, that A.B. 2947 would provide for the obligation of the credit of the state generally, we think that the adoption by the people of either A.C.A. 76, or a constitutional amendment similar to the provisions of A.C.A. 76, would be required.

Very truly yours,

George H. Murphy
Legislative Counsel

By Thomas D. Whelan
Thomas D. Whelan
Deputy Legislative Counsel

TDW:sc

Two copies to Honorable Yvonne W. Brathwaite, pursuant to Joint Rule 34.

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Sacramento, California
August 27, 1973

Honorable Alex P. Garcia
Assembly Chamber

Motor Vehicle Taxation Revenues
(S.C.A. 15) - #17840

Dear Mr. Garcia:

You have asked a series of questions, which are separately stated and considered below, with respect to Senate Constitutional Amendment No. 15, as amended August 23, 1973, which proposes to amend the State Constitution by repealing and adding Article XXVI[1] thereof.

QUESTION NO. 1

Would Section 3 condition the authority of the Legislature in allocating highway users tax revenues for highway and exclusive public mass transit guideway purposes?

OPINION NO. 1

Section 3 would condition the authority of the Legislature in allocating highway users tax revenues for highway and exclusive public mass transit guideway purposes.

ANALYSIS NO. 1

S.C.A. 15, if adopted by the voters, would amend the State Constitution by repealing and adding Article XXVI thereof.

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1 All section references are to Article XXVI as proposed by S.C.A. 15.

Subdivision (a) of Section 1 would authorize the use of motor vehicle fuel tax revenues specifically for research, planning, and operation, as well as for construction, improvement, and maintenance, of public streets and highways, including related public facilities for nonmotorized traffic, and for acquisition of property and administrative costs therefor. Such revenues could also be used for the mitigation of public street and highway environmental effects.

In addition, subdivision (b) of Section 1 would authorize the use of such revenues for similar purposes for exclusive public mass transit guideways, and related fixed facilities, except for the maintenance and operation of mass transit power systems and mass transit passenger facilities, vehicles, equipment, and services.

With respect to revenues derived from fees on vehicles, Section 2 would authorize the use of these revenues for the same purposes that motor fuel tax revenues may be expended therefor under Section 1 and for the mitigation of environmental effects of motor vehicle operation due to air and sound emissions, as well as for enforcement of traffic and vehicle laws by the state.

In regard to your inquiry as to the authority of the Legislature in allocating the above revenues for highway and exclusive public mass transit guideway purposes, Section 3 would provide that:

> "Sec. 3. The Legislature shall provide for the allocation of the revenues to be used for the purposes specified in Section 1 of this article in a manner which ensures the continuance of existing statutory allocation formulas for cities, counties, and areas of the state, until it determines that another basis for an equitable, geographical, and jurisdictional distribution exists; provided that, until such determination is made, any use of such revenues for purposes specified in subdivision (b) of Section 1 of this article by or in a city, county, or area of the state shall be included within the existing statutory allocations to, or for expenditure in, that city, county, or area. Any future statutory revisions shall provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation

> needs of all areas of the state and all segments of the population consistent with the orderly achievement of the adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan."

In brief, the Legislature would be required to continue the existing statutory scheme of allocating the highway users tax revenues for highway purposes[2], and to include any expenditure for such guideway purposes within any allocations required under the existing statutory scheme to be expended in any city, county, or area of the state, "until it determines that another basis for an equitable, geographical, and jurisdictional distribution exists." Any future statutory scheme of allocating the highway users tax revenues would have to give "equal consideration to the transportation needs of all areas of the state and all segments of the population consistent with the orderly achievement of adopted" goals for ground transportation in various specified transportation plans.

As stated in Methodist Hosp. of Sacramento v. Saylor, 5 Cal. 3d 685, on page 691:

> "Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited.'

---

[2] See Sec. 187 et seq., and Sec. 2104 et seq., S.& H.C.

> "Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act on any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations imposed by the Constitution are to be construed strictly, and are not to be extended to include matters not covered by the language used.' [Citations omitted.]"

In other words, while the presumption, in case of doubt, is that the Legislature has the authority to act, such is not the case where the language of the State Constitution is clear in limiting the authority of the Legislature to act (see, e.g., Secs. 8 and 9, subds. (c) and (d), Sec. 12, subd. (a), Sec. 19, subd. (c), Sec. 24, Art. IV, and Sec. 1, Art. XVI, Cal. Const.).

In construing the Constitution, the same rules which apply in construing statutes are applicable (McMillan v. Sieman, 36 Cal. 2d 721, 726).

Where the language of a statute is clear and unambiguous and its meaning plain, there is no need for construction by the court and the courts should not add to or alter that language (Caminetti v. Pac. Mutual L. Ins. Co., 22 Cal. 2d 344, 353-354; In Re W.R.W., 17 Cal. App. 3d 1029, 1033). In such a case, there is no room for interpretation or construction by the courts, and the statute must be given its plain meaning as expressed in its language (Stockton Sav. & Loan Bank v. Massanet, 18 Cal. 2d 200, 207; People ex rel. Hamilton v. City of Santa Barbara, 205 Cal. App. 2d 501, 504-505).

In our opinion, Section 3 is unambiguous in requiring the Legislature to continue the existing statutory scheme of allocating highway users tax revenues until it determines that another basis exists to revise the existing statutory scheme, and in requiring that any revised statutory scheme meet specified criteria.

Therefore, it is our further opinion that Section 3 would condition the authority of the Legislature in allocating highway users tax revenues for highway and exclusive public mass transit guideway purposes.

QUESTION NO. 2

Would the phrase "other similar revenues" in Section 3 include federal funds derived from federally-imposed highway users taxes?

OPINION AND ANALYSIS NO. 2

Federal funds derived from federally-imposed highway users tax revenues allocated to the state for state highway purposes are deposited in the State Highway Account in the State Transportation Fund (Sec. 183, S.& H.C.).

While such federal funds are allocated by the federal government to the state for particular state highway projects, the expenditure of the federal funds is taken into consideration for the purposes of allocating the funds derived from state-imposed highway users taxes for state highway purposes under the existing statutory scheme (Sec. 825, S.& H.C.; Annual Budget Report to the Governor of California by the Director of Public Works, Feb. 1973, pp. 697 and 702).

Since the existing statutory scheme includes the consideration of the expenditure of such federal funds in determining the allocation to be made of state funds, any future statutory scheme of allocating state highway users tax revenues would also have to include the consideration of the expenditure of such federal funds.

Accordingly, it is our opinion that the phrase "other similar revenues" in Section 3 would include federal funds derived from federally-imposed highway users taxes in the sense that the Legislature would be required to take into consideration, in allocating state highway users tax revenues, the expenditure of such federal funds.

QUESTION NO. 3

Could the Legislature enact a revised statutory scheme of allocating highway users tax revenues prior to the adoption of the California Transportation Plan?

OPINION NO. 3

Under proposed Section 3, it is not contemplated that a revised statutory scheme of allocating highway users tax revenues is to be enacted prior to the adoption of the California Transportation Plan, which is to be adopted not later than January 1, 1976.

ANALYSIS NO. 3

Section 3 would provide, in pertinent part, that:

> "Sec. 3. . . . Any future statutory revisions shall provide for the allocation of these revenues, together with other similar revenues, in a manner which gives equal consideration to the transportation needs of all areas of the state and all segments of the population consistent with the orderly achievement of the adopted local, regional, and statewide goals for ground transportation in local general plans, regional transportation plans, and the California Transportation Plan."

In creating the Department of Transportation[3] from the Department of Public Works with expanded transportation planning responsibilities, the Legislature directed the department to prepare "the California Transportation Plan,[4] directed at the achievement of a coordinated and balanced transportation system for the state, including, but not limited to, mass transportation, highway, aviation, maritime, and railroad facilities and services, whether public or private, that is consistent with the state's social, economic, and environmental needs and goals." (Secs. 14001, 14040, Gov. C.; Sec. 20, S.& H.C.).

The Plan is to include regional transportation plans, with such modification in those plans necessary to resolve conflicts among such plans in order to insure a statewide balanced transportation system (Sec. 14040.2, Gov. C.).

The Plan is to be submitted to the State Transportation Board for review and resolution of any objections against the Plan as submitted (Sec. 14040.4, Gov. C.). The board is required to adopt the Plan and transmit it to the Legislature not later than January 1, 1976 (Sec. 14040.6, Gov. C.). Thereafter, the Plan is to be updated periodically (Sec. 14040.7, Gov. C.).

Upon adoption of the Plan, the department, among others, would be required to act in accordance with the Plan, except as otherwise provided by law (Sec. 14040.8, Gov. C.).

---

[3] Hereafter referred to as the department.

[4] Hereafter referred to as the Plan.

The regional transportation plans to be incorporated into the Plan are to be prepared by designated transportation agencies, and the department in specified instances, and are to be directed at the achievement of a coordinated and balanced regional transportation system, including, but not limited to, mass transporation, highway, railroad, maritime, and aviation facilities and services (Secs. 65080, 65080.5, Gov. C.). To the extent appropriate, the transportation plans of cities, counties, special districts, private organizations, and state and federal agencies are to be incorporated into the regional transportation plans (subd. (a), Sec. 65080, Gov. C.).

The regional transporation plans are to be adopted and transmitted to the department not later than April 1, 1975. Thereafter, such plans are to be updated periodically (subd. (b), Sec. 65080, Gov. C.).

By law, every county and city is required to establish a planning agency which is required to prepare a comprehensive, long-term general plan for the physical development of county or city, as the case may be, for adoption by the legislative body thereof (Secs. 65100, 65300, Gov. C.). The general plan must include a circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land-use element of the plan (subd. (b), Sec. 65302, Gov. C.). The general plan may also include a transportation element showing a comprehensive transportation system, including locations of rights-of-way, terminals, viaducts, and grade separations, and port, harbor, aviation, and related facilities, and a transit element showing a proposed system of transit lines, including rapid transit, streetcar, motor coach and trolley coach lines, and related facilities (subds. (c) and (d), Sec. 65303, Gov. C.).

As can be seen, the Plan, through incorporation of the regional transportation plans which, in turn when appropriate, would incorporate the transportation plans of counties and cities as reflected in their general plans, will provide a comprehensive view of the transportation needs of the state.

Presently, the highway users tax revenues, in general, are allocated on the basis of highway needs (Sec. 188.8, S.& H.C.).

The adoption of S.C.A. 15 would authorize the use of highway users tax revenues for exclusive public mass transit guideways as well as for highways. Hence, if such revenues are to be allocated for such guideways, it would be logical to assume that such allocations would, in the future, also be on the basis of such guideway needs.

Until such guideway needs are known and their priorities determined, the existing statutory scheme of allocating highway users tax revenues is to remain in effect. However, the existing statutory scheme may be revised if there is a basis to revise it.

With the adoption of the Plan, the Legislature would have before it a comprehensive transportation plan for the state, and could determine therefrom the allocation of the highway users tax revenues to best achieve the goals as stated in the Plan for both highways and such guideways.

It is our opinion, therefore, that until such information is available to the Legislature, there is no basis for the Legislature to revise the existing statutory scheme.

Thus, it is our opinion, that under proposed Section 3, it is not contemplated that a revised statutory scheme of allocating highway users tax revenues is to be enacted prior to the adoption of the California Transportation Plan, which is to be adopted not later than January 1, 1976.

QUESTION NO. 4

Would Section 4 apply to General Fund revenues or to federal funds derived from federally-imposed highway users tax revenues to be expended for exclusive public mass transit guideway purposes?

OPINION NO. 4

Section 4 would not apply to General Fund revenues, or to federal funds derived from federally-imposed highway users taxes, to be expended for exclusive public mass transit guideway purposes.

ANALYSIS NO. 4

Section 4 provides that:

"Sec. 4. Revenues allocated pursuant to Section 3 may not be expended for the purposes specified in subdivision (b) of Section 1, except

> for research and planning, until such use is approved by a majority of the votes cast on the proposition authorizing such use of such revenues in an election held throughout the county or counties, or a specified area of a county or counties, within which the revenues are to be expended. The Legislature may authorize the revenues approved for allocation or expenditure under this section to be pledged or used for the payment of principal and interest on voter-approved bonds issued for the purposes specified in subdivision (b) of Section 1." (Emphasis added.)

Thus, the revenues under consideration may not be used for exclusive public mass transit guideway purposes in any county, or specified area thereof, except for research and planning, unless such use is approved by a majority of voters voting on the proposition authorizing such use.

The revenues referred to in Section 3 are, of course, state funds derived from state-imposed highway users taxes or "other similar revenues" and would not include General Fund revenues to be expended for such guideway purposes.

In the case of federal funds derived from federally-imposed highway users taxes, the allocation thereof and the purposes for which, and the conditions under which, they may be expended are governed by federal law. Thus, in our opinion such federal funds are not "allocated pursuant to Section 3," although, as indicated in Opinion and Analysis No. 2, the Legislature would be required to take the expenditure of such federal funds into consideration in allocating state highway users tax revenues.

Very truly yours,

George H. Murphy
Legislative Counsel

By Jimmie Wing
Jimmie Wing
Deputy Legislative Counsel

JW:sjr

Two copies to Honorable James R. Mills,
pursuant to Joint Rule 34.

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Sacramento, California
August 29, 1973

Honorable William T. Bagley
Assembly Chamber

Income Taxes - #18003

Dear Mr. Bagley:

FACTS

The Governor's Initiative Measure is an initiative constitutional amendment, which proposes to add a new Article XXIX to the State Constitution. The measure proposes to place various limitations on the taxing and spending powers of local government and is scheduled to appear as Proposition 1 on the ballot at a special election to be held on Tuesday, November 6, 1973.

