

**MINUTES OF THE
UTAH CONSTITUTIONAL REVISION COMMISSION**
Friday, August 24, 2001 - 9:00 a.m. - Room 405 - State Capitol

Members Present:

Mr. Alan L. Sullivan, Chair
Ms. Jean B. White, Vice Chair
Mr. Mike Christensen
Rep. Greg J. Curtis
Mr. W. Craig Jones
Mr. Morris Linton
Mr. Robin Riggs
Sen. John Valentine
Mr. Kevin Worthen

Members Excused:

Rep. Patrice Arent
Sen. Mike Dmitrich
Ms. Christine Durham
Sen. Dave Gladwell
Mr. Byron Harward
Mr. Dallin W. Jensen
Speaker Martin R. Stephens

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 can be found at <http://www.image.le.state.ut.us.imaging/history.asp> or contact the Office of Legislative Research and General Counsel.

1. Call to Order and Approval of Minutes

Chair Sullivan called the meeting to order at 9:08 a.m. He welcomed Rep. Greg J. Curtis as a newly appointed House member of the Commission.

MOTION: Rep. Arent moved to approve the minutes of July 13, 2001 with some technical amendments. The motion passed unanimously with Mr. Linton absent for the vote.

2. State School Fund - Article X, Section 5

Mr. Robert H. Rees, Associate General Counsel, Office of Legislative Research and General Counsel, explained that Rep. Throckmorton was in the process of reworking his draft legislation relating to specifying the use of interest from the State School Fund and would not be present at this meeting. Mr. Rees indicated that Rep. Throckmorton would likely return at a later meeting to present his reworked legislation to the Commission.

Mr. Edward T. Alter, Utah State Treasurer, stated that he is working with a legislative sponsor to have the proposal regarding inflation reinvestment of State School Fund interest prepared in legislative format. He expects the proposed legislation to be ready for presentation to the Commission at its next meeting.

3. Revenue and Taxation - Article XIII

Chair Sullivan provided background on the Commission's efforts to rewrite Article XIII.

He emphasized that the purpose of rewriting the article is to clarify and better organize it and not to make any substantive changes. He stated that after the last Commission meeting he asked staff to go through the Commission's draft to determine if there were any changes that needed to be made to ensure that the substance of the current Article XIII is accurately reflected in the draft. He reported that staff did as he asked and found several instances where changes were needed. He asked Mr. Rees to lead the Commission through those changes.

In explaining the change to Subsection (1) of Section 2 of the draft, Mr. Rees discussed the use of the terms "law" and "statute." The previous draft had in places replaced "law" in the current Constitution with "statute." If it was clear that the intent of the current Constitution is that the Legislature act by statute, then "statute" was used in the draft. If the intent of the current Constitution was not clear, then current Constitution's use of the word "law" was used in the draft.

MOTION: Mr. Worthen moved to adopt the change in Section 2, Subsection (1) of the rewrite. The motion passed unanimously.

Mr. Rees explained that the language added to Section 2, Subsection (6), "or uniform statewide rates of assessment or levy," is in the current Constitution but was omitted from the draft. Mr. Gary Thorup, attorney, Holme, Roberts and Owen, stated that the word "levy" should be modernized. He suggested using "tax" or "taxation."

Mr. Rees stated that "assessment" has multiple meanings and suggested that the Commission consider substituting for it language that is more precise. He stated that the word assessment is in the current Constitution.

Chair Sullivan suggested the Commission adopt the language "or uniform statewide rates of assessment or taxation. . . "

MOTION: Mr. Riggs moved to adopt the suggested language in Section 2, Subsection (6).

Sen. Valentine questioned if that language was proper. Mr. Roger Tew, attorney, stated that the original provision was intended to give flexibility to the Legislature. He stated that the provision does not contemplate an ad valorem tax. He also commented that definitions of terms have progressed over the years and words that have a commonality to them do not necessarily have the same definition. He said that "assessment" may not be able to be replaced without a possibility of changing the intent of the article.

Mr. Thorup clarified that his suggestion to place the language into Section 2, Subsection (6) that was omitted in the previous draft was to respect the concept of making no substantive

changes and that changing the word "levy" to "taxation" was an attempt to modernize the language as the Commission has been attempting to do. He stated that he does not feel that changing "levy" to "taxation" would be a substantive change.

In reference to the "uniform statewide rates of assessment or levy" language omitted from the previous draft, Chair Sullivan explained that many concepts in the current Article XIII are unclear but that those concepts need to be preserved to prevent any unintended substantive changes.

