LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

An Analysis of
1968 BALLOT PROPOSALS

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LEGISLATIVE COUNCIL

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In conformance with the provisions of Chapter 123, Session Laws of 1953, which requires the Legislative Council, among other duties, to "...examine the effects of constitutional provisions..." there is presented herein a copy of its analysis of the 1968 ballot proposals. In addition to listing the PROVISIONS and COMMENTS relating to each such proposal, there are also listed the arguments most commonly given for and against each.

It should be emphasized that the LEGISLATIVE COUNCIL takes NO position, pro or con, with respect to the merits of these proposals. In listing the ARGUMENTS FOR and the ARGUMENTS AGAINST, the Council is merely putting forth the arguments most commonly offered by proponents and opponents of each proposal. The quantity or quality of the FOR and AGAINST paragraphs listed for each proposal is not to be interpreted as an indication or inference of Council sentiment.

COLORADO GENERAL ASSEMBLY

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LETTER OF TRANSMITTAL

September 3, 1968

This analysis of the constitutional amendments to be voted upon at the 1968 general election has been prepared by the Colorado Legislative Council as a public service to members of the General Assembly and to the general public pursuant to 63-4-3, Colorado Revised Statutes 1963.

The provisions of each proposal are set forth, along with general comments on their application and effect. Careful attention has been given to arguments both for and against the various proposals in an effort to present both sides on each issue. While all arguments for and against the proposed amendments may not have been included, the major ones have been set forth, so that each citizen may decide for himself the relative merits of each proposal.

Respectfully submitted,

Representative C. P. (Doc) Lamb
Chairman

CPL/mp

BALLOT TITLES

Constitutional Amendments Submitted by the General Assembly

1. An amendment to article IV of the constitution of the state of Colorado, providing for the election of the governor and lieutenant governor jointly by the casting by each voter of a single vote applicable to both offices.

2. An amendment to article X of the constitution of the state of Colorado relating to the exemption of publicly owned real property from taxation.

3. An amendment to article XIV of the constitution of the state of Colorado, relating to the compensation of county officers.

AMENDMENT NO. 1 -- JOINT ELECTION OF GOVERNOR AND LIEUTENANT GOVERNOR

Provisions:

Amendment No. 1 would provide for the joint election of Colorado's governor and lieutenant governor. Under the amendment each voter at the general election would cast a single vote applicable to both offices. This would eliminate the possibility of having a governor and lieutenant governor from opposite political parties.

Comments:

At the present time the governor and lieutenant governor of Colorado are elected separately. Party nominees for the respective offices do not usually campaign as a team, and it is not uncommon for the voters to elect a governor from one major political party and a lieutenant governor from the other. This has happened in four of the nine gubernatorial elections held in Colorado since the end of World War II.

A Legislative Council study committee in 1966 recommended adoption of Amendment No. 1 to change the present method of electing the governor and lieutenant governor. After studying the role of the lieutenant governor in state government and looking for possible means of strengthening the office, the committee concluded that the governor and lieutenant governor should run on the same ticket in order to assure that the chief executive officer and his immediate successor would be of the same political party. The committee felt that this proposal could result in the lieutenant governor assuming a more active role in the executive branch.

Amendment No. 1 deals only with a joint ticket for the November general election; it makes no mention of party designations or primary election procedures. Since changes in the method of designating and nominating party candidates for lieutenant governor do not require constitutional revision, the General Assembly will decide later what statutory revisions are needed along these lines.

Other states which elect the governor and lieutenant governor jointly include Alaska,1/ Connecticut, Hawaii, Massachusetts, Michigan, New Mexico, New York, Pennsylvania, and Wisconsin. The joint election provision was the result of recent constitutional revision in several of these states.

1/ In Alaska the successor to the governor is the Secretary of State, who is elected jointly with the governor.