Subdivision (b) of Section 4 of this proposed new article would provide as follows:

> "(b) For 1974 and thereafter, the State personal income tax liability of taxpayers shall be determined at rates no higher than those in effect on January 1, 1973, less a credit of 7-1/2%. Single individuals whose adjusted gross income is less than $4,000.00 and married couples and heads of households whose adjusted gross income is less than $8,000.00 shall bear no State personal income tax. The Legislature shall, by statute, implement the tax reduction required by this

> Section as to application to nonresident and fiscal year taxpayers and as to credits in computing liability. The provisions of this subdivision (b) may be modified by statute passed by roll-call vote entered in the journal, two-thirds of the membership of each house concurring. If this Article becomes effective after December 31, 1973, then this subdivision shall apply to 1975 and thereafter instead of 1974 and thereafter."

With respect to the above provision, you have asked the following three questions, which, within the limited time made available to us, are separately stated and considered below, regarding the effect of Proposition 1 on certain administrative procedures of the Franchise Tax Board.

QUESTION NO. 1

If the initiative is approved by the voters, would the Franchise Tax Board be required by state law to reduce the withholding tables, effective January 1, 1974, under the provisions of subdivision (b) of Section 4* of Proposition 1 of 1973?

OPINION NO. 1

The Franchise Tax Board is required by state law to reduce the withholding tables to reflect changes in income tax rates. However, we have no information with respect to whether the changes proposed by Section 4 would require adjustments in such tables or whether such adjustments -- if necessary -- would be made on January 1, 1974.

ANALYSIS NO. 1

Pertinent provisions of Section 18806 of the Revenue and Taxation Code provide that:

> "18806. (a) Every employer making payment of any wages after December 31, 1971, to a resident employee ... shall deduct and withhold from such wages ... for each payroll period, a tax

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* Hereinafter referred to as Section 4.

> computed in such manner as to produce, so far as practicable ... a sum which is substantialy equivalent to the amount of tax reasonably estimated to be due ... . The method of determining the amount to be withheld shall be prescribed by regulations of the Franchise Tax Board.
>
> * * *"

Thus, employers are required to withhold an amount of taxes that conform to the estimated amount of taxes due, and the schedules provided by the Franchise Tax Board would have to reflect any change in the personal income tax rates which affect the amount of personal income taxes which would be due.

Senate Bill No. 90 of the 1973-74 Regular Session of the Legislature has already been enacted into law as Chapter 296 of the Statutes of 1973, and provides that single individuals whose adjusted gross income is less than $4,000.00 and married couples and heads of households whose adjusted gross income is less than $8,000.00 shall bear no personal income tax, as would have been provided in subdivision (b) of Section 4 of Proposition 1.

Further, the Legislature could change the 7-1/2 percent credit authorized in Section 4.

Whether or not such credits would require adjustments to the personal income tax withholding tables could depend on further clarification by the Legislature, and the Franchise Tax Board might elect to await further direction from the Legislature before making any decision with respect to the withholding tables.

QUESTION NO. 2

If the Franchise Tax Board reduces the withholding tables on July 1, 1974, will the 1973-74 state tax revenues, as defined in Section 16 of Proposition 1 of November 1973, be reduced by an amount equal to the 7-1/2 percent income tax credit authorized in Section 4 of that same proposition?

OPINION NO. 2

If the Franchise Tax Board reduces the withholding tables on July 1, 1974, the 1973-74 state tax revenues, as defined in Section 16 of Proposition 1 of November 1973, would not be affected by such reduction.

ANALYSIS NO. 2

Section 16 of Proposition 1 of 1973 defines state tax revenues, as follows:

"Section 16. Definitions.

"(a) 'State Tax Revenue' means the revenue of the State from every tax, fee, penalty, receipt and other monetary exaction ... ." (Emphasis added.)

State tax revenues, as indicated above, include revenue from every tax. However, the right of the state to income taxes vests on the date the tax becomes due and payable (Allen v. Franchise Tax Board, 39 Cal. 2d 109, 113-115), which is April 15th following the close of the calendar year or if the taxpayer files for a fiscal year, on the fifteenth day of the fourth month following the close of the fiscal year (Sec. 18551, R.& T.C.).

Further, the amount withheld is only an estimate of taxes to be due (see Sec. 18806, R.& T.C.).

State tax revenues, as defined by Section 16 of Proposition 1 of November 1973, only include tax revenues, and not amounts withheld pursuant to estimates of taxes to be due. Thus while the reduction in income taxes would affect the state's revenues such reduction of the amount of wages to be withheld for taxes would not affect the amount of such state tax revenues.

QUESTION NO. 3

May the Franchise Tax Board provide for income tax credit authorized in Section 4 to be computed on the returns of state income taxpayers when they are filed approximately April 1975 rather than reducing the current income tax withholding tables if the Franchise Tax Board so desires?

OPINION AND ANALYSIS NO. 3

As we have indicated in our Opinion and Analysis No. 1, if a tax credit is authorized pursuant to Section 4 of Proposition 1 of 1973, the Franchise Tax Board must conform the personal income tax withholding tables to provide a reasonable estimate of actual taxes due. However,

as we have indicated, the minimum tax limit authorized in Section 4 has already been enacted by the Legislature, but the Legislature could change the 7-1/2 percent credit. Thus, whether or not any changes to the personal income tax withholding tables would be required may depend upon further clarification by the Legislature.

Very truly yours,

George H. Murphy
Legislative Counsel

By Charles C. Asbill
Charles C. Asbill
Deputy Legislative Counsel

CCA:caf

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Sacramento, California
October 9, 1973

Honorable Joe A. Gonsalves
4016 State Capitol

Appropriations - #20045

Dear Mr. Gonsalves:

. FACTS

You have directed our attention to Section 21 of Article XIII of the existing State Constitution, which provides, in part, as follows:

> "Sec. 21. No money shall be drawn from the Treasury but in consequence of appropriation made by law, and upon warrants duly drawn thereon by the Controller. No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution, nor shall any grant or donation of property ever be made thereto by the State ... ."

You next direct our attention to Proposition 1 on the ballot for the Special Statewide Election to be held on Tuesday, November 1, 1973, which proposes to add a new Article XXIX to the State Constitution to provide, among other things, for an overall limitation on the taxing and spending power of state government by imposing what is termed a "state tax revenue limit" (see Secs. 2, 3, and 12, proposed Art. XXIX).

Section 2 of this proposed new article would also create a Tax Surplus Fund and would provide that whenever state tax revenues exceed the state tax revenue limit, the excess shall be transferred to such fund where it may be used for "tax refunds or reductions."

Subdivision (a) of Section 4 of proposed Article XXIX would then go on to provide as follows:

> "(a) The imposition of any new tax or the change in the rate or base of any tax by the Legislature shall be by statute passed by roll-call vote entered in the journal, two-thirds of the membership of each house concurring, except for tax refunds or reductions by appropriations specifically declared to be out of the Tax Surplus Fund which shall be by statute passed by a vote of the majority of the membership of each house."

QUESTION

If Proposition 1 is approved by the voters and funds are subsequently accumulated in the Tax Surplus Fund, would the existing California constitutional provision set forth above prevent the Legislature from providing tax refunds by means of mailing warrants directly to one or more of the various institutions mentioned in such section?

OPINION AND ANALYSIS

The "tax refunds" contemplated by Proposition 1 would add a new dimension to the existing concept of such payments, if the measure is approved by the voters. A "tax refund" usually relates to a situation where a taxpayer, having over-paid a tax, the amount of the overpayment is then returned to him (see, for example, Sec. 19051, R.& T.C.).

The measure before us contemplates a situation wherein taxpayers generally would pay the correct amount of tax under then existing laws, but, in the event that it was desired that a "tax refund" would be paid from surplus funds, such refund could be made from the State Tax Surplus Fund.

If Proposition 1 is approved by the voters in its present form, we think the Legislature could provide by statute for "tax refunds" by means of direct payments

to one or more of the enumerated institutions without conflicting with the provisions of Section 21 of Article XIII of the existing Constitution which prohibits gifts of public funds. To the extent that the provisions in Proposition 1 providing for tax refunds are repugnant to the existing constitutional provision prohibiting gifts of public funds, the provisions of Proposition 1 must prevail, since they would be adopted last in point of time (In the Matter of the Application of Mascolo (1914), 25 Cal. App. 92, 97).

Very truly yours,

George H. Murphy
Legislative Counsel

By Russell L. Sparling
Russell L. Sparling
Principal Deputy

RLS:pz

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Sacramento, California
October 26, 1973

Honorable Alex P. Garcia
6001 State Capitol

University of California Regents
(A.C.A. 83) - #19505

Dear Mr. Garcia:

QUESTION

Under A.C.A. 83, as amended August 31, 1973, could the Legislature, by statute, establish the terms of office for the student and faculty nonvoting members of the University of California Regents?

OPINION

The Legislature could, by statute, fix the terms of office of the student and faculty nonvoting members of the University of California Regents proposed by A.C.A. 83, as amended August 31, 1973.

ANALYSIS

A.C.A. 83, as amended August 31, 1973, would amend subdivision (a) of Section 9 of Article IX of the California Constitution to, among other things, provide for a nonvoting faculty and student member of the University of California Regents. The language relating to the faculty and student members proposed by A.C.A. 83 reads as follows:

> "... two nonvoting members with the right of full participation, to wit: one university faculty member selected by the faculty pursuant to procedures established by the Legislature after consultation with representatives of the faculty of the university and one university student selected by the students of the university pursuant to procedures established by the Legislature after consultation with representatives of the students of the university."

Initially, it should be pointed out that the amendments proposed by A.C.A. 83 also contain language specifying that the terms of "appointive members" shall be eight years. The contention could be made that "appointive members" includes the nonvoting student and faculty members selected by the University of California students and faculty and that such members are, therefore, to serve terms of eight years. It is our opinion, however, that in the context of A.C.A. 83, "appointive members" refers exclusively to the 16 persons appointed to the regents by the Governor. Throughout subdivision (a) of Section 9 of Article IX, as it presently reads, and as it is proposed to be amended by A.C.A. 83, the terms "appointment" and "appointive members" are used in connection with provisions dealing with the Governor's appointees. In almost all of the instances in which those terms are used in the amendments proposed by A.C.A. 83, it would be inappropriate to make them applicable to the nonvoting student and faculty members. We think this is especially true with respect to the provision specifying eight-year terms for appointive members. Normally, persons attending the University of California as students do not retain that status for eight years. It is also quite possible that a member of the faculty might terminate his association with the university at some time during an eight-year term. Thus, we conclude that the provision of A.C.A. 83 specifying eight-year terms for appointive members does not apply to the nonvoting student and faculty members.

The amendment proposed by A.C.A. 83 prescribes terms of eight years for each of the 16 persons appointed to the regents by the Governor, but is silent with respect to the terms of the nonvoting student and faculty members. The faculty and student members are to be selected by the University of California faculty and students respectively, pursuant to procedures established by the Legislature.

Generally, the duration of an officer's term is determined by the law under which the office exists. Where, however, the law does not fix its term, an office is said to be held at the pleasure of the appointing power (Sec. 1301, Gov. C.).*

The offices in question, those of the nonvoting student and faculty members of the regents, having terms which are not otherwise fixed by law, would, in our opinion, be held at the pleasure of the respective appointing powers, herein the faculty and students of the University of California.

This does not, however, preclude the Legislature from fixing the terms of the two offices by statute. Except as limited by the Constitution, the term of a public office is a matter of purely legislative discretion, and the Legislature's action in this regard is binding on the appointing power (40 Cal. Jur. 2d, Public Officers, Sec. 74; see People v. Campbell, 138 Cal. 11).

We would conclude, therefore, that under A.C.A. 83, as amended August 31, 1973, the Legislature could, by statute, fix the terms of office of the student and faculty nonvoting members of the University of California Regents.

Very truly yours,

George H. Murphy
Legislative Counsel

By Martin L. Anderson
Martin L. Anderson
Deputy Legislative Counsel

MLA:db

Two copies to Honorable John Vasconcellos, pursuant to Joint Rule 34.

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* Former Section 16 of Article XX of the California Constitution, since repealed, provided, in part, that:

> "When the term of any officer or commissioner is not provided for in this Constitution, the term of such officer or commissioner may be declared by law; and, if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years; ... ."

March 5, 1974

Mr. George Murphy
Legislative Counsel
3021 State Capitol Building
Sacramento, CA 95814

Dear George:

I would like an opinion on the following:

Facts:

A privately owned carwash, licensed as such in a county which has adopted an odd-even license plate requirement regarding the sale of gasoline. The principal business is the carwash. Gasoline sales are a minor part of the business, but such sales determine the price structure for car washes.

Questions:

1. Is the carwash required to comply with the odd-even license plate sales?

2. Can the carwash refuse customers that come to purchase gasoline only?

May I have this opinion by March 7, 1974?

Sincerely,

ALEX P. GARCIA

APG:gl

Eagle F71

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Sacramento, California
March 11, 1974

Honorable Alex P. Garcia
Assembly Chamber

Regulations for California's Gasoline Emergency - #4604

Dear Mr. Garcia:

You have asked two questions regarding the Regulations for California's Gasoline Emergency*, promulgated by the Energy Planning Council and incorporated by reference and issued by the Proclamation of the Governor of February 28, 1974, which are separately stated and considered below, based upon the following statements of facts supplied by you.

FACTS

A privately-owned carwash, licensed as such by the county, is located in a county which has adopted the gasoline marketing plan. Its principal business is washing cars, and while its gasoline sales are a minor part of the business, those sales determine the price structure for car washes. The permanent physical layout of the carwash premises is such that it is impossible to exit from the gasoline pump area except through the carwash, without backing out, counter to the flow of traffic through the carwash and gasoline facility.

---

* Hereinafter referred to as the "regulations."