SUBSTITUTE MOTION: Sen. Valentine moved to adopt the language of Section 2, Subsection 2(6) as contained in the draft prepared by staff. The motion passed unanimously.

Mr. Rees stated that Section 2, Subsection (2)(a) of the current Article XIII creates an absolute exemption for property of school districts, but that the previous draft included school districts with other political subdivisions whose property located outside the political subdivision's boundaries may be subject to taxation. He explained that the changes in Section 3, Subsections (1)(c), (d), and (e) are intended to make the draft accurately reflect the current constitutional provision.

MOTION: Mr. Riggs moved to adopt the language of Section 3, Subsections (1)(c), (d), and (e) as contained in the 8-17-2001 draft. The motion passed unanimously.

In explaining the changes made in the draft to Section 3, Subsection (1)(i), Mr. Rees explained that the current Constitution contains a discreet list of property that is subject to that exemption. He stated that in trying to draft language that would lump those properties together so as to streamline the language, it was difficult to do so without being over or under inclusive. He also explained that the previous draft left out a concept contained in the current Constitution. That concept is to extend the exemption to property that is owned by a corporation to irrigate land that is owned by an individual member of the corporation. He explained that Section 3, Subsection (1)(i) was rewritten to reinstate the list of properties subject to the exemption and to reinstate the concept regarding the individual member of a corporation.

Sen. Lyle Hillyard, Utah State Senate, suggested that the Utah Farm Bureau review the article to ensure the accuracy of the interpretation for this subsection.

MOTION: Mr. Jones moved to adopt the language of Section 3, Subsection (1)(i) of the 8-17-2001 draft. The motion passed unanimously with Rep. Arent absent for the vote.

Mr. Rees stated that language was omitted in the previous rewrite regarding property "present in the State on January 1." He stated that Subsections (2)(a)(i) and (ii) of Section 3 are changed to reinsert that language.

MOTION: Mr. Worthen moved to adopt the language of Section 3, Subsections (2)(a)(i) and (ii) as contained in the 8-17-2001 draft. The motion passed unanimously with Rep. Arent absent for the vote.

Mr. Rees explained that Section 3, Subsection (2)(a)(v) was reworded to reflect more accurately the language of the current Constitution. He stated that property used as household furnishings, etc., may have a different meaning from household furnishings, etc., used in maintaining a home.

There was a discussion as to whether furnishings, etc. in a second home would be subject to the exemption. Mr. Thorup stated that current practice is that second home furnishings, furniture, and equipment are not being taxed. He said that this could imply that the interpretation of the current Constitution extends to furnishings of a second home.

MOTION: Sen. Valentine moved to adopt the language of Section 3, Subsection (2)(a)(v) as stated in the 8-17-2001 draft. The motion passed unanimously.

Mr. Rees distributed "Article XIII, Section 2, Subsection (9) - Actual Language (indenting and emphasis added)" and explained that the handout demonstrates his interpretation of current Article XIII, Section 2, Subsection (9) that has guided his rewrite of Section 3, Subsections (2)(a)(vi) and (vii) of the current draft.

Chair Sullivan stated that the USTC (Utah State Tax Commission) suggested that an "unmarried spouse" is different than a "spouse who has not remarried" and that the Commission make the appropriate change to accurately reflect the language of the current Constitution.

MOTION: Mr. Riggs moved that the Commission adopt the draft language of Section 3, Subsections (2)(a)(vi) and (vii), with the change that Subsection (2)(a)(vii) read "property owned by the unmarried surviving spouse or the minor orphan of a person who. . ."

Mr. Thorup indicated that property that was owned by the person who was disabled or injured in action is not the only property which is implied to be exempt. He stated that the surviving unmarried spouse or minor orphan that purchases property after the person dies would have the exemption on that property recently purchased as well. He explained that this is a possibility consistent with the current Constitution, but indicated that the Commission may wish to address this issue when considering substantive changes after the clarification draft is completed. He also questioned whether the exemption would provide for trusts or utilization of other state planning tools.

The Commission discussed the language of the veteran's exemption and the possible unintended abuses that could occur because of that language. Ms. Pam Hendrickson, Chair,

USTC, responded to the question of whether abuses were occurring, stating that to her knowledge there are no such abuses.

The motion passed unanimously with Sen. Valentine absent for the vote.

MOTION: Mr. Christensen moved to adopt the language of Section 3, Subsection (2)(b) as stated in the 8-17-2001 draft. The motion passed unanimously.