Popular Arguments For:

1. Amendment No. 1 would eliminate the independent election requirement which has been one of the greatest hindrances to making the lieutenant governor an effective executive officer with a responsible role on the governor's administrative "team." A joint election requirement would encourage the governor to make use of the talents of the lieutenant governor on matters that he cannot personally supervise.

2. Although the lieutenant governor succeeds to the powers and duties of the governorship in case of the governor's death or resignation, the present method of selection does nothing to encourage continuity of policies or programs when succession occurs. Under Amendment No. 1 there would be more assurance of such continuity because the lieutenant governor, having been elected as half of the team, would be personally committed to the governor's program.

3. The constitution provides that when the governor is absent from the state, the powers and duties of the office devolve upon the lieutenant governor. Serious frictions develop, however, if the lieutenant governor attempts to exercise more than limited ceremonial and ministerial powers while the governor is out of the state. This is especially true when the lieutenant governor is not of the same political party as the governor. Amendment No. 1 would reduce the likelihood of such frictions by requiring the joint election of the governor and lieutenant governor from the same political party.

4. At the national level we have traditionally followed the practice of electing our president and vice president as a team. To elect a president of one party and a vice president of another would be considered a step backward in terms of governmental structure and efficiency. Why then do we continue to permit the election of a governor and lieutenant governor of opposite political parties at the state level?

5. Because the office of lieutenant governor is often viewed as a stepping stone to higher political office, too much weight is now given to the candidate's personal potential as party leader, vote-getter, and future office holder. This amendment would encourage the parties to shift their emphasis in selecting nominees so that more attention can be given to the candidate's ability to complement the governor and his program.

Popular Arguments Against:

1. The present constitutional provision for the separate election of the lieutenant governor encourages stronger candidates from both parties -- men who have the necessary leadership qualities to be governor if succession occurs. Under the proposed amendment, the lieutenant governor could easily become an errand boy for the governor. If the lieutenant governor were expected to subordinate his

views to those of the governor, the state's most promising leaders would no longer be attracted to the office.

2. Amendment No. 1 would deprive the voters of the right to select the man who will take over the state's highest office in case of the governor's death or resignation. If lieutenant governor candidates are chosen by the political party conventions, the ordinary voter will have no opportunity to influence the choice, either at the primary election or the general election.

3. The proposed joint election procedure might lead the party conventions to overlook the persons best qualified for the office of lieutenant governor, in their search for candidates who will add to a geographically and politically balanced ticket. It is well known that political balance has traditionally been one of the major factors in the selection of vice presidential candidates at the national level.

4. Election of the governor and lieutenant governor as a team would destroy the lieutenant governor's independence. As an independently elected official, the lieutenant governor has sometimes undertaken to serve as a sort of watchdog in government -- particularly when he is not of the governor's political party. If the office of lieutenant governor were stripped of its independent status and made an adjunct to the governor's office, the voters would not be able to rely on the lieutenant governor to help keep the governor "on his toes."

5. Joint election of the governor and lieutenant governor from the same political party offers no real solution to the problem which arises when the governor is out of the state. The amendment would not guarantee that the lieutenant governor would be included in the day-to-day activities of the administration, and since the governor would still be responsible to the voters for the conduct of his office, he probably would not want the lieutenant governor to act in anything but a ministerial capacity during his absence.

6. Amendment No. 1 does not make all the constitutional changes necessary to clarify the role of the lieutenant governor. Changing the method of selection is not enough. Other constitutional revisions (such as providing that the governor will remain governor while absent from the state and removing the lieutenant governor as president of the senate) should also be included when the issue is placed before the voters.

AMENDMENT NO. 2 -- PAYMENTS IN LIEU OF TAXES ON PUBLICLY OWNED PROPERTY

Provisions:

Amendment No. 2 would:

1. Clarify the applicability of the constitutional provision on property tax exemptions for public property, by expressly exempting property owned by "quasi-municipal" corporations. (At present the constitution exempts property of the state, counties, cities, towns, other municipal corporations, and public libraries.)