QUESTION NO. 1

Is the carwash required to comply with the regulations?

OPINION NO. 1

The carwash is required to comply with the regulations.

ANALYSIS NO. 1

Paragraph (1) of the regulations provides as follows:

> "1. At the retail level, gasoline may be dispensed into vehicles with a license plate whose last (or only) digit is an odd number (1, 3, 5, 7 and 9) only on odd numbered days of the month, that is, on the first, third, fifth, seventh and so on. Environmental license plates that contain letters only will be equivalent to the digit 1. Examples of odd number plates are as follows:
>
> SAM 123
> 123 SAM
> MARTHA
> KAM 2345
> 12345J
> J12345" (Emphasis added.)

Paragraph (2) makes similar provisions with respect to even-numbered days of the month.

As written, the regulations would apply to any retail vendor of gasoline in a county adopting the gasoline marketing plan. Nowhere in the regulations is a retail sale of gasoline defined. Furthermore, we are informed by officials of the Energy Planning Council that the regulations are intended to apply to all retail gasoline sales in adopting counties, without regard for other retail activities occurring or other services furnished on the same premises in addition to gasoline retail sales.

With respect to interpretation of an administrative regulation, the Supreme Court has stated, in Bowles v. Seminole Rock & Sand Co., 89 L. Ed. 1700, 1702, "... the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation." We do not think that the interpretation of the Energy Planning Council of its regulations, making them applicable to all retail gasoline sales, is plainly erroneous or inconsistent with the regulations as a whole.

QUESTION NO. 2

May the carwash operator refuse customers who come to purchase gasoline only?

OPINION NO. 2

The carwash operator may refuse customers who come to purchase gasoline only.

ANALYSIS NO. 2

Paragraphs (4) and (5) of the regulations provide, in pertinent part, as follows:

> "4. Gasoline shall not be sold to any vehicle that has more than one-half tankful of gasoline. . . .
>
> "5. When dispensing gasoline to the general public, gasoline retailers shall not refuse to sell gasoline to anyone, on appropriate odd or even days, except to refuse to sell gasoline to vehicles with more than one-half a tankful of fuel."

Thus, the only grounds specifically permitted under the regulations for refusing to sell gasoline, when it is being dispensed to the public, consist of the vehicle involved (1) having a license plate whose last digit is odd, and the day of the month is even, or vice-versa; and (2) having more than a half-tankful of fuel.

However, 210.62 of Part 210 of the Petroleum Allocation and Price Regulations of the Federal Energy Office (39 Federal Register 1931, January 15, 1974, as amended 39 Federal Register 5311, February 12, 1974) provides as follows:

"210.62. Normal business practice.

"(a) Suppliers will deal with purchasers according to normal business practices. ... nor may any supplier modify any other normal business practice so as to result in circumvention of any provision of this chapter.

"(b) No supplier shall engage in any form of discrimination among purchasers of any allocated product. For purposes of this paragraph 'discrimination' means extending any preference or sales treatment which has the effect of frustrating or impairing the objectives, purposes and intent of this chapter or of the Act [Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159], and includes, but is not limited to, refusal by a retail marketer of motor gasoline or diesel fuel to furnish or sell any allocated product due to the absence of a prior selling relationship with the purchaser, or establishment of new volume purchase arrangements where customers of retailers agree in advance to purchase in excess of normal amounts of motor gasoline or diesel fuel and thereby receive preferential treatment." (Emphasis supplied.)

In interpreting this section, the General Counsel of the Federal Energy Office posed the following hypothetical case and made the following ruling (Ruling 1974-6, 39 Federal Register 6111, February 14, 1974):

"Facts. Firm A is a retail marketer of motor gasoline and diesel fuel in a state or locality which has adopted a plan which establishes certain categories of purchasers and specifies the dates, times or conditions under which sales to such categories of purchaser can be made. The plan to which Firm A is subject permits the sale of gasoline to customers with vehicles with even numbered license plates only on even numbered dates, and the sale of gasoline to customers with vehicles with odd numbered license plates

only on odd numbered dates. The plan also provides that certain categories of purchasers, such as those with emergency vehicles or with commercial vehicles, can purchase gasoline on any date.

* * *

"Issue #1. May Firm A follow the state plan without violating 10 CFR 210.62, which requires that suppliers deal with purchasers according to normal business practices and that no supplier engage in any form of discrimination among purchasers?

* * *

"Ruling. Firm A may follow a state or local plan, whether mandatory or voluntary, which establishes certain categories of purchasers and certain conditions of sale as to such categories without violating 10 CFR 210.62, provided that Firm A does not discriminate in its treatment of purchasers within the categories established by the plan. Firm A may not change its normal business practices except to the extent that it distinguishes among the categories of customer specified by the state. Such action by Firm A would not be regarded as 'discriminatory' under 10 CFR 210.62(b), since it would not constitute 'extending any preference or sales treatment which has the effect of frustrating or impairing the objectives, purposes and intent of this Chapter or of the Act.' It should be noted, however, that compliance with any such state plan by Firm A must be uniform, and that application of such a plan only to some purchasers (for example, purchasers who are not regarded by Firm A as regular customers), but to other purchasers, would constitute prohibited 'discrimination' under 10 CFR 210.62(b)." (Emphasis added.)

It is our opinion that a carwash having an unalterable physical layout of the type described in the facts has established a business practice, from physical circumstances of the carwash operation, which reasonably necessitates the sale of carwash services; and, that to require a gasoline purchaser also to purchase carwash services, therefore, would not constitute a technique for discriminating among gasoline purchasers within a single category (i.e., the general public) which is forbidden by Section 210.62.

Very truly yours,

George H. Murphy
Legislative Counsel

By
Jeffrey D. Arthur
Deputy Legislative Counsel

JDA:nmw

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
555 CAPITOL MALL, SUITE 550
SACRAMENTO 95814

March 6, 1974

Honorable Alex Garcia
Assemblyman, 40th District
State Capitol, Room 6001
Sacramento, California 95814

Dear Mr. Garcia:

This will acknowledge receipt of your letter of March 5 requesting our opinion on two questions regarding a carwash and sale of gasoline.

In accordance with our usual policy, we may forward a copy of your opinion request to parties who are interested in this matter and solicit their legal analysis. If you have received a copy of a Legislative Counsel's opinion or an opinion of any other attorney on this matter, we would appreciate your furnishing us a copy thereof for our information and consideration.

This matter has been referred to Chief Assistant Attorney General Wiely Manuel for assignment and handling. You will be advised of our conclusions as soon as possible.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

JAN STEVENS
Assistant Attorney General

JS:er

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

STATE BUILDING, LOS ANGELES 90012

March 21, 1974

Alex P. Garcia
Assemblyman, Fortieth District
State Capitol
Room 6001
Sacramento, California 95814

Dear Assemblyman Garcia:

This is in acknowledgment of your request dated March 5, 1974, for an opinion concerning a privately owned carwash licensed as such, in a county which has adopted an odd-even license plate requirement regarding the sale of gasoline, as to the following questions:

1. Is the carwash required to comply with the odd-even license plate gasoline sales?

2. Can the carwash refuse customers that come to purchase gasoline only?

Your request has been assigned to Deputy Attorney General Gary Wexler of our Los Angeles office, who will be in communication with you regarding the opinion.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

Carl Boronkay

CARL BORONKAY
Assistant Attorney General

CB:wu

cc: J. R. Winkler
W. W. Manuel
E. G. Benard
S. N. Gruskin
W. Wunderlich
J. Stevens

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

COPY

Sacramento, California
March 26, 1974

Mr. Stanley Griffith
Department of the Treasury
Internal Revenue Service
3505 Broadway
Oakland, California 94611

Dear Mr. Griffith:

In response to your inquiry of this date, we are transmitting herewith, with the permission of Assemblyman Alex P. Garcia, a copy of our opinion (Request #4604) regarding regulation of gasoline sales at car washes.

Very truly yours,

George H. Murphy
Legislative Counsel

By
Jeffrey D. Arthur
Deputy Legislative Counsel

JDA:smp

Enclosure: Req. #4604 - Garcia

cc: Honorable Alex P. Garcia

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DEPUTIES

Sacramento, California
April 10, 1974

Honorable Alex P. Garcia
Assembly Chamber

Charter Counties - #5805

Dear Mr. Garcia:

QUESTION

May a charter county nominate candidates for the Board of Supervisors by district at a primary election and elect them at large at a general election?

OPINION

A charter county may not nominate supervisors by district at a primary election and elect them at large at a general election.

ANALYSIS

Article XI, Section 4 of the Constitution provides in part:

"...County charters shall provide for:

"(a) A governing body of 5 or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts."

This section of the Constitution was added in its present form on June 2, 1970. The wording, as proposed by the Legislature and adopted by the voters, is at variance with the recommendation of the Constitution Revision Commission, and there are no legislative committee reports which clarify the intent of the Legislature in delineating these methods of selection of county supervisors.

The word "or" is ordinarily used in a statute as a disjunctive conjunction to mark an alternative generally corresponding to "either," People v. Smith, 44 Cal. 2d 77, 78. Accordingly, the alternatives presented in this section would be construed as separate alternatives from which a charter county may choose to implement one. Alternative (3) would, in our opinion, be construed to allow a county to elect supervisors at large at both the primary and general elections with a requirement that candidates reside in a particular district. Because of this, it is our opinion that the situation proposed would be at variance with the current constitutional provisions.

Very truly yours,

George H. Murphy
Legislative Counsel

Hugh P. Scaramella

By
Hugh P. Scaramella
Deputy Legislative Counsel

HPS:sbw

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DEPUTIES

Sacramento, California
April 10, 1974

Honorable Alex P. Garcia
Assembly Chamber

Constitution Revision - #7310

Dear Mr. Garcia:

QUESTION

Could the Legislature, by resolution or statute, create a "commission" or legislative committee to study and recommend revision of the California Constitution?

OPINION AND ANALYSIS

Since nothing in the California Constitution prohibits it from so acting, the Legislature, by either concurrent resolution or statute, could create a "commission" or legislative committee to study and recommend revision of the California Constitution. For example, the former Constitution Revision Commission was created and continued in existence by concurrent resolutions of the Legislature (see Res. Ch. 181, Stats. 1963; Res. Ch. 179, Stats. 1965; Res. Ch. 74, Stats. 1966 (1st Ex. Sess.); Res. Ch. 163, Stats. 1967; Res. Ch. 202, Stats. 1968; Res. Ch. 390, Stats. 1969).

Very truly yours,

George H. Murphy
Legislative Counsel

By
James L. Ashford
Deputy Legislative Counsel

JLA:cw

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DEPUTIES

Sacramento, California
May 10, 1974

Honorable Alex P. Garcia
Assembly Chamber

Constitutional Amendments - #9898

Dear Mr. Garcia:

QUESTION

You have asked for the procedure by which the Legislature may withdraw a proposed amendment or revision to the California Constitution prior to its submission to the voters for approval.

OPINION AND ANALYSIS

Section 1 of Article XVIII of the California Constitution provides as follows:

> "Sec. 1. The Legislature by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, may propose an amendment or revision of the Constitution and in the same manner may amend or withdraw its proposal. Each amendment shall be so prepared and submitted that it can be voted on separately." (Emphasis added.)

Under the terms of Section 1 of Article XVIII, the Legislature may withdraw a proposed amendment or revision of the Constitution either by law or concurrent resolution voted upon favorably by two-thirds of the membership of each house.

Very truly yours,

George H. Murphy
Legislative Counsel

By James A. Marsala
James A. Marsala
Deputy Legislative Counsel

Concurrent Resolution w/ 2/3 vote.

JAM:sbw

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DEPUTIES

Sacramento, California
May 19, 1974

Honorable Alex P. Garcia
Assembly Chamber

Eminent Domain (A.C.A. 60) - #10457

Dear Mr. Garcia:

QUESTION

You have asked whether the phrase "irrespective of any benefits from any improvement proposed" as contained in new Section 19 of Article I of the California Constitution as proposed by Assembly Constitutional Amendment No. 60 as amended in Assembly May 2, 1974,* makes any substantive change in the existing practices of providing "just compensation" for the condemnation of land?

OPINION

The phrase in question would make a substantive change in the method of computing "just compensation" as it relates to severance damages on property sought to be condemned by a public condemnor. A public condemnor would no longer be entitled to have severance damages reduced in the amount of the benefits to the portion of the property of the owner that is not taken where such benefits accrue on account of the proposed improvements to be effected by the condemnation.

---

* Hereinafter referred to as A.C.A. 60.

In addition, where the inclusion of the phrase in question would change the existing rule is in the situation where the value of the property (1) is increased because the property is initially expected to be outside of, and not taken for, the proposed improvement, (2) is thus expected to reap the benefits resulting from its proximity to the proposed improvement, and (3) is subsequently included within the proposed improvement and condemned.

ANALYSIS

Section 19 of Article I of the California Constitution as proposed by A.C.A. 60 provides, in relevant part, as follows:

> "Sec. 19. Private property may be taken or damaged for public use only when just compensation, irrespective of any benefits from any improvement proposed, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. ..." (Emphasis added.)

This proposed section's counterpart in the present constitutional provisions on eminent domain is Section 14 of Article I, which provides, in relevant part, as follows:

> "Sec. 14. Private property shall not be taken or damaged for public use without just compensation having first been made to, or paid into court for, the owner, and no right of way or lands to be used for reservoir purposes shall be appropriated to the use of any corporation, except a municipal corporation or a county or the State or metropolitan water district, municipal utility district, municipal water district, drainage, irrigation, levee, reclamation or water conservation district, or similar public corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefits from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a court of record, as shall be prescribed by law; ... ." (Emphasis added.)