Returning to Subsection (2)(a)(iv) of Section 3 of the 8-17-2001 draft, Mr. Rees explained that the current Constitution states "the fair market value of residential property, as defined by law" as opposed to the language of the current draft "by statute." Mr. Worthen questioned whether the USTC defined residential property in rule. Ms. Hendrickson stated that a rule did exist and that it was not more narrow or broad than the statute. Chair Sullivan suggested that the USTC review the issue and bring any concerns regarding this section back to the Commission.

Mr. Rees explained that Section 4, Subsection (1) was rewritten from the previous draft to make the provision consistent with the current Constitution. Section 12 of the current Article XIII states that nothing in the Constitution should be construed to prevent the Legislature from imposing any other tax. The previous draft misstated that provision and made the Legislature's ability to impose other taxes subject to other constitutional provisions. Mr. Rees also stated that "and offsets" was added into this draft because that language is in the current Constitution. He stated that the change in the present rewrite reflects the language in the current Constitution.

MOTION: Mr. Linton moved to adopt the language of Section 4, Subsection (1) of the 8-17-2001 draft. The motion passed unanimously.

Mr. Thorup questioned if the word "offsets" should be changed to "credits". He explained that the change could modernize the language further. He stated that he would review the possibility of this change and report back to the Commission.

Mr. Rees explained that the previous draft of Section 4, Subsection (2) differed in a subtle way from the current constitutional provision and that the language in the 8-17-2001 draft is consistent with the current Section 12, Subsection (2).

MOTION: Mr. Linton moved to adopt the language of Section 4, Subsections (2)(a) and (b) of the 8-17-2001 draft. The motion passed unanimously.

Mr. Rees stated that Section 5, Subsection (2)(a) of the previous draft suggested that the appropriation or expenditure would not be allowed if either exceeded the total tax provided by statute, while the current Constitution states that an appropriation or expenditure may not happen only if the State's expenditure exceeds the tax provided for. He explained it was enough of a

difference that it probably ought to be changed. The Commission discussed whether the making of an appropriation was the same as the authorizing an expenditure and concluded that there may be a difference between them so that the two phrases should not be consolidated into one.

MOTION: Mr. Worthen moved to adopt the language of Section 5, Subsection (2)(a) as contained in the current draft. The motion passed unanimously.

Mr. Rees stated that Section 5, Subsection (4) was rewritten to refer to Article X, Section 5, Subsection (5)(a) rather than to try to restate what is contained in that provision. He also said that Subsection (4) was modified to return to the current constitutional language of "purpose" because there may be a subtle but nonetheless substantive difference between "benefit" and "purpose," particularly in light of the case law.

MOTION: Mr. Christensen moved to adopt the language of Section 5, Subsection(4). The motion passed unanimously.

With respect to Section 5, Subsection (6), Mr. Rees said that "other charges" had been omitted from the previous draft and so was included in the 8-17-2001 draft. He explained that Subsections (6)(a) and (b) were rewritten to be consistent with the current Constitution.

MOTION: Mr. Linton moved to adopt the language of Section 5, Subsection (6). The motion passed unanimously.

Mr. Thorup stated that the omission of the word "all" at the beginning of Section 5, Subsection (5) could be interpreted as a substantive change. He stated that without "all," a court might conclude that only some revenue is subject to the earmarking provision. He also stated that the present rewrite states "property tax on intangible property" whereas the current Constitution states "tax on intangible property." Chair Sullivan indicated that the draft language indicates an intent to include all revenue and expressed concern that if "all" is included in this instance, other provisions of the Constitution could be susceptible to misinterpretation if they did not similarly include the word "all."

MOTION: Mr. Linton moved to rewrite Section 5, Subsection (5) to delete "a property tax" after "Revenue from" and to insert "taxes" in place of the deleted language. The motion passed unanimously.

Mr. Rees explained that an affirmative statement that a state tax commission shall exist was needed in Section 6, Subsection (1) of the draft to make that provision consistent with the current Section 11, Subsection (1)..

MOTION: Rep. Arent moved to adopt the language of Section 6, Subsection (1). The

motion passed unanimously.

Mr. Thorup referred the Commission to Subsection (7) of Section 5 of the draft and stated that Section 14 of the current Article XIII refers to both fees and taxes on tangible personal property.

MOTION: Mr. Worthen moved to amend Section 5, Subsection (7) of the present rewrite to read "Fees and taxes on tangible personal property. . ." The motion passed unanimously with Sen. Valentine absent for the vote.