2. Permit the General Assembly to require the making of payments in lieu (but not in excess) of property taxes on real property owned by the state, counties, cities, towns, and other municipal and quasi-municipal corporations and public libraries, to the extent such property is not used for a public purpose.

Comments:

In 1965 the Colorado Supreme Court declared unconstitutional an attempt by the General Assembly to impose "school fees" in lieu of taxes on land owned by the state game and fish commission. The court found that such fees were in violation of article X, section 4 of the Colorado Constitution, which provides that publicly owned real and personal property shall be exempt from property taxation.

Amendment No. 2 is a proposal to modify the constitutional prohibition against taxing public property. Under the amendment the General Assembly would be empowered to require payments in lieu of taxes on publicly owned real property, insofar as such property is not used for a public purpose. In-lieu payments would still be prohibited for personal property and for real property which is used for a public purpose.

The term "public purpose" is not defined in the amendment and legal authorities are in conflict as to what it may include. However, it is generally agreed that leasing to a private lessee is the most common non-public use for publicly owned lands. Thus the agencies most likely to be affected by the amendment are the State Board of Land Commissioners, the Colorado Game, Fish, and Parks Commission, and the Denver Board of Water Commissioners and water boards for other municipalities. All of these agencies lease publicly owned lands to private lessees.

The heaviest financial effect could be on the state-owned school lands leased by the State Board of Land Commissioners -- assuming the General Assembly included these lands in the implementation of the amendment. Payments in lieu of taxes on state school lands could change the distribution of the Public School Income Fund among the

counties, if the fees in lieu of taxes were not passed on to the lessee.

The amendment expressly mentions property tax exemptions for "quasi-municipal" corporations so that there will be no question about the General Assembly's authority to require in-lieu payments from special districts, water boards, and housing authorities. As a matter of practice, most so-called quasi-municipal corporations already enjoy tax exempt status under the present constitutional language.

It should be noted that the amendment itself does not automatically impose fees in lieu of taxes or cover the legislative or administrative details related to such fees. Decisions on implementation would be up to the General Assembly.

Amendment No. 2 in no way changes the legislative authority to tax or exempt property owned by churches, schools, or charitable organizations. Only publicly owned property would be affected by the amendment.

Popular Arguments For:

1. The Game, Fish, and Parks Commission, the State Board of Land Commissioners, the Denver Board of Water Commissioners, and other state and local agencies hold title to millions of dollars worth of tax exempt real property around the state. Since none of this property can be included in the property tax base, an additional burden is placed on the local taxpayers of the counties in which the land is located. Local taxpayers are forced to pay higher taxes in order to compensate for the smaller tax base. This proposed amendment offers relief for local property taxpayers by allowing schools, counties, and municipalities to receive in-lieu payments on publicly owned property which is leased out for private use.

2. Tax exemptions for public property have traditionally been supported on the theory that a governmental unit does not have the right to tax the public functions of other governmental units, i.e., the power to tax is the power to destroy. This line of reasoning is inapplicable where public property is leased to private individuals for private use. Insofar as non-public purposes are involved, there is no reason why public property should not carry its fair share of the tax load.

3. Lessees of publicly owned property benefit from county, municipal, and school district services the same as persons occupying privately owned property, yet neither they nor the governmental units from whom they lease are contributing anything toward the cost of those services. Under the provisions of the proposed amendment, the General Assembly could remedy this situation and establish fees commensurate with the benefits received.

4. Fees imposed by the legislature under this amendment would in most instances be paid by lessees, either directly or through increased rentals. The governmental units owning the property would not be expected to devote public funds to this purpose except in a few cases where the non-public use involves something other than leasing.

5. Many agencies of the federal government have accepted their responsibility to compensate for tax losses due to federal ownership of property. School districts and other local taxing units have benefited from federal payments in lieu of taxes for many years. The voters of Colorado should remove the outmoded provisions of our state constitution which prevent our state and local governments from undertaking similar commitments.

