

DEPARTMENT OF INDUSTRIAL RELATIONS

455 GOLDEN GATE AVENUE
SAN FRANCISCO 94102*Pedrin*
~~WILLIAM C. HERN~~ Director
William C. Hern

May 18, 1970

ADDRESS REPLY TO:
P.O. Box 603
San Francisco 94101

Honorable Wadie P. Deddeh
Member of Assembly
California Legislature
State Capitol
Sacramento, California 95814

Dear Mr. Deddeh:

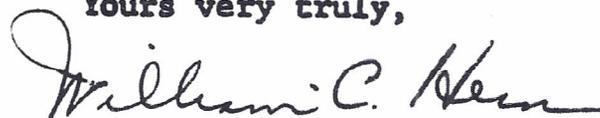
Re: Assembly Constitutional Amendment No. 65
Article XX, Section 17½

In furtherance of the discussion had by you with Rupert Pedrin, Chief Counsel, Department of Industrial Relations, regarding the above-noted constitutional amendment, we would be pleased to have you consider, and to forward the idea that on page 6, line 26, the adjective "a" be changed to "any" so that it will not appear that provision for minimum wages and general welfare of employees must be under one commission.

Presently, minimum wages for women and minors are under the Division of Industrial Welfare and general welfare, which applies to a variety of considerations respecting employment, come under legislative authority provided to the divisions of Labor Law Enforcement, Industrial Safety, Fair Employment Practices, Industrial Welfare, Apprenticeship Standards, and Conciliation, all under the general authority of the Department of Industrial Relations.

Accordingly, the present language of Article XX, Section 17½, indicated in the strike-out portion of ACA 65, page 6, lines 15 through 20, beginning with "No provision ..." is more suitable to effective administration.

Yours very truly,



William C. Hern
Director

WCH:tn
cc: Rupert Pedrin ✓

ASSEMBLY COMMITTEE ON ELECTIONS AND CONSTITUTIONAL AMENDMENTS

PAUL PRIOLO, CHAIRMAN

ANALYSIS - ACA 65 (DEDDEH) AS AMENDED JUNE 17, 1970SUBJECT: Constitution Revision - Article 20 (Miscellaneous)

EXPLANATION: The following general analysis summarizes and comments on the Constitution Revision Commission's (CRC) proposals and their effect on existing law. Since Article 20 deals with a variety of topics which could not be classified under a single subject heading, this analysis is broken down by section. Significant sections are indicated by asterisk (*). Section numbers refer to the printed bill.

CRITERIA:

For purposes of constitutional revision, three criteria may be relevant:

1. Is the provision necessary -- either as a grant of legislative power, or a limitation of legislative power? (State constitutions are generally construed as limitations on inherent legislative power).
2. Is the provision proper -- as an expression of fundamental law?
3. Is change inefficient -- since the proposal may have been fully litigated and interpretation settled?

REVISED PROVISIONSSECTION 1 - STATE CAPITALSUMMARY:

Retains and condenses existing section which allows capital to be changed by 2/3 vote of the Legislature with approval of majority of voters.

COMMENT:

Existing section specifies the vote requirements while proposal effectuates the same procedure by requiring use of a constitutional amendment.

SUMMARY:

Retains verbatim provision which allows Legislature to provide for suing the State.

COMMENT:

Since the Legislature has enacted comprehensive statutes pursuant to its inherent power and since this section has been construed in court as neutral in effect, why was the section included?

SECTION 8 - SEPARATE PROPERTY OF HUSBAND & WIFE

SUMMARY:

Retains and rewords section identifying the separate property rights of husband and wife (i.e. property acquired by either before marriage is their own, as is property acquired afterwards by gift, devise or bequest).

COMMENT:

Legislature has inherent power over this subject but a large body of law has developed in the area thus justifying a retention of the status quo.

SECTION 17 - EIGHT-HOUR DAY ON PUBLIC WORKS

SUMMARY:

Retains section which requires eight hour day for laborers in public works except in time of war or emergency that endangers life or property.

Expands Legislature's discretion in enforcing rather than requiring a stipulation in the contract.

