

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Friday, July 13, 2001 - 9:00 a.m. - Room 405 - State Capitol

Members Present:

Mr. Alan L. Sullivan,
Chair
Rep. Patrice Arent
Sen. Mike Dmitrich
Ms. Christine Durham
Mr. Byron Harward
Mr. W. Craig Jones
Mr. Morris Linton
Speaker Martin R. Stephens
Mr. Kevin Worthen

Members Excused:

Ms. Jean B. White,
Vice Chair
Rep. Afton Bradshaw
Mr. Mike Christensen
Sen. Dave Gladwell
Mr. Dallin Jensen
Mr. Robin Riggs
Sen. John Valentine

Staff Present:

Mr. Jerry D. Howe,
Research Analyst
Ms. Cassandra Bauman,
Legislative Secretary

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

1. Call to Order and Approval of Minutes

Chair Sullivan called the meeting to order at 9:09 a.m.

2. Revenue and Taxation - Article XIII

Chair Sullivan presented background on the revisions to Article XIII of the Utah Constitution. He emphasized that the revision is intended to make no substantive changes.

Mr. Mark Buchi, Holme, Roberts, & Owens, suggested several clarifications to the draft, which the Chair requested to be presented to the Commission in writing, so that each issue could be thoroughly discussed at a future meeting. Mr. Buchi concluded that:

- (1) the concept of "assessment" in the uniform and equal clause of Section 3 should be combined with the uniform and equal language of the draft. Mr. Buchi suggested that page 3, lines 91-93 be redrafted to state "Subject to exemptions in this Constitution or in federal law, all tangible property in the State shall be assessed and taxed at a uniform and equal rate in proportion to its just value in money, to be ascertained as provided by statute."
- (2) the term "just value" should be changed to "fair market value."
- (3) page 4, lines 94-96 should read "Each corporation and person in the State shall pay

tax on the real and personal property owned or used by the corporation or person within the boundaries of the State or local authority levying the tax."

He suggested this in order to maintain the requirement that the owners of the property pay taxes on the property. He identified an issue that the term "or used" could cause double taxation.

- (4) page 5, line 132 should be changed to "places of burial not held or used for commercial purposes;" since burial plots are not taxed, but they could be considered held for private use.
- (5) page 5, lines 134-136 eliminates the current language of all the types of distribution systems (reservoirs, power generators, transmission lines, canals, flumes, etc). This draft uses the term "distribution facilities" which may not be broad enough to cover all of the systems in the current language.
- (6) page 5, lines 150-152 needs to be written to clarify that the property owned by the "person who was killed in action or died in the line of duty in the military services of the United States or the State" is tax exempt, not the "property owned by the surviving spouse." He expressed concern that as drafted, the language may exempt property purchased by the surviving spouse after the death of the spouse who was killed in the line of duty.
- (7) page 6, line 159-161 deletes the term "offsets." This term is necessary to allow the Legislature to use income tax credits, since credits are different from deductions and exemptions.
- (8) page 6, line 159 of the draft replaces "Nothing in this Constitution shall be construed to prevent the Legislature. . . ," of current section 12 with "Subject to limitations in this Constitution, the Legislature may. . . " There is a substantive difference in these clauses, he said.
- (9) page 8, line 236 should be reviewed. He explained that changing the term "law" to "statute" would limit the Tax Commission's authority. He explained that this is an unintended substantive change.

Chair Sullivan thanked Mr. Buchi for the comments and suggestions, and again requested that he submit some written comments so the Commission can focus on each issue at a future meeting.

Mr. Roger Tew, representing the Utah League of Cities and Towns, questioned technical

definitions that might be problematic, when specific exemptions are taken out and summed up under a broader or more narrowly defined term.

Chair Sullivan inquired whether Mr. Tew believed that the State Board of Equalization should be referred to as such, since it is not referenced anywhere else in the Constitution and the responsibilities of the board are not clearly defined in the Constitution. Mr. Tew explained that duties of the city and county boards of equalization are not clearly defined either; however, the concept of a state board that is responsible for equalization is an important concept. He expressed concern for an inadvertent change in tone and tenor of the current constitution.

Mr. David Thomas, Chief Civil Deputy County Attorney, Summit County, representing the Utah Association of Counties, stated that the association had concerns with lines 239-240 on page 8. He stated that the language of Subsection (5), Section 11 of the current Article XIII addresses both the State Tax Commission and county boards of equalization in providing that the Legislature may authorize courts to redetermine decisions relating to revenue and taxation. The Association is concerned that making a separate provision addressing the Legislature's authority to authorize courts to redetermine appeals from county boards of equalization might invite the Legislature to provide for that authority in the future where it has chosen not to do so in the past. He would like to see those provisions combined in the draft. He also questioned the wisdom of allowing county board of equalization decisions to go directly to court without going first to the State Tax Commission. Chair Sullivan stated that this would be a substantive change that the Commission could look into at a later date, but would not be considered for the clarification draft that is now before the Commission.

Mr. Wes Quinton, Vice President, Utah Taxpayers Association, distributed a handout "Revenue and Taxation - Article XIII, Re-organizational, Non-Substantive Draft of Article XIII Taxpayer Areas of Concern."

Mr. Harward explained that the current Constitution states, "the duties imposed upon the State Board of Equalization by the Constitution shall be performed by the State Tax Commission." He stated that there are no duties imposed by the current constitution, but now they are given a duty under the draft language. He referred to page 8, lines 223-224, that states the State Tax Commission shall "act as the State Board of Equalization in adjusting and equalizing the evaluation and assessment of property among and within the counties." He inquired whether this language gave the State Tax Commission the direct authority to equalize among or within the counties.

