

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Friday, May 10, 2002 – 9:00 a.m. – Room 405 State Capitol

Members Present:

Mr. Alan L. Sullivan, Chair
Mr. Kevin J. Worthen, Vice Chair
Rep. Patrice M. Arent
Mr. Michael E. Christensen
Sen. Mike Dmitrich
Mr. Byron L. Harward
Mr. Morris D. Linton
Dr. Michael Petersen
Ms. Kristine Strachan
Sen. John L. Valentine

Members Absent:

Rep. Greg J. Curtis
Chief Justice Christine Durham
Sen. David L. Gladwell
Judge Jon M. Memmott
Mr. Robin Riggs
Speaker Martin R. Stephens

Staff Present:

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

Note: A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

1. Call to Order and Approval of Minutes

Chair Sullivan called the meeting to order at 9:10 a.m.

MOTION: Mr. Harward moved to approve the minutes of the November 7, 2001; January 11, 2002; and February 1, 2002 meetings with minor corrections. The motion passed unanimously with Mr. Linton absent for the vote.

2. Review of Constitutional Amendments Passed During the 2002 General Session

Mr. Howe discussed the constitutional amendments which passed during the 2002 General Session, including S.J.R. 10 "Resolution Amending Revenue and Taxation Provisions of Utah Constitution," which will be presented to the voters on the November ballot.

3. Items Scheduled for Discussion

Article VI, Legislative Department, Sections 16 and 17–Impeachment

Mr. Rees distributed "Legislative Special Sessions - Constitutional Survey." Sen. Valentine explained that during a discussion with the Senate regarding the Legislature's authority to call itself into special session the issue was raised on whether the Legislature could call itself into special session for impeachment purposes. He indicated that the constitution is silent on this issue, but an interesting theoretical question is raised in the case of an impeachment proceeding involving the governor.

Commission discussion followed. Chair Sullivan indicated that the Commission will invite individuals and organizations to provide input on what alternatives are available to clarify the impeachment provision.

Article VII, Executive Department, Legal Counsel and Executive Branch Officers

Sen. Valentine indicated that the Commission discussed a potential constitutional conflict between the Attorney General's Office and the State Auditor's Office if the auditor's attorney is employed by the attorney general, as is the current arrangement. Such a conflict is apparent in the case of the State Auditor performing an audit of the Attorney General's Office. He indicated that the constitution allows the Attorney General to be legal advisor to the executive branch and that it does not grant authority to the State Auditor to have separate legal counsel.

Mr. Mark Shurtliff, Attorney General, State of Utah, indicated that the scope of in-house legal counsel even goes beyond the Auditor's Office. He explained that an opinion from Legislative Research and General Counsel was issued in 2001 stating that the attorney representing the Auditor General and State Treasurer, as well as approximately 24 other attorneys acting as in-house counsel are unconstitutional. He expressed concern that the powers of the attorney general are being diminished with the continued allowance of state offices seeking separate counsel. In fact, he said, the Supreme Court in *Hansen v. Legal Services Committee* (1967) concluded that, with issuance of separate legal counsel for state offices, the office of the attorney general effectively could be emasculated and rendered impotent and for this reason the court held that the attorney general shall be legal counsel for the State Auditor and Treasurer. Mr. Shurtliff indicated that as the parties involved continue to discuss possible solutions he would welcome recommendations from the Commission.

Mr. Gary Doxey, General Counsel to the Governor, Governor's Office, stated that the opinion that Legislative Research and General Counsel issued included legislation that may be reviewed to assist in resolving issues with the legality of legal counsel for the executive offices. He explained that the State Auditor and Treasurer are constitutional offices and that a constitutional amendment would likely be required to resolve this conflict.

Ms. Betsy Ross, Special Assistant Attorney General, Utah State Auditor's Office, indicated that she disagrees with the opinion that separate legal counsel for the State Auditor and Treasurer is unconstitutional. She welcomed any input the Commission could provide.

MOTION: Sen. Valentine moved that the Commission postpone discussion on the issue and that the Attorney General provide a progress report to the Commission in September. The motion passed unanimously.