Mr. Rees stated that a subtle, yet important, change from the previous rewrite is the exclusion of the wording "and within" from Section 6, Subsection (3)(c). He explained that the current Constitution gives the State Tax Commission authority to adjust and equalize among the counties but allows it to equalize and adjust within counties only "under such regulations in such cases and within such limitations as the Legislature may prescribe." He stated that that change and the others in Subsections (3)(c) and (d) make the draft language consistent with the current Constitution.

Mr. Rees explained that the language concerning the State Board of Equalization is stricken from the draft in Section 3, Subsection (3)(c). He stated that the current Constitution authorizes the USTC to act as the State Board of Equalization, but the State Board of Equalization is not referenced in the Constitution. He said that the current draft gives to the State Tax Commission the authority that a State Board of Equalization would have had to adjust and equalize.

MOTION: Rep. Arent moved to adopt the language of Section 6, Subsection (3) as contained in the 8-17-2001 draft. The motion passed unanimously with Sen. Valentine and Mr. Christensen absent for the vote.

Mr. Rees explained the changes to Section 6, Subsection (4) and Section 7, Subsection (4). In both cases, "relating to revenue and taxation" language had been omitted from previous drafts. He explained that omitting that language could arguably expand the Legislature's authority to allow courts to review other decisions of the State Tax Commission and county boards of equalization relating to such things as hiring and firing.

Mr. Thorup stated that omission of the language "Notwithstanding the powers granted to the State Tax Commission in this Constitution" could open the argument of whether tax courts are Constitutional. He stated that the language was very carefully considered and that he would hesitate to change it. He referenced the *Evans v Sutherland* decision. There was discussion that including the language Mr. Thorup suggested is redundant and unnecessary because the entire provision would be meaningless unless the authority to authorize courts to review decisions of the

State Tax Commission and county boards of equalization trumped other constitutional provisions giving those bodies authority.

MOTION: Rep. Arent moved to approve the language of Section 6, Subsection (4) and Section 7, Subsection (4). The motion passed with Mr. Christensen absent for the vote.

Mr. Rees indicated that, except for the change from "exercise" powers to "have" powers discussed in connection with another section, only technical changes were made in Section 7, Subsection (3).

MOTION: Rep. Arent moved to adopt the language of Section 7, Subsection (3). The motion passed unanimously with Mr. Christensen absent for the vote.

Mr. Thorup stated his belief that Section 7, Subsection (1) contains a substantive change because it changes "board of county commissioners" in current Section 11, Subsection (6) to "members of the elected legislative body of the county." County commissions exercise both legislative and executive functions, while county legislative bodies exercise only legislative functions. Mr. Worthen stated that this may be the only instance where, in spite of the Commission's efforts to prepare a rewrite without substantive changes, a substantive change is required because the "board of county commissioners" model no longer reflects reality.

Ms. Mary Ellen Sloan, Salt Lake County District Attorney's Office, suggested replacing the word "in" with "within" in Section 7, Subsection (2).

MOTION: Sen. Valentine moved to amend Section 7, Subsection (2) to read "Each County Board of Equalization shall adjust and equalize the valuation and assessment of the real and personal property within its county, subject to the State Tax Commission's regulation and control as provided by law." The motion passed unanimously with Mr. Christensen absent for the vote.

MOTION: Mr. Worthen moved to accept the entire draft of the rewrite of Article XIII as amended. The motion passed unanimously with Mr. Christensen absent for the vote.

Chair Sullivan stated that this draft is subject to change and that the Commission will hear testimony from other agencies regarding the rewrite of Article XIII at future meetings.

4. Presentation of Plaques of Appreciation

Chair Sullivan expressed appreciation for Dr. Jean Bickmore White, Mr. W. Craig Jones, Mr. Richard V. Strong, and Rep. Afton Bradshaw for their years of devoted service to the Commission. He explained the contributions that each member brought to the Commission. Mr.

Jones served six years with the Commission. Dr. White and Rep. Bradshaw had both served the full term of 12 years. Mr. Strong, serving as the ex-officio member from the Office of Legislative Research and General Counsel, had served 15 years with the Commission.

5. Vertical Revenue Sharing - Article XIII, Section 5

This item will be discussed at a future meeting.

6. Other Business

Staff will contact Commission members regarding the next meeting of the Constitutional Revision Commission as well as an all-day retreat.

Chair Sullivan presented an update on the Appointment Subcommittee progress; interviewing will begin in the next couple of weeks.

7. Adjourn

Chair Sullivan adjourned the meeting at 11:57 a.m.