The rule developed by court decisions as to the effect of the phrase "irrespective of any benefits from any improvement proposed" as used in Section 14 upon the payment of "just compensation" for a taking by eminent domain is that a private condemnor may not appropriate a right of way (and presumably may not condemn property for reservoir purposes) without first compensating the owner therefor irrespective of any benefits to be derived from the improvement. That is to say, when condemning only a portion of the owner's property, the condemnor may not offset the award of severance damages for the taking by any enhanced value accruing to the portion of the owner's property not taken where the enhanced value accrues by virtue of the proposed improvement. However, public condemnors are excepted from this rule and such condemnors are entitled to have severance damages awarded against them reduced in the amount of the special benefits which accrue to the property not taken on account of the proposed improvement (People v. McReynolds, 31 Cal. App. 2d 219, 223; Oro Loma Sanitary Dist. v. Valley, 86 Cal. App. 2d 875, 879; see also Contra Costa County Water Dist. v. Zuckerman Construction Co., 240 Cal. App. 2d 908; Sec. 1248(3) C.C.P.).

In contrast to existing Section 14 of Article I of the California Constitution, proposed Section 19 incorporates the phrase "irrespective of any benefits from any improvement proposed" but without any language limiting the scope of its application either as to use for which the property is taken or as to the condemning entities subject thereto.

Thus, the effect of the inclusion of the phrase in question in proposed Section 19 would be to preclude condemnors, both public and private, in any condemnation action involving severance damages from having the amount of the severance damages awarded against them reduced in the amount of the benefits to the portion of the property of the owner that is not taken where such benefits accrue on account of the proposed improvement. This would also eliminate the exception accorded to public condemnors by Section 14 of Article I discussed above.

The inclusion of the phrase in question in proposed Section 19 likewise has the effect of precluding from the determination of "just compensation" in condemnation actions involving a total rather than partial taking the value of benefits conferred on the property taken by any improvement

proposed. This, however, is in accord with the existing rule in the following situations: (1) where the property taken is enhanced in value because it is known to be and valued as part of the proposed improvement rather than as a separate tract of land (see San Diego Land etc. Co. v. Neale, 78 Cal. 63, 74-75); and (2) where the value of property expected to be condemned may increase because of the anticipation that the condemnor will be required to pay an inflated price for the land at the time of condemnation (Merced Irrigation Dist. v. Woolstenhulme, 4 Cal. 3d 478, 491; United States v. Reynolds, 25 L. Ed. 2d 12).

Where the inclusion of the phrase in question would change the existing rule is in the situation where the value of the property (1) is increased because the property is initially expected to be outside of, and not taken for, the proposed improvement, (2) is thus expected to reap the benefits resulting from its proximity to the proposed improvement, and (3) is subsequently included within the proposed improvement and condemned. In this situation, the court decisions hold that the increased value constitutes a proper element of "just compensation" (see Merced Irrigation Dist. v. Woolstenhulme, supra, 488-495; People ex rel. Dept. Pub. Wks. v. Miller, 21 Cal. App. 3d 467).

It should be recognized that the language of the proposed amendment does not provide an answer to the question and our conclusion is based on judicial decisions involving the present Section 14 rather than a literal reading of its terms. Further, it does not consider the material contained in the ballot pamphlet which might be of great weight in determining the question posed.

Very truly yours,

George H. Murphy
Legislative Counsel

By James A. Marsala
James A. Marsala
Deputy Legislative Counsel

JAM:nev

Two copies to Honorable Ken Meade,
pursuant to Joint Rule 34.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

Condemnation Law and Procedure

The Eminent Domain Law

January 1974

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

acquisitions outside the territorial limits of the public entity.[64] In addition, it should be made clear that the resolution of necessity has no effect on the justiciability of such "public use" issues as takings for exchange purposes, taking of remnants, and some takings for future use.[65]

COMPENSATION

Basic Compensation Scheme

Existing law provides that compensation shall be paid for property taken by eminent domain and, if the property is part of a larger parcel, for damage to the remainder caused by its severance from the part taken and by construction and use of the project for which it is taken.[66] If benefits are conferred by the project, the benefits may be offset against compensation for damage to the remainder but not against compensation for the part taken.[67]

Most states use the same general compensation scheme as California.[68] Nevertheless, the Commission has considered the compensation approaches adopted in the remaining states. The most popular alternative is the "before and after" rule under which the value of the property before the taking and the value of the remainder after the taking are determined and the difference, if any, is awarded to the property owner. Despite the apparent fairness and simplicity of operation of the before and after rule, the Commission has determined not to

[64] Judicial review of necessity in extraterritorial condemnation cases is desirable since the political process may operate to deny extraterritorial property owners an effective voice in the affairs and decision-making of the local public entity. *Cf.* Scott v. City of Indian Wells, 6 Cal.3d 541, 492 P.2d 1137, 99 Cal. Rptr. 745 (1972). For this reason, when extraterritorial condemnation is undertaken, a local public entity is denied a conclusive presumption as to the public necessity of its acquisition. See, *e.g.*, CODE CIV. PROC. § 1241(2); City of Los Angeles v. Keck, 14 Cal. App.3d 929, 92 Cal. Rptr. 599 (1971).

[65] These public use issues have previously been discussed. See discussion *supra* under "Public Use."

[66] The basic compensation scheme appears in Code of Civil Procedure Section 1248(1)–(3).

[67] The language of the first sentence of Section 14 of Article I of the California Constitution requires that, in certain cases, compensation be made "irrespective of any benefits from any improvement proposed by such corporation." The phrase applies only to "corporations other than municipal" and, oddly, only to takings for right of way or reservoir purposes. The language may be inoperative under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. See Beveridge v. Lewis, 137 Cal. 619, 70 P. 1083 (1902). In any event, the complex question of the offsetting of benefits in cases of partial takings should be left to the Legislature; hence, the Commission recommends that this language be deleted from the Constitution.

[68] See, *e.g.*, 4A P. NICHOLS, EMINENT DOMAIN § 14.23 *et seq.* (rev. 3d ed. 1972) (including a discussion of the numerous variations).

recommend any change in the gene
scheme because there appears to
California that adoption of a d
desirable.[69]

Although the Commission has
method of measuring compensat
retained, there are a number of
need correction, and there are som
owners that are not now compe
revisions of existing law recomme
outlined below.

Accrual of Right to

Code of Civil Procedure Sectio
purpose of assessing compensati
thereto accrues as of the date of is
is an arbitrary one since summons
the complaint is filed and, even
immediately. The filing of the
eminent domain proceeding and
jurisdiction;[70] hence, the date th
appropriate date for accrual of t

Date of V

Since 1872, Code of Civil Proce
that the property taken be value
is issued. In an attempt to impro
owner and to compel the c

[69] The Commission notes that the Califor
computing damages to the remainder, a
to the remainder has undergone a con
Court decisions have limited compensat
that amount to more than "mere inco
particular property. See, *e.g.*, Eschus v. I
37 P. 750 (1894), and City of Berkeley v.
Rptr. 502 (1963). Recent cases, however
may be compensable in any case wher
more than his "fair share" of the burd
People v. Volunteers of America, 21 C
similar development has taken place in
may be offset against damages; tradition
but recent cases have found special l
Compare Beveridge v. Lewis, 137 Ca
Niagara Farms, Inc., 22 Cal. App.3d
In light of this continuing judicial e
existing scheme, the Commission r
elements of damage and benefits.

[70] CODE CIV. PROC. §§ 411.10 and 1243;
P. 15 (1924).

STAFF ANALYSIS: ACA 42 (Beverly) as amended May 16, 1972

SUBJECT: Constitution Revision

SUMMARY: Constitution Revision Commission's recommendation to consolidate and clean up, for the most part, non-substantive matters. On the printed bill revision is as follows:

Page 2 - Article III

1. Sec. 1: Existing Constitution, sec. 3, Art. I, redrafted without change in meaning (sec. 3, Article I, is repealed).

2. Sec. 2: The first sentence relating to boundaries...allows the Legislature to change them by statute. The existing constitutional provision, setting forth the coundaries in detail, is repealed. Any change in boundaries would have to be approved by the federal government.

   Second sentence is identical language to existing sec. 1, Article XX, which is repealed.

3. Sec. 3: Identical to existing Article III, which is repealed.

Page 3

1. Sec. 4: Identical to existing Article XX, section 6, which is repealed.

Substantive Changes

Line 27 : The language on convict labor is changed. Labor representatives on the Commission opposed this change since there has been a court decision interpreting the language deleted. The Commission, however, feels there is little or no substantive change in the new language.

Page 4

1. Line 1 : Section 16 of Article 20 is deleted because Commission felt that certain terms of appointment or office should be left to the flexibility of statute, instead of requiring a constitutional amendment each time it was appropriate to have a term of office or appointment over four years.

2. Line 7 : This is a new section on disqualification from public office for conviction of certain felonies. The deleted section stated (see attached) that laws shall be made excluding from office, serving on juries, and the right to vote, individuals convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes.

   The new section gives the Legislature more latitude in determing the crimes and length of disqualification from public office.

For further information see Constitutional Revision Commission's Analysis.

ARTICLE III

STATE OF CALIFORNIA

Proposed Constitution

Section 1

Sec. 1. The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land. Rights guaranteed by the California Constitution are not dependent on those guaranteed by the United States Constitution.

Existing Constitution

Section 3

Sec. 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

Comment: Existing Section 3 recognizes the legal supremacy of the Federal Constitution. The Commission recommends that this declaration be retained and expanded to state that rights guaranteed by the California Constitution are independent of Federal guarantees.

Under well-established principles of constitutional law, laws flowing from the Federal Constitution have supremacy over state laws which occupy the same subject matter or conflict with the Federal provision. In addition, many Federal guarantees in the field of civil and criminal rights have been applied to the states through judicial declarations which apply Bill of Rights provisions via the due process and equal protection clause of the Fourteenth Amendment. These legal precedents are subject to change and uncertain in scope. The Commission proposal recognizes that the California Constitution is an independent and important source of law. The proposed new language will not affect the legal relationship between state and Federal law but will state more clearly the legal role of the California Constitution.

Proposed Constitution

SECTION 2.

Sec 2. The boundaries of this State are those stated in the Constitution of 1849 as modified pursuant to statute.

Existing Constitution

Section 1

Section 1. The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a southeasterly direction, to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast.

Section 2, sentence 1

Sec. 2. The Legislature, in cooperation with the properly constituted authority of any adjoining state, is empowered to change, alter, and redefine the state boundaries, such change, alteration and redefinition to become effective only upon approval of the Congress of the United States.

Comment: This proposed provision preserves the boundaries claimed by California when admitted as a State to the Union. The proposed provision also retains the power of the Legislature, granted by existing Section 2, to alter the boundaries of the State.

The detailed boundary description in existing Section 1 is not retained in the Constitution for several reasons.

First, by specifying that a portion of the eastern boundary runs "down the middle of the channel" of the Colorado River, existing Section 1 fails to provide for changes in the course of the River and results in problems between California and Arizona concerning law enforcement, taxation and general jurisdiction. This shortcoming finally had to be corrected in 1956 by enactment of existing Section 2 which, among other things, permits the Legislature to change California's boundaries.

Second, the provision that the boundary runs to the Pacific Ocean and extends "therein three English miles" was impliedly invalidated by the United States Supreme Court in litigation between California and the federal government, the complexities of which are beyond the scope of this comment. See *United States v. California*, 332 U.S. 19 (1947). Congress subsequently enacted the Submerged Lands Act in 1953 which confirms in California, title to and ownership of the lands and natural resources within three geographical miles of its coastline. Geographic miles are 6,076.1 feet per mile but English miles, as specified in existing Section 1, are only 5,280 feet per mile. Therefore, Congress has granted to California a strip of submerged land approximately one-half mile wide which lies beyond the boundary specified in existing Section 1.

Third, the Commission was advised that the boundary between California and Oregon which is specified in existing Section 1 as running along "the line of said forty-second degree of north latitude" has not been successfully surveyed due to the rugged, and perhaps impassable, terrain in the northeast corner of the State. Should there be future attempts to survey and agree on line adjustments, the resulting compacts with Oregon probably would create further inaccuracies in existing Section 1.

The proposed provision resolves these problems by preserving the Legislature's powers under existing Section 2 to change the 1849 boundaries by statute. This revision therefore makes it possible for the Legislature to continue to solve problems along the Colorado River, to deal with future problems along the boundary with Oregon, and to enact statutes, if it sees fit, extending the seaward boundary three geographic miles thereby conforming that boundary to the federal Submerged Lands Act and perfecting California's claim to the approximately one-half mile strip of submerged lands which are granted to California by that Act.

In addition, the proposed revision preserves any claims California may have based upon its original boundaries, by declaring that, subject to statutory modification, the boundaries are those stated in the 1849 Constitution.

SECTION 3: EXISTING CONSTITUTION - ART. III.

SECTION 4: EXISTING CONSTITUTION - SEC. 6, ART. 20.

Proposed Constitution
ARTICLE ~~XX~~, Section 5

SEC. 5. Convict labor shall not be let out by contract to any person. Individual convicts may obtain employment as provided by statute.

Existing Constitution
Article X, Section 1, paragraph 3

The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

Comment: The Commission concluded that the prohibition against the letting out of convict labor by contract was a necessary constitutional provision. The first sentence of the Commission proposal restates, without substantive change, the existing prohibition. The terms "copartnership", "company", the "corporation" were deleted because they are included within the legal definition of the term "person." The Commission recommends deletion of the second clause of the existing provision and the substitution of a new sentence. The existing language mandating the Legislature to provide for the working of convicts for the benefit of the State is ambiguous. Since the letting out of convict labor by contract might, in some instances, be construed as benefitting the State, this provision appears to weaken the prohibition against the letting out of convict labor. At the same time, a narrow interpretation of this provision would seem to prohibit the parole and work furlough programs currently in use by the Department of Corrections. The Commission proposal eliminates these problems and recognizes the responsibility of the Legislature with respect to the correctional system.