Article IX, Legislative Apportionment, Section 1

Mr. Howe explained the history of redistricting and indicated that the Commission voted during the 2002 General Session to study redistricting in the 2002 Interim. He said 39 states have the state legislature create legislative and congressional district maps, while 11 states have either an all civilian commission or a commission comprised of some elected officials and civilians. Mr. Howe explained that both the commission and legislative forms of redistricting would both be subject to the same legal parameters. He noted that neither the legislature's nor the commission's charged with creating new district maps are immune from criticism. In fact, it seems that both legislatures and commissions are guilty of drawing

maps that are legally suspect. Mr. Howe noted the current legal difficulty that both Arizona and Idaho have experienced recently with their redistricting process. This is indicative, he said, of the inherent difficulty associated with the redistricting process and that no system has been able to remove the politics because, he said, redistricting is at its core a political process.

Rep. Arent explained that whether or not a legal challenge has been mounted against a redistricting plan is not the only measure of whether the process or the product of the process is fair.

The Commission decided to hear testimony from interested organizations at its next meeting to determine whether the redistricting process in Utah could benefit from some form of independent redistricting commission.

Article XIV, Public Debt, Section 1—Purposes for Which State May Issue Debt

Mr. Harward indicated that this issue should be studied because the provision does not prevent public debt. He explained that the Commission should study amending the provision to draw down the permissible use of debt to something that meets the state's current practice.

Mr. Richard Ellis, Deputy State Treasurer, State of Utah, explained historical types of debt in Utah. He distinguished general obligation bonds from revenue bonds, indicating that general obligations bonds are guaranteed by the state's property tax while revenue bonds are payable by other revenues sources. The risk to the creditor on general obligation bonds is reduced because these bonds are guaranteed by the state so the financing charges and interest rates are less expensive.

Mr. Carl Empey, Vice President, Zion's Bank Public Finance, distributed "Historical General Obligation Bond Issuance." He explained that a property tax levy must be assessed in order to obligate the state to the bond's repayment schedule and to reduce the finance costs of the bond. The conditional property tax assessment is triggered if there is a default on the general obligation bond, in which case Wallstreet attorneys can force the property tax to be assessed such that revenues would pay off the bond.

Article XXIII, Amendment and Revision, Sections 1 and 3—Procedures to Amend Utah Constitution

Mr. Howe distributed a copy of an opinion from Assistant Attorney General Homer Holmgren (1970) which explained the constitution requires constitutional amendments to be published in at least one newspaper in the state for 2 months immediately proceeding the General Election. Mr. Howe stated that the Voter Information Pamphlet is distributed in the newspapers, but the text of the constitutional amendments are published in the paper for only 1 day, at cost of approximately \$40,000. According to the Elections Office, the cost to comply with a 2-month publication would be much more expensive. The question is whether the publication of over one million Voter Information Pamphlets, which are distributed in all the newspapers of general circulation, meets constitutional muster.

Chair Sullivan asked the staff to prepare several options for the Commission to review regarding the clarification of this provision.

4. Other Potential Study Items

Mr. Rees distributed "Potential Study Items." Chair Sullivan asked if there are any other issues that ought to be considered.

Mr. Worthen asked about the constitutional amendment to change the taxation of governmental property if it was used in competition with other business. Mr. Howe indicated that the Utah Tax Review Commission has been assigned to study that issue. Chair Sullivan asked staff to report to the Commission on the progress of that study from time to time.

Mr. Doxey discussed Article VI, Section 29 regarding the prohibition of lending public credit. He explained that under certain conditions the state could provide seed money for research and development that may produce significant gains to the state while assisting in research and development. Mr. Doxey explained that the Supreme Court has issued an opinion on this issue which the Commission may wish to review. The Governor's Office, he said, is interested in pursuing avenues to explore whether, and under what circumstances, it may be appropriate for the state to be involved in beneficial private partnerships.

Mr. Doxey asked the Commission to consider studying this issue.

MOTION: Mr. Harward moved that the chairs develop a schedule for the previous items to be studied by the Commission. The motion passed unanimously.

5. Other Business

Future meetings dates for the Utah Constitutional Revision Commission are scheduled for Friday, June 14, 2002, and Friday, July 12, 2002 at 9:00 a.m. in room 405 of the State Capitol building.

6. Adjourn

Chair Sullivan adjourned the meeting at 11:14 a.m.