

**MINUTES OF THE  
UTAH CONSTITUTIONAL REVISION COMMISSION**

Friday, November 10, 2000 - 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  
Sen. Dan Eastman  
Mr. Byron Harward  
Mr. Dallin W. Jensen  
Rep. David M. Jones  
Mr. Morris Linton  
Sen. Howard C. Nielson  
Mr. Robin Riggs

**Members Excused:**

Mr. W. Craig Jones  
Speaker Martin R. Stephens  
Mr. Richard V. Strong  
Prof. Kevin Worthen

**Staff Present:**

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

**Note:** A list of others present and handouts distributed are on file in the Office of Legislative Research and General Counsel.

**1. Call to Order**

Chair Sullivan called the meeting to order at 9:07 and welcomed those in attendance.

**MOTION:** Dr. White moved to approve the minutes of the October 13, 2000 meeting. The motion passed unanimously with Sen. Eastman, Mr. Linton and Mr. Riggs, absent for the vote.

**2. Article XIII, Revenue and Taxation**

Working from the draft included in the packet dated November 10, 2000, Chair Sullivan explained the changes made at the meeting of October 13, 2000.

Mr. Robert Rees, Associate General Counsel, Office of Legislative Research and General Counsel, provided background information relating to the term “just valuation in money.” Mr. Rees said that he was unable to locate any case law that discussed “fair market value” as the preferred terminology. Justice Durham related that she is not aware of any case in which the court has discussed or attempted to define all the terms that relate to “fair market value.” Chair Sullivan suggested that the commission use the word “value” in place of all other terms. Mr. Harward asked that Mr. Buchi be contacted to explore the cases which he was referring to at the October meeting. Mr. Kent Michie, State Financial Advisor, pointed out that there are many properties that are centrally assessed that do not approach a just valuation in money. Mr. John McCarrey, Attorney General’s Office, said that additional research would be helpful. Mr. Kelley Wright, Morgan County Attorney, UAC said that there is a statute that defines “fair market value.” Chair Sullivan agreed that these issues need further research.

Mr. Byron Harward discussed the creation of draft section 6. Chair Sullivan suggested that subsection 4(2) be moved to section 6. He also suggested that subsection 3(2)(a) and 3(2)(b) be consolidated into one sentence. Chair Sullivan suggested that section 9 read, “the legislature may not make an appropriation or authorize an expenditure if the appropriation or expenditure would exceed total tax revenues for the fiscal year.” Justice Durham said that the proposed language seems to accomplish the same goal as the existing language.

Chair Sullivan invited members of the audience to respond to the language in question. Mr. Richard Ellis, Chief Deputy State Treasurer and Mr. Dale Okerlund, First Security Von Kasper and former State Bond Council, discussed the current Article XIV. Mr. Okerlund first referred to the current Article XIV subsection 1, which applies to the casual deficit. He explained that this provision has traditionally been flexible. He pointed out that the state is operating on a large capital expenditure program and that the term “ordinary” is loosely applied. He also stated that he is not sure what would qualify as “extraordinary.” Sen. Nielson suggested that the wildfires last year have probably been termed an “extraordinary” expense.

Mr. Okerlund moved to section 9 in the current constitution and questioned the validity of the language in the first sentence, “...then provided for by law and applicable for the particular appropriation or expenditure...” Chair Sullivan said that this language was removed. Justice Durham pointed out that this section refers to a budget provision. Mr. Okerlund asked if this would apply to both a revenue shortfall and a balanced budget provision. Mr. Roger Tew, Attorney, discussed various situations where there was a shortfall in money and what was done to remedy the situation. Chair Sullivan said that the current constitution doesn’t prohibit the executive branch from creating a deficit. Chair Sullivan said that this issue will need to be researched and discussed further. Mr. Johnson said that the proposed section 6 allows the legislature to plan for a deficit in the general fund as long as it is offset by a surplus from the school fund.

**MOTION:** Mr. Harward moved to reinsert the concept from the current Article XIII section 9 to subsection 6(2)(a) of the draft. The motion passed unanimously.