Proposed Constitution

ART. XXIV Section 4 7

Sec. 7. (a) The Legislature shall provide for periods of disqualification from public office for conviction of designated felonies.

(b) A person convicted of giving or offering a bribe to procure his election or appointment to public office is disqualified from any public office.

Existing Constitution

Sections 10 and 11

Sec. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Sec. 11. Laws shall be made to exclude from office, serving on juries, [and from the right of suffrage,] persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. [The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.] *

* Bracketed portions of Section 11 are not pertinent to revised Section 4 but are treated elsewhere.

Comment: The proposed Section encompasses only those portions of existing Sections 10 and 11 relating to disqualification from holding public office. The provisions of existing Section 11 relating to disqualification of electors and the protection of free suffrage were transferred to proposed Article II (Voting), Sections 1 and 3. See Constitution Revision Commission, Proposed Revision of the California Constitution, Part 2, pp. 17–22 (1970).

The absolute disqualification from holding any public office upon conviction of having given or offered a bribe to obtain public office, presently found in existing Section 10, is retained without change in substance in proposed Section 4 (b).

Proposed Section 4 (a) empowers the Legislature by statute to disqualify persons from holding public office upon conviction of such felonies as the Legislature may designate and for such periods of time as it may deem appropriate. The Commission recommends deletion of the partial listing of specific crimes and the inferred existing provision that disqualification is for life. However, the Legislature by statute may continue a lifetime disqualification upon conviction of designated felonies, as "for life" may be one of the "periods of disqualification" within the meaning of the proposed Section.

The existing reference to jury duty is deleted in favor of statutory treatment.

LEGISLATIVE COUNSEL

REQUEST OF Assemblyman Alex P. Garcia
(per Same Farr - 5-0363)

AMENDMENTS

Amend ACA No. 42 per attached.

Attachment
Draft of proposed amendments to ACA 42 dated 5-22-72.

Subject
Constitutional Revision

Received
5/22/72

This will acknowledge your request received on the date indicated. Please examine the above statement to determine if it correctly sets forth your request.

Any question with respect to this request may be directed to Miss Shaw to whom it has been assigned.

GEORGE H. MURPHY
Legislative Counsel

No. 11754

No. 11754

May 22, 1972

ACA 42 - PROPOSED AMENDMENTS

1. Page 3 of printed bill, line 4, add new section 4 to read:

   Salaries of elected State officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

2. Page 3, line 4 of printed bill, change Section 4 to read:

   Section 5

3. Page 4, line 8 of printed bill, insert after words "public office":

   and from voting

MAY 23 1972
Req. #11754

AMENDMENTS TO ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 42
AS AMENDED IN ASSEMBLY MAY 16, 1972

AMENDMENT 1

On page 3, between lines 3 and 4 of the printed measure as amended in Assembly May 16, 1972, insert:

Sec. 4. Salaries of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

AMENDMENT 2

On page 3, line 4, strike out "4" and insert:

5

AMENDMENT 3

On page 3, strike out lines 27 to 29, inclusive, and insert:

Sec. 5. The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the state.

File

Req. #11754

AMENDMENT 4

On page 4, line 8, after "office" insert:

and from voting

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

BILL ANALYSIS WORK SHEET

BILL NO. ACA 42 - Beverly

In keeping with our legislation study program, we will appreciate any help you can give in providing the information requested below. If you or the bill sponsor already have on hand explanatory or background materials relative to this measure, would you please attach these materials to this form and forward them to the Committee Consultant at least one week prior to the scheduled hearing date.

---

1. SOURCE OF THE MEASURE:
(Briefly stated)

(a) What person, organization, or governmental entity, if any, requested introduction?

California Constitution Revision Commission

(b) Has a similar bill been before either this or a previous session of the Legislature? If so, please identify the session and bill number.

Not to my knowledge

(c) Has there been an interim committee, task force, university or other report on the bill? If so, please identify the report.

Yes - Constitution Revision Commission

2. PURPOSE OF THE BILL:

(a) Problem or deficiency in the present law which the bill seeks to remedy.

Clarify and update Constitution primarily

3. BACKGROUND INFORMATION:

(a) Legal, social, economic, other.

(b) Groups supporting the bill.

California Constitution Revision Commission; League of Women Voters of California

(c) Groups opposing the bill. (Organizations or governmental agencies)

None to my knowledge

Please send to: Charles L. Baldwin, Committee Consultant
Room 5050 State Capitol
Telephone: 445-1193

STAFF ANALYSIS: ACA 42 (Beverly) as amended May 16, 1972

SUBJECT: Constitution Revision

SUMMARY: Constitution Revision Commission's recommendation to consolidate and clean up, for the most part, non-substantive matters. On the printed bill revision is as follows:

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   Second sentence is identical language to existing sec. 1, Article XX, which is repealed.

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Page 3

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   The new section gives the Legislature more latitude in determing the crimes and length of disqualification from public office.

For further information see Constitutional Revision Commission's Analysis.

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Proposed Constitution
Section 2

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Existing Constitution
Section 1

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In addition, the proposed revision preserves any claims California may have based upon its original boundaries, by declaring that, subject to statutory modification, the boundaries are those stated in the 1849 Constitution.

SECTION 3: EXISTING CONSTITUTION - ART. III.

SECTION 4: EXISTING CONSTITUTION - SEC. 6, ART. 20.

Proposed Constitution
~~SECTION~~ Section 5

Convict labor shall not be let out by contract to any person. Individual convicts may obtain employment as provided by statute.

Existing Constitution
Article X, Section 1, paragraph 3

The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

Comment: The Commission concluded that the prohibition against the letting out of convict labor by contract was a necessary constitutional provision. The first sentence of the Commission proposal restates, without substantive change, the existing prohibition. The terms "copartnership", "company", the "corporation" were deleted because they are included within the legal definition of the term "person." The Commission recommends deletion of the second clause of the existing provision and the substitution of a new sentence. The existing language mandating the Legislature to provide for the working of convicts for the benefit of the State is ambiguous. Since the letting out of convict labor by contract might, in some instances, be construed as benefitting the State, this provision appears to weaken the prohibition against the letting out of convict labor. At the same time, a narrow interpretation of this provision would seem to prohibit the parole and work furlough programs currently in use by the Department of Corrections. The Commission proposal eliminates these problems and recognizes the responsibility of the Legislature with respect to the correctional system.

Proposed Constitution

ART. XXIV Section 4 7

Sec. 7. (a) The Legislature shall provide for periods of disqualification from public office for conviction of designated felonies.

(b) A person convicted of giving or offering a bribe to procure his election or appointment to public office is disqualified from any public office.

Existing Constitution

Sections 10 and 11

Sec. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Sec. 11. Laws shall be made to exclude from office, serving on juries, [and from the right of suffrage,] persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. [The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.] *

* Bracketed portions of Section 11 are not pertinent to revised Section 4 but are treated elsewhere.

Comment: The proposed Section encompasses only those portions of existing Sections 10 and 11 relating to disqualification from holding public office. The provisions of existing Section 11 relating to disqualification of electors and the protection of free suffrage were transferred to proposed Article II (Voting), Sections 1 and 3. See Constitution Revision Commission, Proposed Revision of the California Constitution, Part 2, pp. 17–22 (1970).

The absolute disqualification from holding any public office upon conviction of having given or offered a bribe to obtain public office, presently found in existing Section 10, is retained without change in substance in proposed Section 4 (b).

Proposed Section 4 (a) empowers the Legislature by statute to disqualify persons from holding public office upon conviction of such felonies as the Legislature may designate and for such periods of time as it may deem appropriate. The Commission recommends deletion of the partial listing of specific crimes and the inferred existing provision that disqualification is for life. However, the Legislature by statute may continue a lifetime disqualification upon conviction of designated felonies, as "for life" may be one of the "periods of disqualification" within the meaning of the proposed Section.

The existing reference to jury duty is deleted in favor of statutory treatment.

REPORTS OF STANDING COMMITTEES

Committee on Governmental Organization

Senate Chamber, June 29, 1972

Mr. President. The Chairman of the Committee on Governmental Organization which was/~~were~~ referred:

Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate Bill	Assembly Bill
Senate	Assembly Constitutional Amendment 42
Senate	Assembly

Reports the same back with AUTHOR'S AMENDMENTS with the recommendation: Amend, and re-refer to the committee.

Rials, Chairman

SD Form 9

JUN 27 1972
Req. #14125

AMENDMENTS TO ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 42
AS AMENDED IN ASSEMBLY JUNE 1, 1972

AMENDMENT 1

In line 4 of the title of the printed measure, as amended in Assembly June 1, 1972, after "III" insert:

, Section 44 to Article XIII,

AMENDMENT 2

On page 3, between lines 13 and 14, insert:

Fifth--That Section 44 is added to Article XIII, to read:

Sec. 44. The Legislature, in connection with any change, alteration or redefinition of state boundaries may provide for and deal with all matters involving the taxation or the exemption from taxation of any real or personal property involved in, or affected by, such change, alteration or redefinition of state boundaries.

AMENDMENT 3

On page 3, line 14, strike out "Fifth" and insert:

Sixth

AMENDMENT 4

On page 3, line 15, strike out "Sixth" and insert:

Seventh

AMENDMENT 5

On page 3, line 20, strike out "Seventh" and insert:

Eighth

AMENDMENT 6

On page 3, line 23, strike out "Eighth" and insert:

Ninth

AMENDMENT 7

On page 3, line 25, strike out "Ninth" and insert:

Tenth

Legislative Analyst
July 5, 1972

ACA 42 (Am. 6/1/72)

ANALYSIS OF ACA NO. 42 (Beverly)
As Amended in Assembly June 1, 1972
1972 Session

Fiscal Effect:

Cost: None.

Revenue: None.

Anlaysis:

This proposed consitutional amendment would:

1. Repeal Section 3 of Article I which declares the state to be an inseparable part of the American Union and that the U.S. Constitution is the supreme law of the land. This section would be reenacted in the proposed new Article 3.

2. Repeal and reenact Article III, relating to the separation of powers, into the legislative, executive and judicial branches and include in the new Article III the existing Section 3 of Article I above and the existing Section I of Article XX which declares Sacramento to be the capital, and Section 6 of Article XX relating to suits against the state. The new article includes a new section declaring the boundaries of the state to be as stated in the Constitution of 1849, as modified by statute, and repeals Article XXI which sets forth the boundaries by metes and bounds. The new Article III also provides that salaries of elected state officers may not be reduced during their terms of office and that laws which set such salaries are appropriations.

The amendment moves Section 1 of Article X prohibiting private contracting of convict labor to a new Section 5 of Article XX.

The amendemnt also repeals:

1. Article X (except for provision relative to contracting inmate labor) which provides for the establishment and operation of state penal facilities for all felons.

ACA 42 (Continued)

2. Section 16 of Article XX relating to the term of office of any officer or commissioner not fixed by the Constitution.

There is no direct cost to this amendment.

46

ACA 42 (Beverly) July 4, 1972

ACA 42

Constitutional Amendment

HISTORY:

Source: The California Constitution Revision Commission

Prior Legislation: The State Constitution

PURPOSE:

To clarify and update the Constitution.

ANALYSIS:

1. This measure is a technical clean-up measure introduced at the request of the California Constitution Revision Commission. It makes no substantive changes to the Constitution, but does alter the language of the Constitution for the purpose of clarification and also renumbers some sections to a more appropriate article.

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

COPY

July 17, 1972

Senator Albert S. Rodda
Senate Chamber

S.C.A. 42 - Conflict
Supplemental Letter

The above measure, introduced by you, which is now set for hearing in the Senate Governmental Organization Committee appears to be in conflict with the following other measure(s):

Enactment of these measures in their present form may give rise to a serious legal problem which probably can be avoided by appropriate amendments.

We urge you to consult our office in this regard at your earliest convenience.

Very truly yours,

George H. Murphy
Legislative Counsel

cc: Committee
named above
Each lead author
concerned

California Legislature

Assembly Committee on Constitutional Amendments

STATE CAPITOL
445-7533

ALEX P. GARCIA
CHAIRMAN

March 27, 1972

TO: Bob Stern, Election & Reapportionment Committee

FROM: Sam Farr

RE: ACA 42 (Beverly)

Note: Best bet is to have the bill re-referred to C.A. Committee

1. The proposed revision of Article 3, beginning on page 2, line 28 of the printed bill comes from the following:

   Section 1... Existing Const. Art I, Sec. 3 redrafted without change in meaning. (See attached #1)

   Section 2... Revised former Art. 21, Sec's 1 and 2. Existing Const. Art. 20, Sec. 1. (See attached #2)

   Section 3... Existing Const. Art. 3.

   Section 4... Existing Const. Art. I, part of Sec. 12, redrafted without change in meaning. (Found on page 3, line 34 of the bill)

2. On page 3, line 5, note that Section 1 of Art 10 must be double joined with SCA 6 (Grunsky) of this session. (Proposition 10 on the June ballot). Double joinder is necessary, unless we amend ACA 42 after June primary, to prevent re-enactment of the first two paragraphs. (See attached #3 for explanation of deletion in the Grunsky bill).

3. On page 3, line 28, this sentence is renumbered as Sec. 2, Art. 3 and is found on page 2, line 33 of the printed bill.

4. On page 3, lines 23-26 are redrafted as Sec. 5, Art. 20 beginning on line 29.

   According to CRC this is revision of existing language now found in Sec. 1, 3rd paragraph, Art. 10. (see attached #4 for comment).

