

APPENDIX #1**Property Tax Convention Task Force Meetings/Hearings**

<u>Date</u>	<u>Time</u>	<u>Location</u>	<u>Who</u>
Tuesday 9/21/04	2pm-4pm	Rutgers' Winants Hall	Public
Monday 10/4/04	2pm-4pm	Bergen Community College	Public
Wednesday 10/6/04	7pm-9pm	Mercer Community College	Public
Tuesday 10/19/04	2pm-4pm	Camden Community College	Public
Wednesday 10/20/04	2pm-4pm	Rutgers' Winants Hall	Governors and Treasurers
Tuesday 10/26/04	2pm-4pm	Rutgers' Brower Commons	Advocates
Friday 10/29/04	10am-12pm	Rutgers' Winants Hall	Advocates
Tuesday 11/9/04	2pm-4pm	Rutgers' Winants Hall	Scholars and Experts
Friday 11/12/04	2pm-4pm	Rutgers' Winants Hall	Scholars and Experts
Tuesday 11/23/04	2pm-4pm	Rutgers' Winants Hall	Discussion of Delegates and Campaigns
Friday 12/3/04	9:30am-12pm	Douglass' Trayes Hall	Discussion of Public Education, Operations, and Proposals
Friday 12/8/04	2pm-5pm	Douglass' Trayes Hall	Discussion of Scope
Friday 12/10/04	9:30am-12pm	Rutgers' Winants Hall	Discussion of Cost
Friday 12/17/04	2pm-5pm	Douglass' Trayes Hall	Discussion of Draft Report
Tuesday 12/21/04	9:30am-12pm	Rutgers' Winants Hall	Approval of Final Report

Commenters to the Property Tax Convention Task Force
(in order of appearance)

September 21, 2004, Rutgers University, New Brunswick

Governor James E. McGreevey

Robert F. Williams, Distinguished Professor of Law, Rutgers School of Law-Camden

October 4, 2004, Bergen Community College, Paramus

Pat Walsh, Budd Lake

Belinda Wilson, South Orange

J.P. Tristani, Ramsey

George D. Fosdick, Mayor of Ridgefield Park

John Bavazzano, West Caldwell

Irene Sterling, Paterson (Paterson Education Fund)

Joseph Inserra, New Providence (New Jersey Coalition for Property Tax Reform)

Mary Nash, Harrington Park

Helen Lindsay, Ridgewood

John Gibbons, Harrington Park

Dr. Jonathan Hodges, President, Paterson Board of Education

Claudia Monteith, Member, Ramsey Board of Education

Robert Rashkes, West Orange

Carlo DeSantis, Leonia

Clifford Beebe, Lake Hopatcong

Marie Hakim, Clifton

Michael Brinzey, Hillsdale

Chris Allyn, Morristown

Nina Levinson, Fort Lee

Mabel Mendes, East Orange

Sophie Heymann, Member, Closter Borough Council

Sally Dudley, Mendham (Association of New Jersey Environmental Commissioners)

Richard Pederson, Wayne

Jose Martinez, Hackensack

Ilan Plawker, President, Englewood Cliffs Borough Council

Craig H. Rogers, Member, Little Ferry Board of Education

Bernie Sobolewski, Little Ferry

Steve Lonagan, Mayor of Bogota

David Huemer, Deputy Mayor of Maplewood

Robert Paterson, Allendale

Robert Robinson, Teaneck

Gary Paton, Member, Mahwah Township Council

Henry K. Levari, Jr., Buena (Excellent Education for Everyone)

Lou Schwartz, Teaneck
Bill Brown, Glen Rock (New Jersey Coalition for Property Tax Reform)
John Tourian, Hillsdale
Kathleen Caren, West Milford
Norman Gorlin, Bergen County
Vincent J. Frantantoni, Belleville
Rev. Robert C. Morris, Jr., East Orange
Charles Heath, Glen Rock

October 6, 2004, Mercer County College, West Windsor

Michael M. Horn, Mendham (former New Jersey State Treasurer)
Hon. Linda R. Greenstein, Member, New Jersey State Assembly (District 14)
Quincy Battis, Paterson
Tommy Silva, Paterson
Martin Marks, Mayor of Scotch Plains (New Jersey State League of Municipalities)
William Opferman, Trenton
Rose Clevenger, Southampton
Ann N. Taliaferro, Paterson
Mitchell Landis, West Windsor
Bruce Coe, Lambertville (Coalition for the Public Good)
August Scotto, Hamilton
Jack Mozloom, Hamilton
Walter Helfrecht, Upper Freehold
Michele Siekerka, Washington Twp. (Greater Mercer County Chamber of Commerce)
Denise Millington, Trenton
Vince Calcagno, Mayor of Washington Township (Mercer)
Sharon Ransavage, Flemington
Junius Williams, Newark
Michael James, Newark
Richard S. Messner, Upper Freehold
Marilyn Askin (President, AARP New Jersey)
Gerald Nathanson, Upper Freehold
Richard A. Harbourt, West Windsor
Seth Stern, East Brunswick
Steve McPhillips, Robbinsville
Dorothea Koukotas, Robbinsville
Sandy Jarvis, Allentown
Mike Ferrell, Wall
Robert Patten, Mayor of Hightstown
Allen Cohen, Lawrence
Gino Melone, Member, Trenton City Council
Hon. Robert J. Martin, Member, New Jersey State Senate (District 26)
George Martch, West Windsor
Marvin Reed, Princeton Borough