COMMENT:

1. The Labor Code details regulation of the workday for other employees (e.g. a general eight hour day where not specified in contract; eight hour day maximum for persons under 18 years of age except in agricultural activities or in parental control situations).

2. Why is a constitutional provision singling out public works laborers necessary or proper?

*SECTION 17½ - MINIMUM WAGES FOR
WOMEN & CHILDREN: LABOR LEGISLATION

SUMMARY:

1. CRC retains and condenses existing section which permits the Legislature to establish minimum wage legislation for women and minors and to provide for the welfare of all employees.

2. Extends the minimum wage authority to include all employees, rather than just women and minors.

3. Retains section which allows Legislature to provide for an appropriate administrative agency with executive, legislative and judicial powers.

COMMENT:

1. Although the Legislature has these powers anyway, the CRC retained these sections having heard testimony from organized labor.

2. The provision authorizing an administrative agency is equally unnecessary -- there are at least 61 state agencies with legislative and judicial powers which are created by statute whereas only 7 originate in the Constitution (mostly for historical reasons).

SECTION 18 - SEX NOT DISQUALIFICATION FOR BUSINESS

SUMMARY:

Retains a section which broadly forbids disqualifying persons because of sex from entering or pursuing a particular business.

COMMENT:

1. Courts have applied this section to law-making bodies only, not private employers and also held that the state may reasonably regulate the subject (e.g. the section does not preclude a statute which prevents female employees from mixing drinks).

2. Since federal law already proscribes sexual discrimination in public and private employment, is this section necessary?

SECTION 20 - UNIFORM ELECTION
DATE & COMMENCEMENT OF TERMS

SUMMARY:

Retains and condenses section which provides a uniform term commencement date (the first Monday after the January First after election) and a uniform election year (the last even-numbered year prior to the term's expiring) where not otherwise specified.

COMMENT:

This section supplements provisions of the Constitution which establish an office but fail to provide an election date or term commencement date.

*SECTION 21 - WORKMEN'S COMPENSATION

SUMMARY:

Retained verbatim.

COMMENT:

In view of the complex body of law which has developed around this section, the CRC recommends maintaining the status quo.

DELETED PROVISIONS

(Section numbers refer to present Constitution)

SECTION 2 - DUELING FORBIDDEN

SUMMARY:

Deletes provision which penalizes dueling with disenfranchisement and preclusion from holding office.

COMMENT:

The provision is unnecessary since a similar provision appears in the Penal Code. Reasons for inclusion of this section are historical and obsolete.

SECTION 3.5 - REINSTATEMENT
OF VETERANS AS PUBLIC EMPLOYEES

Deletes as unnecessary a provision which allows Legislature to provide for reinstatement of veterans back into public employment -- Legislature has this power inherently.

SECTION 4 - ELECTION AND APPOINTMENT
OF OFFICERS AND COMMISSIONERS

Deletes as unnecessary provision which allows Legislature to provide procedures for election and appointment of officers where Constitution does not otherwise specify -- Legislature has inherent power to do this.

SECTION 5 - FISCAL YEAR

Transfers to Government Code section which describes the fiscal year since this detail is both unnecessary and improper.

SECTION 7 - VALIDITY OF CIVIL MARRIAGE

Transfers to the Civil Code a section which forbids the invalidating of a legally contracted marriage for religious reasons. Provision is unnecessary due to the Legislature's inherent and exclusive power over the subject.

SECTION 9 - PERPETUITIES - CHARITABLE PURPOSE

Deleted as unnecessary since a similar, clearer provision is stated in the Civil Code.

SECTION 12 - ABSENCE AS AFFECTING RESIDENCE

Transfers to the Government Code as vague and unnecessary a section which states that legal residence is not affected by absence from the state on federal or state business.

SECTION 13 - ELECTION BY PLURALITY - MUNICIPAL REGULATIONS

SUMMARY:

Transfers to Elections Code statement that a plurality vote constitutes a choice in an election where not otherwise indicated by Constitution, charter or general law governing municipal formation.

COMMENT:

Since this rule is already provided by the Elections Code, at least for elections of candidates, why is another Code section needed?

SECTION 14 - BOARD OF HEALTH

SUMMARY:

Deletes section which states that Legislature may create a Board of Health.