5. On page 3, line 33, renumbered as Sec. 4, Art. 3, and is found on line 3 above.

6. On page 3, line 37, existing Section 10 is revised and renumbered as Section 8, Art. 24, and is found on line 3, page 5. (See attached #5 for comment)

7. On page 4, lines 2-9, are revised and renumbered as Sec. 8, Art. 24, and is found on line 3, page 5 of printed bill. (See same comment as above)

8. On page 4, line 12, revises Section 15, according to CRC the change restates more concisely the substance of the existing provisions without change in meaning.

   Line 19 adds a new provision which mandates the Legislature to provide "for protection against inequity". CRC added this primarily to require states to protect a property owner from being forced to pa twice for work or materials. (See "Minority Reports", attached #6 for dissent)

9. On page 4, lines 21-40, and on page 5, lines 1 and 2, are deleted because the general effect of Section 16 is to require a constitutional amendment each time it proves desirable to establish a term of office in excess of four years. The result is that this section breeds amendments.

   The Commission concluded that it was appropriate for the Legislature to determine the term of office for officials other than those whose terms are specifically fixed by the Constitution.

10. On page 5, line 3, Sec. 8, see numbers 6 and 7 above.

BRUCE W. SUMNER
Chairman

MICHAEL D. SANFORD
Special Counsel

California Legislature

Constitution Revision Commission

ACTING UNDER THE
JOINT COMMITTEE ON RULES
JOHN L. BURTON
Chairman
LOU CUSANOVICH
Vice Chairman

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MIRIAM GOODMAN
Public Information Coordinator

Room 1068, State Building
San Francisco, California
94102

Telephone:
(415) 557-1266

Same for
R.G.B. Call Pls.

February 25, 1972

Assemblyman Robert G. Beverly
Room 2196, State Capitol
Sacramento, CA 95814

Dear Mr. Beverly:

When Sam Farr and I asked you to carry one of our revision proposals I believe we failed to bring to your attention one item in the bill that may prove controversial.

The bill revises the "convict labor" provision presently found in Article X, Section 1. The Commission proposal is intended to preserve existing law but to remove ambiguities in the existing language.

At the time this proposal was before the Commission, however, representatives of labor opposed making <u>any</u> change. The basic reason for their opposition is that they have a court decision construing the existing language and they are afraid that a change in the language will deprive them of the certainty the court decision provides.

Although I believe that the Commission proposal is clearly superior to the existing language, I think it only fair to alert you to the possibility that introduction of the bill will bring opposition from labor, or at least some segments of labor. The convict labor aspect of the bill could be removed and the remainder of the bill would still be intact. Perhaps you could introduce the bill in its existing form with a view to amending it should this opposition actually materialize.

Also, introduction of the revision of Article XX, Section 15 (mechanics liens) may create a stir if only because this section is of great importance to the construction industry. Here, however, the changes proposed by the Commission are very slight, and strong opposition is not expected.

I want to emphasize again that this bill, taken as a whole, is a "clean up" measure and should not produce strong opposition except as indicated.

We are very grateful to you for carrying it, and our staff will assist you in every way possible.

Yours very truly,

Michael D. Sanford

MDS:so

APR 26 1972

Req. #9465

AMENDMENTS TO ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 42

AMENDMENT 1

In line 6 of the title of the printed measure, strike out "8" and insert:

7

AMENDMENT 2

On page 4, line 13, strike out "alien" and insert:

a lien

AMENDMENT 3

On page 5, line 3, strike out "8" and insert:

7

AMENDMENT 4

On page 5, line 5, strike out "8" and insert:

7

AMENDMENT 5

On page 5, after line 10, insert:

And be it further resolved, That if Proposition No. 10 on the June 6, 1972, direct primary ballot is adopted by the people, then Section 1 of Article X is repealed and, in that event, Section 1 of Article X as amended by the fourth paragraph of the first resolved clause shall not become operative.

ALL IN STRIKEOUT

~~SECTION 1. The Legislature may provide for the establishment, government, charge and superintendence of all institutions for all persons convicted of felonies. For this purpose, the Legislature may delegate the government, charge and superintendence of such institutions to any public governmental agency or agencies, officers, or board or boards, whether now existing or hereafter created by it. Any of such agencies, officers, or boards shall have such powers, perform such duties and exercise such functions in respect to other reformatory or penal matters, as the Legislature may prescribe.~~

~~The Legislature may also provide for punishment, treatment, supervision, custody and care of females in a manner and under circumstances different from men similarly convicted.~~

~~The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.~~

Page 2, line 31

(2)

ARTICLE XXI

REVISED PROVISIONS

Boundaries

Proposed Constitution

The boundaries of this State are those stated in the Constitution of 1849 as modified pursuant to statute.

Existing Constitution

Section 1

Section 1. The boundary of the State of California shall be as follows: Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line, in a south-easterly direction, to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the forty-second degree of north latitude; thence on the line of said forty-second degree of north latitude to the place of beginning. Also, including all the islands, harbors, and bays along and adjacent to the coast.

Section 2, sentence 1

Sec. 2. The Legislature, in cooperation with the properly constituted authority of any adjoining state, is empowered to change, alter, and redefine the state boundaries, such change, alteration and redefinition to become effective only upon approval of the Congress of the United States.

Comment: This proposed provision preserves the boundaries claimed by California when admitted as a State to the Union. The proposed provision also retains the power of the Legislature, granted by existing Section 2, to alter the boundaries of the State.

The detailed boundary description in existing Section 1 is not retained in the Constitution for several reasons.

First, by specifying that a portion of the eastern boundary runs "down the middle of the channel" of the Colorado River, existing Section 1 fails to provide for changes in the course of the River and results in problems between California and Arizona concerning law enforcement, taxation and general jurisdiction. This shortcoming finally had to be corrected in 1956 by enactment of existing Section 2 which, among other things, permits the Legislature to change California's boundaries.

Second, the provision that the boundary runs to the Pacific Ocean and extends "therein three English miles" was impliedly invalidated by the United States Supreme Court in litigation between California and the federal government, the complexities of which are beyond the scope of this comment. See *United States v. California*, 332 U.S. 19 (1947). Congress subsequently enacted the Submerged Lands Act in 1953 which confirms in California, title to and ownership of the lands and natural resources within three geographical miles of its coastline. Geographic miles are 6,076.1 feet per mile but English miles, as specified in existing Section 1, are only 5,280 feet per mile. Therefore, Congress has granted to California a strip of submerged land approximately one-half mile wide which lies beyond the boundary specified in existing Section 1.

Third, the Commission was advised that the boundary between California and Oregon which is specified in existing Section 1 as running along "the line of said forty-second degree of north latitude" has not been successfully surveyed due to the rugged, and perhaps impassable, terrain in the northeast corner of the State. Should there be future attempts to survey and agree on line adjustments,

the resulting compacts with Oregon probably would create further inaccuracies in existing Section 1.

The proposed provision resolves these problems by preserving the Legislature's powers under existing Section 2 to change the 1849 boundaries by statute. This revision therefore makes it possible for the Legislature to continue to solve problems along the Colorado River, to deal with future problems along the boundary with Oregon, and to enact statutes, if it sees fit, extending the seaward boundary three geographic miles thereby conforming that boundary to the federal Submerged Lands Act and perfecting California's claim to the approximately one-half mile strip of submerged lands which are granted to California by that Act.

In addition, the proposed revision preserves any claims California may have based upon its original boundaries, by declaring that, subject to statutory modification, the boundaries are those stated in the 1849 Constitution.

page 5, line 5

ASSEMBLY COMMITTEE ON CONSTITUTIONAL AMENDMENTS

ALEX P. GARCIA, Chairman

SB 52

STAFF ANALYSIS: SCA 6 (Grunsky), as introduced January 12 and SB 52, as amended March 2, 1972

SUBJECT: Constitutional Revision

SUMMARY: Constitution Revision...limited to selected deletions from the Constitution...does not contain new or revised provisions. Also transfers section 8, Article 22 to section 16, Article 9, for renumbering.

SB 52: Allows SCA 6 to be placed on June ballot.

BACKGROUND: SCA 6 is the same as ACA 66 (Garcia) last session which passed this committee and Assembly floor on consent calendar...was subsequently killed in Senate Governmental Organization. All of the provisions of this bill have been passed by both houses in the past, but failed on the ballot in 1970 due to controversial sections. Those controversial items were removed before SCA 6 was prepared.

COMMENT: The Secretary of State has notified this committee that SCA 6, and the companion bill, SB 52, must be received in his office by March 11 in order to qualify for the June primary ballot.

Senator Grunsky has introduced a companion bill relating to codification of various provisions which are deleted from the constitution by this SCA.

NOTE: Attached is an analysis which summarizes the affect of SCA 6 on the present constitution.

Also available are Legislative Counsel's opinion regarding "substantive" changes and Constitution Revision Commission response to that opinion.

GENERAL CRITERIA: In discussing constitutional provisions two criteria are generally used:

> Is the provision necessary -- either as a grant or a limitation of legislative power?.....State constitutions are generally construed as limitations on the plenary power inherent in the Legislature -- supposed constitutional grants of power are often construed as limitations.
>
> Is the provision proper -- as an expression of fundamental law?....."A constitution should contain only the basic and fundamental law of a state, rather than being filled with detailed and statutory material." (1963 Resolutions, Chapt. 181, relative to constitution revision).

RECOMMENDED DELETIONS

Note: Numbers below correspond to those in bill, beginning page 2, line 15

1. Article 10, first two paragraphs - State Institutions and Public Buildings

SUMMARY: authorize Legislature to establish, maintain, and govern penal institutions and to delegate this power to other agencies...paragraph 2, provides that female felons may be treated differently from male felons.

DELETION RATIONAL: authorization is unnecessary...Re: paragraph 1, Legislature has inherent power to provide for penal institutions...provisions neither compel excercise of power, nor restrict that power... paragraph 1 merely provides the Legislature "may" take action...paragraph 2, no constitutional authority is necessary in order to treat female felons differently from male felons...no other State Constituion contains such a provision.

COMMENT: 1. Legislature approved similar deletions in 1968 (ACA 30) and 1969 (ACA 30), both were rejected by the voters.
2. Present ACA leaves controversial paragraph in Constitution, thus avoiding controversy surrounding previous ballot failures.

2. Article 12 - Corporations and Public Utilities Commission

SUMMARY: deletes most of corporations material...leaves PUC untouched.

COMMENT: all sections in Art. 12, found below have been before the Constitutional Revision Commission and the Legislature without objection to their deletion.

A. Section 1, sentence 1 - Formation, Organization, and Regulation

SUMMARY: section grants power to Legislature to provide for formation, organization, and regulation of corporations.

DELETION RATIONAL: unnecessary, Legislature has inherent power to enact corporation laws.

COMMENT: 1. Similar deletions passed by Legislature in 1969 (ACA 31) and 1968 (ACA 30)...rejected by voters.
2. Controversial parts of section 1 remain in Constitution.

B. Section 4: Definition; right to sue and be sued

SUMMARY: defines "corporation" for purposes of Art. 12, gives them right to sue, and makes them subject to suit.

DELETION RATIONAL: unnecessary, because these rights exist in statute (Corporations Code, sec.), and by provisions of Federal Constitution.

COMMENT: 1. Similar deletions approved by Legislature in 1968 (ACA 31) and 1969 (ACA 30), but rejected by voters in both cases...ballot measures contained more than just this section.

C. Section 5, sentence 1 - Banks Under General Laws Only - Classification by Population for Regulation

SUMMARY: prohibits granting of charters to banks by special act...prohibits circulation of any but U.S. currency.

DELETION RATIONAL: duplicates substance of Art. 4, sec. 16, requiring Legislature to proceed by general statute whenever possible...currency circulation not necessary as a constitutional provision.

COMMENT: approved by Legislature in 1968 (ACA 30) and 1969(ACA 31) and rejected by voters...both measures included more than this one section.

D. Section 6 - Pre-1879 Franchises Void Unless Business Commenced

SUMMARY: states effect of 1879 Constitution on then existing corporate franchises.

DELETION RATIONAL: Entirely obsolete

COMMENT: Also above by Legislature in 1968 and 1969 and rejected by voters...section was part of a package.

E. Section 7 - Corporate Franchises

SUMMARY: prohibits extension of corporate franchises except by general law.

DELETION RATIONAL: repetitive of Art. 4, sec. 6.

COMMENT: As above sections, this was approved by Legislature in 1968 and 1969 and rejected by the voters...section was part of a package.

F. Section 8 - Corporations subject to eminent domain and police power

SUMMARY: states that police power of the State and power of eminent domain may not be abridged with respect to the property and franchises of corporations.

DELETION RATIONAL: unnecessary, police powers and power of eminent domain are inherent state powers and may not be abridged regardless of this provision.

COMMENT: section was part of 1968 and 1969 proposals rejected, as above, by voters...it also was part of entire package.

G. Section 10 - Grant or lease of franchise; liabilities preserved

SUMMARY: states transfer of a franchise may not disturb liabilities or obligations incurred prior to the transfer.

DELETION RATIONAL: relates to matters no longer of foreseeable concern.

COMMENT: deletion approved by Legislature in 1968 and 1969....rejected by voters as part of entire package.

SUMMARY: declares holding of large tracts of unimproved land is against public interest and should be discouraged by means not inconsistent with rights of private property.

DELETION RATIONAL: provision has no legal effect since no specific action is authorized and private property rights are expressly preserved. Conflicts with public will expressed in 1966 by enactment of Article 18.

b. Section 3 - Land Grants to Actual Settlers

SUMMARY: designed to curtail concentrated ownership of land during period of massive federal land grants were made to the western states in the late 19th Century.

DELETION RATIONAL: section has virtually no current application...California Lands Commission advised CRC that State no longer owns any land to which section would apply...prospect of future application is speculative.

COMMENT: nature of provision may require flexability that only statutory form can provide....thus it is transferred to statute.