3. Vertical Revenue Sharing - Article XIII, Section 5

This item was postponed to a future meeting date.

4. State School Fund - Article X, Section 5

Mr. Steve Cruz, Executive Director, Utah Foundation, explained that the State School Fund is unlikely to contribute more than three percent of the education budget under any investment strategy. He stated that caution should be exercised in looking toward future growth rates and referenced a Utah Foundation Research Report from March/April 2000 that assumed three increasingly optimistic investment strategies, all of which concluded that the State School Fund will not contribute a significant portion to overall education budget.

Mr. Richard Ellis, Chief Deputy State Treasurer, distributed a handout, "Article X, Section 5 Proposed Amendments." He clarified the need for the language to be broadened to include not only interest but also dividends. He explained that the current constitution requires that an amount equal to the inflation rate for the previous year be reinvested into the Fund. Because growth rates are producing a large income, and since an equity strategy is in place to help the Fund grow, it is not necessary to maintain the inflation protection clause, he said. He explained that the proposed 50 percent minimum threshold of equities would help to ensure funds for future use, but he would not push for a minimum threshold because the highest priority is to delete the 1994 amendment.

Mr. Melvin Brown, Former Speaker of the House and Sponsor of the 1994 amendment, explained that historically the fund invested in fixed assets only. The 1994 amendment was needed to ensure that the fund would at least keep up with inflation. He explained that depreciation of the dollar amount over many years is not accounted for when investing into fixed assets. He further explained that the Fund is growing, but the only amount that can be distributed into education is the interest and not the dividends.

Mr. Brown explained that the permanent fund is not the only source of revenue for schools. He said that 30 percent of the private land base in Utah was once school trust lands. He explained that the annual tax revenue contributions from trust lands are another source of revenue for schools.

Mr. Kimo Esplin, Chief Financial Officer, Huntsman Corporation, explained to the Commission that a minimum threshold is needed to maintain growth in the Fund.

Rep. Matt Throckmorton explained his proposed legislation "Resolution Directing Use of Interest on State School Fund," stating that the intent is to allow the funds to be sent to the schools directly, removing the State Board of Education/State Office of Education from the process. He stated that the most important part of the amendment is that the moneys would be spent on "student academic achievement."

MOTION: Rep. Arent moved to adopt the proposed amendment to add "and dividends"

wherever interest is mentioned. The motion passed unanimously with Speaker Stephens absent for the vote.

5. State and Local Government Sale/Leaseback Exemption - Article XIII, Section 2

Chair Sullivan reviewed the "Proposed Property Tax Exemption for Property of State or Local Government Subject to Sale/Leaseback Financing Transaction" as it was distributed in a prior meeting. He explained for the record that he represents the Utah Transit Authority, that he has advised them on this issue, and hence, would not be voting on this issue. He said that the issue before the commission is to consider exempting sale/leaseback transactions from property taxes and that he wanted it to be clear that he has served as counsel on this issue for the Utah Transit Authority.

Mr. Kent Michie, Vice President, Zion's National Bank, stated that this concept is an example of resourcefulness and should be used for the state's advantage.

Mr. Darrel "Buzz" Larsen, bond counsel, Chapman & Cutler, explained how sale/leaseback transactions occur. He stated that the state or local government sells a capital asset to a private owner, the owner then simultaneously leases the asset back to the governmental entity. In that leaseback, he explained, there is the obligatory lease payment that includes a purchase option. He said that the money used to buy the property is set aside and invested for use to pay the lease and purchase option. This type of transaction in Utah cannot work without extending the property tax exemption to private owner. That is why a constitutional amendment is necessary.

Mr. Harward asked about bankruptcy or other possible incidents. Mr. John Hackett, Senior Vice President, Capstar Partners, explained that there are safeguards against such problems taken into consideration before the sale. He stated that the contracts clarify that the property is not to be set against a loan or used as any collateral. He stated also that the corporations involved in these transactions are unlikely to experience bankruptcy.

Mr. Hackett provided background on sale/leaseback transactions. He stated that the transaction has just recently moved out of the transit field into other fields. He said that a number of states have taken legislative action to allow these transactions to occur. Some of those states include: California, Illinois, New Jersey, Texas, and Washington. He explained that Utah is unique because a Constitutional amendment is required to make the property exemption extend to non-governmental entities.

Mr. Harward inquired about how a school district would close a school or other building if it were involved in this type of transaction. Mr. Hackett stated that there are a number of options in the contract to deal with these situations, but emphasized that a facility that would not be threatened by this type of incident is preferred for sale/leaseback transactions. He concluded that

these leases are not permanent, there are purchase options and other mechanisms to end the leases.

The Commission decided to hear further discussion on this issue, inviting representatives from the State Tax Commission and Attorney General's Office to testify at a future meeting.

Mr. Ken Montague, Chair, Utah Transit Authority (UTA), stated that this is an innovative technique that would be very beneficial to UTA.

6. Other Business

Chair Sullivan explained that a number of members of the Commission have reached the maximum number of years that they are statutorily allowed to serve on the Commission. He asked those members to remain on the Commission until their replacements have been appointed.

Mr. Worthen explained the efforts of a search committee that consists of himself, Mr. Linton, and Mr. Sullivan. He stated that they are contacting several universities to find individuals who have a knowledge of the Constitution and its history. He also stated that the Commission has to take a number of other issues into consideration, such as geographical location and political affiliation.

The next meeting will be held Friday, August 10, 2001 at 9:00 a.m. in room 405.

7. Adjourn

Chair Sullivan adjourned the meeting at 12:10 p.m.