6. The provisions of Amendment No. 2 protect public property owners and their lessees by stating that the legislature cannot require in-lieu payments higher than what the taxes would be if the property were taxable. The fees could be set at a lower level if desired.

Popular Arguments Against:

1. Amendment No. 2 would actually accomplish very little because it affects only public property which is not used for a "public purpose." It would not reach the bulk of the public property for which tax exemptions have been criticized. Those Game, Fish, and Parks lands which are used for public purposes would remain tax exempt under the amendment. The same is true of property used in connection with municipally operated "proprietary" activities such as electric power and transportation in competition with private industry. Tax exemptions for all such properties would be continued on the basis of the "public purpose" theory. Thus the amendment would leave unaffected most of the tax exempt public properties which have been the major cause for concern.

2. There is nothing in the amendment to guarantee that the burden of payments in lieu of taxes would be passed on to private lessees. Under the proposed language the agency owning the property might be forced to raise its fees or increase its taxes just to reduce property taxes elsewhere.

3. To require payments in lieu of taxes from one public entity to another is merely to shift public funds between governmental units and add to the general cost of governmental operations. The people of the state should not be asked to take on these unnecessary administrative costs.

4. Our state constitution recognizes that all public agencies share a common concern for the best interests of the state as a whole. It is to this end that intergovernmental taxation of publicly owned property is prohibited. Amendment No. 2 would change the present con-

stitutional recognition of this common concern and would emphasize selected local interests over the state's interest in the efficient administration of recreation and school lands on a statewide basis.

5. Some publicly owned properties require few, if any, local governmental services. In fact, a local entity may gain more than it loses from the presence of publicly owned land within its boundaries. State recreational lands, for example, attract tourists whose presence stimulates the local economy. Local residents too can take advantage of such lands, thereby reducing the need for locally financed recreational facilities. Keeping in mind the net balance of benefits on both sides, it appears that the in-lieu fees possible under Amendment No. 2 could exceed the amount which local taxing units could justify as a charge for services.

AMENDMENT NO. 3 -- COMPENSATION OF COUNTY OFFICERS

Provisions:

Amendment No. 3 would:

1. Authorize the General Assembly to consider other variables in addition to the county's population classification when fixing the compensation of county officers. Factors to be considered would include: (a) population; (b) the number of persons residing in unincorporated areas; (c) assessed valuation; (d) motor vehicle registrations; (e) building permits; (f) military installations; and (g) such other factors as may be necessary to prepare compensation schedules that reflect variations in the workloads and responsibilities of county officers and in the tax resources of the several counties.

2. Permit the payment of county officers' salaries from the county general fund rather than from the fees collected.

3. Make all county officers eligible for raises in 1969 (instead of 1971) by suspending for one year only the prohibition against increasing the compensation of a county officer during his term of office.

4. Prohibit the singling out of a particular officeholder for an increase or decrease in salary, by providing that adjustments in the compensation of any county officer could be made only when adjustments are made for all officers in his county or for his office in all counties.

Comments:

County officers affected by Amendment No. 3 would include all county commissioners, county clerks, treasurers, assessors, sheriffs, and county superintendents of schools (with the exception of the City and County of Denver, where the salaries are fixed at the local level).

The General Assembly has the responsibility for fixing the salaries which counties must pay to the above-listed county officers. The constitution now directs that the counties must be classified and salaries fixed according to county population. In spite of the wide variations in county resources and responsibilities -- even among counties of approximately equal population -- there is no constitutional authority for classifications based on factors other than population. Amendment No. 3 would remove the population restriction and expand the list of variables the General Assembly may consider in preparing county salary schedules.

In addition, Amendment No. 3 would eliminate the longstanding

constitutional provision requiring that the salaries of county officers be paid out of the fees they collect for their services. Under the amendment there would be no direct relationship between fees collected and salaries received. All fees would be paid into the county general fund.