5. Sec. 24 of Art. 20 - this is a transfer of sec. 1, sentence 2, Art. 12 (see line 1, page 3 of bill, as introduced January 12, 1972.

6. Article 22 - Schedule

SUMMARY: ACA 66 deletes all of Article 22...consisting of temporary provisions, provisions specifying the effect of the adoption of the Constitution of 1879 upon then existing law, and provisions specifying effect of constitutional amendments proposed solely to eliminate obsolete or supercede provisions of the Constitution.

DELETION RATIONAL: all provisions are either obsolete or unnecessary.
Sections 1 and 2 are obsolete...relate to effect of Constitution at time of adoption in 1879.
Section 3 declares effect of certain legislatively proposed constitutional amendments and has been superceded by Article 28.
Sections 4,5,6, and 7 were adopted for specific and temporary purposes in 1966 and are no longer needed.

H. Section 13 - State not to lend credit or own stock - exception, public water supplies - mutual water companies - investment of public retirement funds

Renumbering: this sec. becomes sec. 42 of Art. 23.

I. Section 15 - Treatment of foreign and domestic corporations

SUMMARY: prohibits favored treatment of out-of-state corporations.

DELETION RATIONAL: unnecessary treatment of corporations is assured in other provisions.

COMMENT: deletion approved by Legislature in 1969 and 1969 but rejected by voters...section was part of package.

J. Section 16 - County in which corporation may be sued

Transfer: recommended for statutory law.

K. Section 24 - Statute Authorization

SUMMARY: authorizes Legislature to implement Art. 12 by statute.

DELETION RATIONAL: Legislature has inherent power to do this...no other similar provisions are found in other Articles.

L. Sec. 42 of Art. 13 - this is renumbering No. H.above.

3. Article 14, section 1, in part - water and water rights

SUMMARY: gives local government bodies rate-f'xing power over public utilities that supply water.

DELETION RATIONAL: Art. 12, sec. 13, supercedes, giving State Public Utilities Commission rate-fixing function.

COMMENT: deletion approved by Legislature in 1968 (ACA 30), and 1969 (ACA 31) rejected by voters...part of revision package of Art. 12 above... ballot arguments made no mention of this section....

4. Article 17 - Land and Homestead Exemption

COMMENT: CRC recommended deletion of entire Article 17 as outdated, unenforceable and misleading...Legislature approved deletion in 1968 ACA 30) and 1969 (ACA 30), but both were rejected by voters...present ACA 66 does not delete section 1 regarding homestead protection which probably was downfall to revision in past.

a. Section 2 - unemproved lands.

Page 3, line 30 —

ARTICLE XX

REVISED PROVISIONS

MISCELLANEOUS

Sec. 5

Proposed Constitution
Article XX, Section ...

Convict labor shall not be let out by contract to any person. Individual convicts may obtain employment as provided by statute.

Existing Constitution
Article X, Section 1, paragraph 3

The labor of convicts shall not be let out by contract to any person, copartnership, company or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

Comment: The Commission concluded that the prohibition against the letting out of convict labor by contract was a necessary constitutional provision. The first sentence of the Commission proposal restates, without substantive change, the existing prohibition. The terms "copartnership", "company", the "corporation" were deleted because they are included within the legal definition of the term "person." The Commission recommends deletion of the second clause of the existing provision and the substitution of a new sentence. The existing language mandating the Legislature to provide for the working of convicts for the benefit of the State is ambiguous. Since the letting out of convict labor by contract might, in some instances, be construed as benefitting the State, this provision appears to weaken the prohibition against the letting out of convict labor. At the same time, a narrow interpretation of this provision would seem to prohibit the parole and work furlough programs currently in use by the Department of Corrections. The Commission proposal eliminates these problems and recognizes the responsibility of the Legislature with respect to the correctional system.

Page 5, line 3

(5)

Proposed Constitution

Section 3

Sec. 3. All public officers and employees, except inferior officers and employees exempted by law, shall take and subscribe this oath or affirmation before undertaking their duties, and no other oath or affirmation may be required:

"I, _____, solemnly swear (or affirm) that I will bear true faith and allegiance to the Constitutions of the United States and of California, I will support and defend them against all enemies, and I will well and faithfully discharge the duties I am undertaking. I take this obligation freely without reservation or purpose of evasion."

Existing Constitution

Section 3

Sec. 3. Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

_____

(If no affiliations, write in the words "No Exceptions")

and that during such time as I hold the office of _____

(name of office)

I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

And no other oath, declaration, or test, shall be required as a qualification for any public office or employment.

"Public officer and employee" includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority; including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing.

Comment: Proposed Section 3 retains in more concise language the existing provisions designating the persons who must take the oath of office, the time when it must be taken, and parts of the existing oath form.

The second paragraph of the existing oath was deleted due to its unconstitutionality. *Vogel* v. *County of Los Angeles*, 68 Cal. 2d 18 (1967).

The prohibition that no other oath may be required as a qualification for public office or employment is retained.

The last paragraph of the existing provision listing various public officers and employees was deleted as unnecessary. "All public officers and employees" includes, without necessity of definition or descriptive listings, every person serving on or employed by a governmentally constituted organization or agency in this State.

Printed Bill: page 5, line 3

Proposed Constitution

Section 4

~~Sec. 4.~~ Sec 8

(a) The Legislature shall provide for periods of disqualification from public office for conviction of designated felonies.

(b) A person convicted of giving or offering a bribe to procure his election or appointment to public office is disqualified from any public office.

Existing Constitution

Sections 10 and 11

Sec. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Sec. 11. Laws shall be made to exclude from office, serving on juries, [and from the right of suffrage,] persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. [The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.] *

* Bracketed portions of Section 11 are not pertinent to revised Section 4 but are treated elsewhere.

Comment: The proposed Section encompasses only those portions of existing Sections 10 and 11 relating to disqualification from holding public office. The provisions of existing Section 11 relating to disqualification of electors and the protection of free suffrage were transferred to proposed Article II (Voting), Sections 1 and 3. See Constitution Revision Commission, Proposed Revision of the California Constitution, Part 2, pp. 17-22 (1970).

The absolute disqualification from holding any public office upon conviction of having given or offered a bribe to obtain public office, presently found in existing Section 10, is retained without change in substance in proposed Section 4 (b).

Proposed Section 4 (a) empowers the Legislature by statute to disqualify persons from holding public office upon conviction of such felonies as the Legislature may designate and for such periods of time as it may deem appropriate. The Commission recommends deletion of the partial listing of specific crimes and the inferred existing provision that disqualification is for life. However, the Legislature by statute may continue a lifetime disqualification upon conviction of designated felonies, as "for life" may be one of the "periods of disqualification" within the meaning of the proposed Section.

The existing reference to jury duty is deleted in favor of statutory treatment.

Proposed Constitution
Section 5

Sec. 5. A person, corporation, or organization that advocates the overthrow of the government of the United States or of California by force, violence, or other unlawful means, or advocates the support of a foreign government against the United States in the event of hostilities, may not hold public office or employment or receive tax exemption. The Legislature shall provide for enforcement of this section.

Existing Constitution
Section 19

Sec. 19. Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

(a) Hold any office or employment under this State, including but not limited to the University of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State; or

(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section.

Comment: The proposed Section retains the substance of existing Section 19 with redrafting to state the provisions more concisely. The proposed Section controls all other provisions of the Constitution with respect to the holding of any public office or employment within the State and the right to receive any exemption from taxes imposed at any level of State or local government.

The descriptive enumerations of public bodies and taxing authorities found in subparagraphs (a) and (b) of existing Section 19 were deleted as unnecessary for the reasons stated in the Comment to Section 3.

ASSEMBLY COMMITTEE ON ELECTIONS AND REAPPORTIONMENT
HENRY A. WAXMAN, CHAIRMAN

ANALYSIS - ACA 42 (BEVERLY)
As Amended

HEARING: Wednesday, May 3, 1972, 3:45 p.m., Room 2170, State Capitol

SUMMARY: 1. Most of the ACA concerns non-substantive matters, consolidating sections and cleaning up language.

2. The substantive changes are the following:

a. P. 3, line 23: the language on convict labor is changed. Labor representatives on the Commission opposed this change since there has been a court decision interpreting the language deleted. The Commission feels there is little or no substantive change in the new language.

b. P. 4, line 12: the section on mechanics liens is revised. There was a minority report on this change which felt that further language should be offered to clarify the section. "Such liens may not require a property owner to pay more than the agreed amount for a completed work of improvement." The Commission felt the language "protection against inequity" takes care of the problem. (Minority report is enclosed.)

c. P. 4, line 21: the entire section has been deleted. The Commission felt that certain terms of appointment or office should be decided by the Legislature rather than requiring a constitutional amendment each time it was appropriate to have a term of office or appointment over four years.

d. P. 5, line 5: this is a new section on disqualification from public office for conviction of certain felonies. The deleted section stated that laws shall be made excluding from office, serving on juries, and the right to vote, individuals convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The new section gives the Legislature more latitude in determining the crimes and the length of disqualification from public office.

Non-substantive changes are the following:

1. Section 1 is identical language to Article I, Section 3 which is repealed.

2. Section 2, second sentence is identical language to Article XX, Section I which is repealed.

The first sentence relating to the boundaries of California allows them to be changed by statute. The existing Constitutional provision, setting forth the boundaries in detail, is repealed. Any change in boundaries would have to be approved by the federal government.

3. Section 3 is identical to Article III, which is repealed.

4. Section 4 is identical to Article XX, Section 6, which is repealed.

5. Article X, Section 1 remains the same except that the paragraph on convict labor is deleted and reworded in another section. The ACA doublejoins Proposition 10 which appears on the June ballot. (Proposition 10 repeals the first two paragraphs of Article X, Section 1 but retains the paragraph on convict labor.)

6. Article XX, Section 15 is amended to clarify the section on mechanics liens.

7. Article XX, Section 16, setting forth maximum terms of appointments is deleted.

8. Article XXIV, Section 7 is substituted for Article XX, Sections 10 and 11. The new article allows the Legislature to provide for periods of disqualification from public office for convictions of designated felonies, except that a person giving a bribe to procure election or appointment to public office is barred completely. The old sections set forth specific crimes for which a person could be barred from office, service on juries, and from the right of suffrage.

Page 4, line 12 - Minority Report (6)

APPENDIX

MINORITY REPORTS

This chapter is comprised of dissents filed by members of the Commission in opposition to the action taken by a majority of the Commission concerning specific sections. The number assigned to a dissent corresponds to the applicable section of the revised article.

ARTICLE XX, SECTION 12 (Existing Section 15)

On July 24, 1969, the following amendment to Section 15 of Article XX was proposed to the Commission:

> "Mechanics, materialmen, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens. *Such liens may not require a property owner to pay more than the agreed amount for a completed work of improvement.*

The proposed amendment was defeated by a vote of 19 to 14.

Instead, the following amendment was adopted:

> *"The Legislature shall enact provisions to protect against inequities."*

The Commission adopted the amendment with the intention that the Legislature should enact measures to protect property owners against double payment of mechanics' lien claims. It means nothing, for Legislatures since 1879 have tried to protect homeowners.

The Mechanics' Lien Law is a source of great public dissatisfaction because it requires a property owner either to pay somebody else's bill, or face the threat of losing his property. Mechanics' lien claimants can enforce their claims for debts which the property owner never incurred and did not agree to pay. This is the injustice which the defeated amendment would have prevented.

It is conceded that if a property owner incurs a debt for the improvement of his property, the creditor should have a lien on the property to secure the payment of the debt. But injustice occurs when the property owner pays the full agreed price to the prime contractor, and the prime contractor, in turn, fails to pay his subcontractors or material suppliers. For example, after the property owner has paid the full contract price to the prime contractor, the prime contractor may nevertheless fail to pay for the masonry work, which cost $2,000. Therefore, the prime contractor owes the masonry subcontractor $2,000. The prime contractor should pay the subcontractor. The property owner should not be required to assume that burden. To carry the example a step further, if the masonry subcontractor fails to pay the brick supplier $1,000, should the brick supplier in justice be permitted to foreclose a mechanic's lien against the property owner? This result cannot be defended as a work of justice.

The injustice feeds upon itself, because the brick supplier in the example, aware of his mechanic's lien rights against the property owner, can afford to be generous in extending credit. If it turns out that he extended credit to a bad risk, he need not be concerned. He is protected by his mechanic's lien rights against the property owner.

In recognition of this fundamental injustice, the Legislature has from time to time adopted protective measures which attempt to treat the symptoms of a disease while not reaching the disease itself. For example, a potential lien claimant must notify the property owner of his name and address before he records a mechanic's lien. In theory, this gives the owner an opportunity to protect his property by making certain that all of the contractors and subcontractors on the job have paid all of their bills. But in practice this doesn't work out.

Even on small jobs, the property owner gets notices from 40 or more contractors and material suppliers. For most property owners, a construction project is a once in a lifetime event. He cannot set up an auditing system equal to the task of providing protection against mechanics' liens.

The preliminary notice provides no protection at all if the property owner has made advance payments to his contractor, nor if a contractor or subcontractor claims he paid a bill when he did not do so.

The property owner should be required to pay the entire agreed price for a completed project. After mechanics' lien claimants have divided that amount, they should not be permitted to enforce further recovery against the property owner. To the extent that such a rule would limit the potential recovery under mechanics' liens, it would encourage claimants to look more closely to their customers for payment. This is no innovation. All other creditors look to their customers, rather than the ultimate consumers, for payment.

It was argued before the Commission that the proposed amendment might in some cases prevent wage earners from enforcing mechanics' lien rights. But

wage earners are adequately protected by the Division of Labor Law Enforcement under current law. And, most wage earners are also property owners who would benefit with all other property owners from the proposed amendment.

