

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
November 12, 1999 - 9:00 a.m. - Room 405 - State Capitol

Members Present:

Mr. Alan L. Sullivan, Chair
Dr. Jean B. White, Vice Chair
Rep. Afton B. Bradshaw
Sen. Mike Dmitrich
Justice Christine Durham
Mr. Dallin W. Jensen
Rep. David M. Jones
Mr. Morris Linton
Sen. Howard C. Nielson
Mr. Robin Riggs
Mr. Richard V. Strong
Prof. Kevin Worthen

Members Absent:

President Lane Beattie
Speaker Martin R. Stephens
Ms. Diana Allison
Mr. W. Craig Jones

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Mr. Robert H. Rees,
Associate General Counsel
Ms. Cassandra Bauman,
Legislative Secretary

Note: A list of others present and a copy of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

1. Call to Order - Chair Sullivan called the meeting to order at 9:09 a.m.

MOTION: Mr. Linton moved to approve the minutes of the October 15, 1999 meeting. The motion passed unanimously with Sen. Mike Dmitrich and Sen. Howard Nielson absent for the vote.

Chair Sullivan stated that he had received a letter of resignation from Ms. Diana Allison. Because Ms. Allison was appointed by the commission, he suggested that the commission give some thought as to how it might fill the vacancy.

2. Airline Apportionment - Chair Sullivan provided a brief overview of the airline apportionment issue, noting that the method of apportioning property tax revenue from commercial airline equipment had been struck down as unconstitutional by the Utah Supreme Court.

Mr. Gary R. Thorup, Holmes Roberts & Owen LLP, serving as local tax counsel to Delta Airlines, Inc., commended Rep. Harper for his efforts in trying to address the concerns of local governments. Mr. Thorup explained that Delta Airline's annual property tax has increased since the Supreme Court's ruling but that members of the Air Transport Association neither support nor oppose Rep. Harper's proposal.

Administrative Concerns - Mr. Thorup explained that under the proposal double taxation

is an issue because the proposal does not prevent the possibility that the state may, at some future point, impose an additional state tax levy for its own purposes rather than imposing a state wide levy for the benefit of local governments. Either the resolution itself, or some other legislation should be drafted to prevent future double taxation, he said.

Constitutional Concerns - Mr. Thorup further explained that the airlines believe the proposal may unlawfully create a statewide taxing system under which some or all air carrier property will be taxed at a different, non-uniform, and unequal rate from that imposed on other taxpayers, and that at least some air carrier property may not be paying a tax in proportion to its value.

Federal Law Concerns - Finally, Mr. Thorup explained that 49 U.S.C., Section 40116 (c) provides that a state or political subdivision may levy a tax only if the aircraft takes off or lands in the state or political subdivision. Although the Supreme Court decided the case under the Utah Constitution, and did not address the federal statutes, it would seem appropriate, he said, to thoroughly research the federal laws to ensure the proposal meets those requirements.

Mr. Bruce Johnson, Utah State Tax Commission, distributed reports titled, "Airline Value Reapportionment Revenue Impact to Counties" and "Airline Value Reapportionment Revenue Impact to School Districts." He said that the Utah Tax Commission has concerns about vertical revenue sharing, explaining that it is important to have uniform and equal tax rates.

MOTION: Rep. Bradshaw moved that the commission delay their actions on the proposal until the Utah Foundation report is available.

SUBSTITUTE MOTION: Rep. Jones moved that the commission adopt vertical revenue sharing as an agenda item for next year, and that Rep. Harper's resolution be discussed at its next meeting. The motion passed unanimously.

3. Review of Judicial Retention Report - Chair Sullivan said the report is intended to explain the position of the commission regarding increasing the percentage required to retain judges at judicial retention elections and how those retention elections might be improved.

MOTION: Mr. Linton moved that the commission adopt the report with the addition of a bibliography in the normal report format. The motion passed unanimously.

4. Number of Members of the Legislature - Sen. Nielson stated that the constitution currently provides for a maximum of 29 Senators. He explained that the Senate will lose rural representation during the next redistricting effort, causing current incumbents to be squeezed out of the Legislature. He explained that raising the number of Senators to 31 will solve this problem.

The commission took no position on the resolution.

5. Resolution Providing for Special Session of the Legislature 2000 - 0197/005 and 006- Rep. Walsh summarized the resolutions, stating that the Legislature should have authority to call itself into Special Session when it deems necessary. Rep. Jones stated that it would be a good idea if it required a higher vote. Sen. Nielson concurred that the Legislature should have authority to call itself into a Special Session but agreed that it should do so upon a two-third vote rather than a majority vote.

Mr. Riggs stated that currently only the Governor can call a Special Session. Mr. Strong noted that the constitution allows for the Legislature to call itself back for five days without the Governor's call. Mr. Jensen stated that this resolution would give the Legislature more authority than it currently has.

MOTION: Mr. Riggs moved to postpone a vote on this issue until the next commission meeting. The motion passed unanimously.

6. Local Government Provisions - Mr. Rees distributed the "Resolution Amending State and Local Government Provisions," explaining that the question for the commission is whether to recommend that the Legislature reconsider its position on the powers of cities. The commission discussed the issue and took no action.

7. Article XIII, Revenue and Taxation - Mr. Rees explained that the commission had been discussing Article XIII with the idea of either providing a technical rewrite that wouldn't change any substance, or a complete rewrite of the whole article. Chair Sullivan explained that Article XIII is disorganized, disjointed, and difficult to comprehend. Mr. Steve Allred urged the commission to move slowly and carefully on any Article XIII amendments. Chair Sullivan stated that the commission will have this item on the agenda next year and wanted the members to be aware of it ahead of time.

8. Other Business - The next meeting is scheduled for February 4, 2000 at 12:00 p.m. in room 405.

9. Adjourn - Chair Sullivan adjourned the meeting at 11:52 a.m.