**MOTION:** Sen. Nielson moved to start from the time the debt is incurred rather than when it is passed by the legislature. Mr. Harward and Mr. Riggs spoke in opposition of the motion. The motion failed with Sen. Dmitrich and Sen. Nielson voting in favor.

**MOTION:** Byron Harward moved that subsection 4(2) be included with section 6. The motion passed unanimously.

Mr. Bruce Johnson, State Tax Commission, discussed the concerns of the Attorney General’s Office and added that they are preparing detailed comments on the draft for the commission.

Mr. Johnson discussed the current constitution 2(1) and the removal of “all tangible property of the state not exempt under the laws of the United States or under this constitution shall be taxed at a uniform and equal rate...” He said that it is likely unconstitutional to remove this language. Justice Durham pointed out that the provision, as written, is superceded by federal law.

**MOTION:** Justice Durham moved to insert the language in subsection 2(1) “subject to exemptions in this constitution or in Federal law.” The motion passed unanimously.

Mr. Johnson referred to subsection 2(1) in the current constitution. He said that this current substantive change should be considered further. He said that the Tax Commission is very careful to avoid taxing both the user and the owner. Mr. Kelley Wright, Morgan County Attorney, UAC, concurred with Mr. Johnson, adding that this fundamental change would require amendments to statutes.

**MOTION:** Justice Durham moved that the language “to its owner” be removed from subsection 2(1). The motion passed unanimously with Sen. Dmitrich absent for the vote.

Chair Sullivan moved to subsection 2(3) of the draft and suggested removing the words “only” and “located” and insert “owned or used within its limits.” Mr. Kelley Wright said that there is a concern on how this impacts unitary assessment. He asked if the new section would restrict that by only allowing political subdivisions to assess property tax and property located within their limits. Chair Sullivan suggested striking the words “assess and collect property taxes on” and insert the word “tax.” Mr. Wright said that would remedy his concern. Mr. Rees pointed out that the ideas in the current subsection 2(10) are being removed. Chair Sullivan suggested that this issue be explored further, taking into consideration all the issues discussed today.

Mr. Johnson moved the commission to subsection 4(3) of the draft. He expressed concern with the language “as the same may be or become effective at any time or from time to time.” He pointed out that the current language allows for the changes that the federal government generates each year. He suggested adding language to the effect that “as the same may be or become effective from time to time.” Chair Sullivan agreed that this issue needs further discussion.

Mr. Johnson referred to subsection 5(3) of the draft and pointed out that motor vehicle fuels that are used to propel farm and construction equipment, which are not used on public highways are subject to the sales and use tax, which goes into the general fund. Chair Sullivan suggested adding the language, “fuel for motor vehicles operated on public highways.” Mr. Johnson said that change would remedy his concern.

**MOTION:** Justice Durham moved to insert the language in subsection 5(3) “fees and

taxes related to the operation of motor vehicles or in fuel for motor vehicles operated on public highways shall be used..." The motion passed unanimously.

Mr. Johnson thanked the commission for allowing him the opportunity to convey the concerns and suggestions from the State Tax Commission. Chair Sullivan thanked Mr. Johnson for his comments, input and suggestions.

Chair Sullivan suggested that the substantive issues to Article XIII be discussed after the 2001 General Session.

### **3. Commission Discussion Regarding Caucus Meetings During Annual General Sessions and Review of Proposed Constitutional Amendments During Annual General Sessions**

The commission discussed the option of requesting input from the Tax Review Commission on the outstanding issues.

Justice Durham asked if there will be a meeting held during the 2001 General Session. Chair Sullivan said that they plan to meet during the General Session. The commission scheduled a tentative meeting for Friday, February 9, 2001 at 12:00 p.m.

Chair Sullivan instructed staff to inform the commission members of the date and times the legislature would like us to attend their individual caucus. Chair Sullivan encouraged all interested members to attend their informative meetings.

### **4. Other Business**

### **5. Adjournment**

**MOTION:** Chair Sullivan ruled the meeting adjourned at 11:45 a.m.