It was argued in the Commission that the prime contractor is the agent of the owner for the purpose of incurring mechanics' lien obligations. No such agency exists; typically, the prime contractor is an independent contractor who exercises independent authority as distinguished from an agent. It is as an independent contractor that he contracts with subcontractors.

Property owners should be protected against the unjust application of the Mechanics' Lien Law. They should not be required by law to pay the debt of another on pain of losing their property. The construction industry is entitled to expect the property owner to pay the full agreed price, not more than the agreed price. The present structure of the mechanics' lien law encourages the extension of credit to insubstantial contractors and subcontractors, and makes it possible for them to remain in business. Under the present system, the debts of the construction industry are imposed upon innocent property owners who did not incur those debts. Such clear injustice shoud not, and must not, continue to find support in our law.

The foregoing Minority Report was applicable on July 24, 1969. At the Commission meeting in Los Angeles on February 19–20, 1970, the Drafting Committee changed the wording, but not the substance, of Section 15, as follows:

> "Mechanics, materialmen, artisans, and laborers of every class shall have a lien on property for the value of labor bestowed on, or material furnished to, the property. The Legislature shall provide for speedy and efficient enforcement of the lien and for protection against inequity."

The proposed amendment of: "*Such liens may not require a property owner to pay more than the agreed amount for a completed work of improvement*" may easily be appended to the section as now reading, and, therefore, the substantive argument of the Minority Report, as above stated, is as relevant and cogent as when first presented and voted on.

DANIEL G. ALDRICH, SR.
HARRY BARDT
JACK A. BEAVER
GALE BRANDON
JOHN BUSTERUD
JAMES S. CANTION
RICHARD CARPENTER
JAMES F. CRAFTS
OTIS L. FROST
RUTH CHURCH GUPTA
P. N. HYNDMAN
PAUL MASON
DONALD MCCLURE
FRANK F. NAKAMURA
ROBERT E. OSBORNE
DONALD H. PFLUEGER
GEO. W. ROCHESTER—Author
MRS. EARL B. SHOESMITH
SOL SILVERMAN
JOHN A. SPROUL
MILTON M. TEAGUE
JOHN A. VIDO

ARTICLE XX, SECTION 13 (Existing Section 21)

Many Commission members dissent from the Commission's action on Section 21 of Article XX, relating to workmen's compensation. The Commission, by a narrowly divided vote, recommended that not a single word be changed in this 400 word section. The fifty-year-old language of the section not only contains the verbiage of 1918 but it preserves unnecessary phrases and a series of concepts totally inappropriate to the revised Constitution.

The Commission's unanimous policy decision was to preserve the substance of Section 21 but, following its usual practice, it requested that a committee recommend the deletion of unnecessary language and a modern statement of the retained language. This was done and the rephrased section is appended to this report.

Perhaps the most dramatic example of the inapt terminology of 1918 is the existing provision that states, "The Legislature is hereby vested with plenary power *unlimited by any provision of this Constitution*, to create and enforce a system of workmen's compensation." Similar language is found in the Constitution with respect to the State Public Utilities Commission dating from 1911, and both the Commission and the Legislature are agreed that the language is inapt and should be revised in respect to that Commission.

The old provision does not, of course, mean what it appears to say since no one would think that it intended to eliminate the provisions of the Constitution with respect to equality before the law or with respect to making gifts of public money. Many other provisions of the Constitution that were never intended to be eliminated could be cited, as for example, those relating to the powers of local government or the powers of the Governor.

This minority report recommends to the Legislature, therefore, that it express the meaning of this ancient language as it was restated in connection with the Public Utilities Commission. Thus, the suggested new section would say that the Legislature may confer on a commission legislative, executive and judicial powers in the field of workmen's compensation.

It is respectfully suggested that the Legislature include the revised language in its proposed constitutional revision, and that it ask those interested in this

AIC Elect + Reapp
ACA 42, 1972

AUTHOR'S COPY

Date:

Request No.

LEGISLATIVE COUNSEL'S DIGEST

_____, as introduced, Beverly (_____).

Bill No. Author Committee

Marshals' recruitment and training.

General Subject

Makes provisions relating to standards for recruitment and training of certain peace officers employed by designated public entities receiving state aid for such purposes applicable to peace officer members of marshal's offices.

Vote - Majority; Appropriation - No; Fiscal Committee - Yes.

LEGISLATIVE COUNSEL

(12 TO SET) 4T 052

ARGUEMENT IN FAVOR OF PROPOSITION 6 (ACA 42)

The main purpose of this measure is to reorganize Article III of the California Constitution in accordance with the recommendations of the California Constitution Revision Commission. It collects in a single article various provisions relating to the State that are presently scattered among different constitutional articles. The measure simplifies and modernizes provisions relating to federal supremacy, the boundaries of the State, the State Capitol, and suits against the State. The existing law on all these matters is not changed, but the Constitution is simplified and improved.

This measure also removes from the Constitution a provision limiting the term of any officer or commissioner to four years unless the Constitution specifies a longer term. This is an undesirable provision because it makes a constitutional amendment necessary any time an agency is created with terms longer than four years. Such an amendment was required, for example, in order to create 8-year terms for the members of the State College Board of Trustees.

In the future, we may wish to establish new agencies in the fields of education or environmental protection with terms longer than 4 years. If a constitutional amendment is required, the people will be put to an unnecessary election expense because of the existing constitutional limitation. This limitation serves no useful or legitimate purpose and should be removed.

This measure is supported by the League of Women Voters. Its passage will continue the task of simplifying and clarifying

ARGUMENT IN FAVOR OF PROPOSITION_____(ACA 42)

Proposition 6 continues the work of the Constitution Revision Commission by updating and modernizing our State Constitution. In the revision proposal six sections are rearranged, one is repealed and one new section is added. All basic rights are retained. A "YES" vote on Proposition_____simplifies provisions relating to federal supremacy, state boundaries and suits against the State, and collects various scattered provisions into a single article. Existing law on these matters is not changed, but the Constitution is simplified and improved.

Proposition_____deletes a provision limiting terms to four years. This limitation is undesirable because it makes a constitutional amendment necessary anytime an exception is desired.

Proposition_____also protects elected State officers in all 3 branches of government by providing that their salaries can't be reduced during the term for which they were elected and makes salary statutes appropriations. This will not increase the cost of government or cost the taxpayers more, but will strengthen the independence of all 3 branches of government.

A "YES" vote on Proposition_____will continue the job of revision begun several years ago to revise and modernize California's Constitution so that it will be a clear, concise and workable document.

Proposition_____is a completely nonpartisan measure. This is illustrated by the fact that this measure passed both houses of the Legislature with only one dissenting vote. This measure is also supported by the League of Women Voters.

Vote "YES" on Proposition_____and help keep California's government efficient and effective.

JUDGE BRUCE W. SUMNER, Chairman
Constitution Revision Commission

Robert G. Beverly

ROBERT G. BEVERLY, Assemblyman
46th District

The undersigned author(s) of the primary

_____ argument
(primary/rebuttal)

in favor of _____ ballot
(in favor of/against)

proposition ACA 42 at the
(name or number)

General election for the
(title of election)

State to be held on 11/7/72
(jurisdiction) (date)

hereby state that such argument is true and correct to the

best of their knowledge
(his/their)

and belief.

Signed _____ Date _____

Robert G Beverly Date 8/4/72

Nicholas C. Petris Date 8/4/72

D-E-C-L-A-R-A-T-I-O-N

The undersigned author(s) of the primary argument in favor of ballot proposition ACA 42 at the general election for the State to be held on November 7, 1972, hereby state that such argument is true and correct to the best of their knowledge and belief.

SIGNED [signature] DATE 8-2-72

SIGNED _____ DATE _____

SIGNED _____ DATE _____

EDMUND C. BROWN JR.
SECRETARY OF STATE

TELEPHONE: (916)
CAPITOL OFFICE 445-6371
CERTIFICATION 445-1450
CORPORATION INDEX 445-2900
CORPORATION RECORDS 445-1768
ELECTION DIVISION 445-0820
LEGAL DIVISION 445-0620
NOTARY PUBLIC DIVISION 445-6507
STATE ARCHIVES 445-4293
UNIFORM COMMERCIAL CODE 445-8061

Secretary of State

STATE OF CALIFORNIA
111 CAPITOL MALL
SACRAMENTO, CALIFORNIA 95814

August 2, 1972

Honorable Robert Beverly
Member of the Assembly
State Capitol
Sacramento, CA

Dear Assemblyman Beverly:

This office has been notified that Speaker of the Assembly Bob Moretti has appointed you to coauthor the argument in favor of ACA 42. The argument may not exceed 500 words.

This measure may appear on the November General Election ballot if enabling legislation is signed by the Governor. Until such legislation becomes law, we will assume that this measure will qualify for the November election. The State Printer has given us the deadline of August 15, 1972 by which he must have all copy for the ballot pamphlet. Since the enabling legislation has not been signed into law at this date, we must proceed on a time schedule which allows for the preparation and submission of primary and rebuttal arguments. Accordingly, we request your cooperation in submitting the primary argument by August 4, 1972.

I enclose for your convenience an "Author's Statement" to be signed by each author of a ballot argument as required by Elections Code Section 5350. Thank you for your cooperation.

Sincerely yours,

David M. Weetman

David M. Weetman
Associate Counsel and
Deputy Secretary of State

DMW:alf

Enclosures

ED REINECKE
LIEUTENANT GOVERNOR

State of California

LIEUTENANT GOVERNOR'S OFFICE
SACRAMENTO 95814

August 1, 1972

The Honorable Nicholas C. Petris
Member of the Senate
Room 3082 State Capitol
Sacramento, CA 95814

Dear Nick:

As Lieutenant Governor, I am designated by statute to appoint State Senators to write or coauthor ballot arguments for Constitutional Amendments.

I am hereby appointing you to coauthor the supporting argument for ACA 42 for the November 1972 ballot. The Assembly author is Assemblyman Robert G. Beverly. This argument cannot exceed 500 words and should be filed with the Secretary of State not later than August 4, 1972. Please also file a copy with the Legislative Counsel.

Sincerely,

Ed

ED REINECKE

ER:vm

cc: The Honorable James R. Mills
The Honorable Robert Moretti
The Honorable Edmund G. Brown, Jr.
The Honorable Robert Beverly

Superior Court of the State of California
County of Orange
Santa Ana, California

Chambers of
Bruce W. Sumner
Presiding Judge

August 1, 1972

Mr. Sam Farr
c/o Assemblyman Alex Garcia
State Capitol
Sacramento, Calif.

Dear Sam,

This letter authorizes you to affix my signature to the arguments in your possession supporting ACA 42 and SCA 32, both of which measures have been finally passed by the Legislature.

Thank you for your assistance in securing passage of these important propositions. If there is any difficulty in my giving you authorization to sign my name by this letter, please contact me immediately.

Sincerely,

Bruce W. Sumner
Chairman, Constitution
Revision Commission

BWS:c

SUPERIOR COURT, ORANGE COUNTY, CALIFORNIA

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ROOM 3164
STATE CAPITOL
95814
TELEPHONE: 445-8434

DISTRICT OFFICE
12444 VICTORY BOULEVARD
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NORTH HOLLYWOOD 91606
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LOS ANGELES OFFICE
217 WEST FIRST STREET
TELEPHONE: 620-2620

Assembly
California Legislature

MEMBER CALIFORNIA LEGISLATURE
42ND ASSEMBLY DISTRICT
LOS ANGELES COUNTY

MEMBER:
BOARD OF REGENTS
UNIVERSITY OF CALIFORNIA
BOARD OF TRUSTEES
CALIFORNIA STATE COLLEGES
CALIFORNIA EMERGENCY COUNCIL

BOB MORETTI
SPEAKER OF THE ASSEMBLY

July 31, 1972

Honorable Robert Beverly
Member of the Assembly
State Capitol
Sacramento, California

Dear Bob:

As author of ACA 42 I am appointing you to write the ballot argument in favor of this measure. The Lieutenant Governor will appoint a Senator as co-author.

The argument cannot exceed 500 words and should be filed with the Secretary of State no later than August 4. Please sign the enclosed affidavit and file it with the Secretary of State with your argument. The co-author should also sign it.

Sincerely,

Bob

BOB MORETTI

BM:em
cc: Secretary of State
Lieutenant Governor

Legislative lyst
July 5, 1972

ACA 42 (Am. 6/1/72)

ANALYSIS OF ACA NO. 42 (Beverly)
As Amended in Assembly June 1, 1972
1972 Session

Fiscal Effect:

Cost: None.

Revenue: None.

Anlaysis:

This proposed consitutional amendment would:

1. Repeal Section 3 of Article I which declares the state to be an inseparable part of the American Union and that the U.S. Constitution is the supreme law of the land. This section would be reenacted in the proposed new Article 3.

2. Repeal and reenact Article III, relating to the separation of powers, into the legislative, executive and judicial branches and include in the new Article III the existing Section 3 of Article I above and the existing Section I of Article XX which declares Sacramento to be the capital, and Section 6 of Article XX relating to suits against the state. The new article includes a new section declaring the boundaries of the state to be as stated in the Constitution of 1849, as modified by statute, and repeals Article XXI which sets forth the boundaries by metes and bounds. The new Article III also provides that salaries of elected state officers may not be reduced during their terms of office and that laws which set such salaries are appropriations.

The amendment moves Section 1 of Article X prohibiting private contracting of convict labor to a new Section 5 of Article XX.

The amendemnt also repeals:

1. Article X (except for provision relative to contracting inmate labor) which provides for the establishment and operation of state penal facilities for all felons.

ACA 42 (Continued)

2. Section 16 of Article XX relating to the term of office of any officer or commissioner not fixed by the Constitution.

There is no direct cost to this amendment.

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