The immediate short-term effect of the proposed amendment is related to the implementation of a law passed by the General Assembly in 1967 to increase the salaries of county officers. The increases are scheduled to become effective on January 1, 1969. However, since most county officers were elected in 1966 and still have two years remaining in their present terms, they are subject to the constitutional prohibition against increasing a public officer's salary during his term of office. In the absence of a constitutional amendment, only a few county officers (those who will begin new terms in 1969 or 1970) will be able to take advantage of the increase in salary before 1971. Amendment No. 3 would make the 1969 increase a one-time exception to the rule; all county officers, regardless of terms, would be eligible for the raise beginning January 1. After 1969, salary adjustments would again be subject to the general prohibition and would be available to a county officer only at the beginning of his next term of office.

Popular Arguments For:

1. The present requirement for basing county salaries solely on population classifications is unduly restrictive and should be changed. Variations in the responsibilities and workloads of county officers are related to many factors other than population. Amendment No. 3 recognizes the need for greater flexibility and permits the General Assembly to consider a variety of factors in establishing county salary levels.

2. The fee system of county officer compensation is archaic and unrealistic. There is no relationship between fees collected and the responsibilities of a county office. All vestiges of the fee system of compensation would be abolished under this proposal.

3. Amendment No. 3 does not in itself increase the salaries of county officers. New raises have already been provided by the General Assembly. The amendment would merely suspend the constitutional provision which keeps county officers from receiving these raises before their terms are up.

4. Most employees of county officials receive annual cost-of-living increases. Why should their elected employers be restricted to one raise every four years?

5. The effect of the recent pay raise will be highly discriminatory among county officials unless Amendment No. 3 is adopted. One county commissioner, for example, might receive higher pay than the others simply because the beginning of his term happens to coincide

with the effective date of the raise. Amendment No. 3 would avoid this problem by making all county officers eligible for the raise at the same time -- January 1, 1969.

Popular Arguments Against:

1. All county officers knew when they were elected that their salaries could not be increased for four years. Now they are asking the voters to give them a break by permitting a raise at mid-term. This is a form of special legislation and could establish an undesirable precedent.

2. The present constitution prohibits local determination of salaries for county officers. Amendment No. 3 would not change this. Under the provisions of the amendment the power to fix county salaries would remain with the General Assembly, even though the counties would pay the bill. As long as salaries are paid out of county funds, the county commissioners should have control over compensation levels for the officers in their respective counties.

3. The use of county population classifications has promoted objectivity, uniformity, and fairness in fixing county officers' salaries. Replacing this system with a subjectively determined combination of factors would increase the pressures on the General Assembly from various counties and county officers seeking preferred treatment.

4. Amendment No. 3 does nothing to encourage changes in our outmoded county government structure. In fact, by facilitating salary adjustments within the present structure, it may be postponing action for the consolidation of county offices and other fundamental improvements to increase the efficiency of county government operations.

5. The proposed amendment is too short-sighted. It permits county officers to receive raises during their terms of office for one time only -- on January 1, 1969 -- and then perpetuates the same old constitutional restrictions for the future. Temporary measures such as this will do little to help solve the county officers' perennial salary problems.

Note on County Superintendent Question

In addition to the above three statewide constitutional amendments, electors in several counties will be voting on the question, "Shall the office of county superintendent of schools for the county of _____ be abolished?". The General Assembly has provided that this question may be placed on the general election ballot in any county by resolution of the county commissioners or by petition of eight percent of the qualified electors in the county.

If a majority of the votes cast on the question are in favor of abolishing the office of county superintendent, the incumbent's term of office will terminate on June 30, 1969. By law his duties and responsibilities will be distributed among other county, school district, and state officials.

Thirty-five counties have already abolished the office of county superintendent of schools and several more counties will be voting on the question in 1968.