COMMENT:

1. Deleted as unnecessary. Legislature has inherent power to create Health and Welfare agency or, for that matter, any administrative agency.
2. Early in California history there was some legal doubt as to this power but the courts have long since resolved the doubt in favor of the Legislature.

PROPOSED REVISIONS DELETED
BY THE E & CA COMMITTEE AS
TOO CONTROVERSIAL

*SECTION 3 - OATH OF OFFICE

SUMMARY:

1. Retains and condenses existing language requiring oath of allegiance to and support of state and federal constitutions.
2. Deletes existing oath of non-advocacy of, and non-membership in, subversive organizations as unconstitutional.
3. Deletes a specification that University of California employees are among those "public employees" required to take the oath.

COMMENT:

1. The present anti-subversive oath was held unconstitutional by the California Supreme Court in 1967 since it forbids not only knowing membership with an intent to further the organization's illegal aims but also inactive membership and knowing membership with no illegal intent.

2. Valid anti-subversive oaths are extremely difficult to draft since the Federal Constitution requires narrow specificity and since they may be objectionable on several constitutional theories (e.g. may create a "chilling effect" on freedom of expression; may constitute a "prior restraint" on free speech; or may be unconstitutionally vague).

3. Several alternatives are available to remedy this problem:

- a. Delete entirely.
- b. Attempt to redraft more narrowly and constitutionally.
- c. Merely authorize the drafting of a statutory oath.

4. Since the Constitution already proscribes subversive activity by requiring an oath of support and defence of the Constitution, is another anti-subversive oath necessary?

5. Why is public officer not defined to include employees of the University of California as in the present section?

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SECTION 11- INELIGIBILITY FOR OFFICE & DIS-
QUALIFICATION FROM OFFICE FOR BRIBERY & MISCONDUCT

SUMMARY:

Retains and rewords provision disqualifying from office-holding, persons convicted of certain crimes, but deletes listing of those crimes in favor of general description; deletes specification that disqualification is permanent and gives Legislature discretion to determine period of disqualification.

Transfers to Article 2 (Suffrage) the provision mandating legislation to preclude corrupt practices in elections.

Retains and rewords provision disqualifying from public office any person convicted of bribery to procure an office.

COMMENT:

The proposed section allows the Legislature to determine the types of disqualifying crimes and the penalty period.

SECTION 15 - MECHANICS' LIEN

SUMMARY:

1. Retains and condenses existing section which broadly guarantees the right to a mechanic's lien (i.e. a charge or right of detention against property as security for goods or services which a contractor or sub has provided for improving the property).
2. Adds a broad guarantee that Legislature shall protect against inequity.

COMMENT:

1. The guarantee of protection against inequity has no effect by itself -- it must be implemented by protective legislation, which already exists.
2. The CRC was attempting to counteract the problem of land purchasers who are faced with paying off multiple liens of sub-contractors when a prime contractor defaults. However, the proposed section leaves broad discretion in the Legislature.

SECTION 16 - TERMS OF OFFICE WHEN NOT FIXED BY CONSTITUTION

SUMMARY:

Transfers to the Government Code a section which states that the Legislature may establish terms of office of up to four years where the Constitution or charter does not otherwise govern, and that State College Trustees may hold for eight years.

COMMENT:

1. This section is unsuitable for constitutional treatment since it affects only statutory offices - the statute creating the office could logically provide the term.
2. The section has spawned amendments whenever the Legislature decided on a longer term for a statutory office.

*SECTION 19 - SUBVERSIVE PERSONS & GROUPS

SUMMARY:

1. Retains and condenses existing section which forbids any persons or organizations from holding public employment or receiving tax exemption if they advocate the overthrow of the government by unlawful means or support an enemy government during hostilities.
2. Deletes a specification that working for the University of California is a public employment subject to this section.

COMMENT:

1. A companion statute to this section was held unconstitutional by the U.S. Supreme Court in 1958 but the Court did not overrule the California Supreme Court's decision that this section was valid.

2. Recent cases suggest that the section is of doubtful constitutionality since it is also subject to objections of vagueness, chilling effect, prior restraint and overbreadth (e.g. is opposition to the Vietnam war "support of a foreign government" within the prohibition of this section?)

3. Why is public employment not defined to include employees of the University of California?

*SECTION 22- USURY

SUMMARY:

1. Present provision establishes ceilings on interest rates (7% where the rate is not specified in writing, 10% where it is specified) but exempts several classes of commercial lenders and allows the Legislature to regulate them; i.e. building and loan associations, credit unions, industrial loan companies, personal property and pawn brokers, non-profit co-op and certain agricultural organizations.

2. CRC proposal deletes the ceilings and allows Legislature to establish the usurious rate; deletes the existing description of the types of transactions covered and leaves "usury" undefined; provides for penalties of treble damages in addition to others prescribed by statute.

3. CRC proposal adds "insurers" to the existing list of exemptions and retains the Legislature's power to regulate them.

4. CRC deletes an existing initiative statute which sets a general ceiling of 12% but which was partially superseded by the present constitutional section.

COMMENT:

1. The CRC proposal may be meaningless in effect since it seems to allow the Legislature to define the transactions and persons covered by usury, set the rate, and exempt and regulate commercial lenders -- in effect give the Legislature complete power over usury legislation.

2. Giving the Legislature such power may be highly controversial since it would remove apparent constitutional protection from usury.

3. Would deletion of the initiative statute raise the same objection?

4. ACA 60 (Prop 60 -- passed out of this committee May 21, 1970), retains the existing law and simply adds an exemption for loans which exceed \$100,000 in principal.

SECTION

EXCISE 22 - ALCOHOLIC BEVERAGES

SUMMARY:

1. Retains and condenses existing provisions which: a) create and organize the office of Director of Alcoholic Beverage Control (ABC), the Department of ABC, and the ABC Appeals Board; b) describe the licensing powers of the ABC Department and the apportionment of license fees; c) detail the procedures and functions of the ABC Appeals Board.
2. Deletes unnecessary provisions authorizing automatic repeal of inconsistent sections and automatic operation without implementing legislation.
3. Retains the minimum age restrictions on sale or furnishing of alcoholic beverages to minors but changes the minimum 21 years of age to "voting age" and adds authority for the Legislature to except persons under parental control or engaging in religious ceremonies.

COMMENT:

1. Although all of these provisions could be enacted into statute, they were included in the Constitution through initiative in 1954 and 1956 as a result of the Weinberger Committee's investigation of abuses when the system operated under the State Board of Equalization.
2. The California Supreme Court in October of 1969 held that the Legislature could limit the Department's power to suspend licenses by restricting the penalty for violation of fair trade price provisions to fine, rather than license suspension or revocation. This decision clearly implies that the Legislature can further limit the Department's licensing power although the literal language of section 22 and the intent of its proponents indicate that the Department probably should have autonomous power. Several alternatives are raised:
 - a. Preserve the existing relevant language, thus maintaining the Supreme Court's view of superior legislative power.
 - b. Adopt the CRC's original proposal which probably strengthens the Supreme Court's view of dominant legislative power.
 - c. Adopt the CRC's revised proposal which specifically limits legislative power and overrules the Supreme Court's view.

June 26, 1970

Honorable Wadie P. Deddeh
Member of the Assembly
State Capitol
Sacramento, California 95814

Dear Assemblyman Deddeh:

It has come to my attention that your Assembly Constitutional Amendment No. 65 would delete Section 5 of Article XX which provides that the State fiscal year begin on July 1.

We are opposed to this amendment to the Constitution inasmuch as there is no argument to support such a change other than that it may be advantageous to have a different fiscal year.

The implications of a change in fiscal year are far-reaching. It was proposed by a former Director of Finance that the fiscal year be altered in order that the cash flow problem be alleviated and the year-end debt be minimized. We opposed the suggestion at that time and would continue to do so.

Furthermore, a change of one day in the fiscal year could reduce the State's liability for salaries and be rather significant as a result.

We ask that you retain the present language of Section 5, Article XX.

Sincerely,

Charles L. Smithers
Director of State Affairs

CLS:la

Senate Judiciary
ACA 65, 1970

SECRETARY OF STATE, ALEX PADILLA
The Original of This Document is in
CALIFORNIA STATE ARCHIVES
1020 "O" STREET
SACRAMENTO, CA 95814