Keith M. Jones (President, NAACP of New Jersey)
Pasquale Maffei, Trenton

October 19, 2004, Camden County College, Blackwood

Hon. Fred H. Madden, Jr., Member, New Jersey State Senate (District 4)
Hon. David R. Mayer, Member, New Jersey State Assembly (District 4)
Judith Cambria, Manahawkin (League of Women Voters of New Jersey)
Edward J. Dodson, Cherry Hill
James Dougherty (President, New Jersey School Boards Association)
Mark Markos (Cherry Hill Committee for Property Tax Reform)
Edwin Klinewski, West Berlin
Eli Hiller, Cherry Hill
George A. Spadaro, Mayor of Edison (New Jersey State League of Municipalities)
Ray Hellings, Cinnaminson
Alexander Esposito, Haddonfield
Creed Pogue, Estell Manor (Coalition for the Public Good)
Patricia Kaletkowski, Long Beach Township
Robert Stockwell, Carneys Point
Blanca N. Gonzalez-Restrepo, Egg Harbor
Richard J. Edgar, Gloucester Township
Richard Floreck, Somerdale
Raymond Pohl, Lakewood
Victor Gilson, Bridgeton
William J. Carlton, Jr., Plainsboro
Dick McCarthy, Sicklerville
Dolores Prokapus, Thorofare
Vincent Grosso, Washington Township (Gloucester)
Eugene St. Lawrence, Member, Gloucester Township Council
Sara T. Davis, Member, Camden City Board of Education
Dr. Joseph Schley, Atlantic City
Billy Carroll, Audubon
Seth Grossman, Somers Point
William Love, Medford
Fernando Powers, Sicklerville
Nick Naum, Cherry Hill
Irene Burke, Cherry Hill

October 20, 2004, Rutgers University, New Brunswick

Hon. Brendan T. Byrne, former Governor of New Jersey
Hon. James J. Florio, former Governor of New Jersey
Clifford A. Goldman, Ph.D., former New Jersey State Treasurer
Michael M. Horn, Esq., former New Jersey State Treasurer

October 26, 2004, Rutgers University, New Brunswick

Philip Kirschner, President, New Jersey Business & Industry Association
Richard Goldberg, President, Commerce and Industry Association of New Jersey
Joan Verplanck, President, New Jersey State Chamber of Commerce
Richard D. Loccke, Esq., Co-General Counsel, New Jersey State AFL-CIO
Jeff Tittel, Director, New Jersey Sierra Club
Judith Cambria, League of Women Voters of New Jersey
Jon Shure, President, New Jersey Policy Perspective

October 29, 2004, Rutgers University, New Brunswick

Edithe A. Fulton, President, New Jersey Education Association
Christopher Kniesler, Dir., Governmental Relations, New Jersey School Boards Ass'n
Lynne Strickland, Executive Director, Garden State Coalition of Schools
David Sciarra, Executive Director, Education Law Center
Peter A. Cantu, 1st Vice President, New Jersey State League of Municipalities
Marilyn Askin, President, AARP New Jersey
Keith M. Jones, President, NAACP of New Jersey
Gregg M. Edwards, President, Center for Policy Research of New Jersey
Hon. Gary S. Stein, Justice of the New Jersey Supreme Court, Retired

November 9, 2004, Rutgers University, New Brunswick

Hon. William Schluter, former Member, New Jersey State Senate (District 23)
Professor Richard Briffault, Vice Dean, Columbia Law School
Professor Myron Orfield, Univ. of Minn., and Senior Fellow, Brookings Institution

November 12, 2004, Rutgers University, New Brunswick

Richard C. Leone, former New Jersey State Treasurer
Professor Elmer Cornwell, Brown University

Papers Presented:

Professor Gerald Benjamin, State University of New York, New Paltz
Martin Perez, Latino Leadership Alliance of New Jersey
New Jersey Association of Counties
Professor A. E. Dick Howard, University of Virginia Law School
Ron Sworen, Mayor of Frenchtown, New Jersey Conference of Mayors
Professor Dawn Clark Netch, Northwestern University Law School
Hon. Alan B. Handler, Justice of the New Jersey Supreme Court, Retired

APPENDIX #3

Property Tax Convention Task Force
Written Communications received thru 12/23/04

Task Force Website

<u>Writer</u>	<u>Pro</u>	<u>Con</u>	<u>Sought information</u>	<u>Total</u>
Businesses	5	4	1	10
Citizens	<u>254</u>	<u>76</u>	<u>41</u>	<u>371</u>
Subtotal	259	80	42	381

Other correspondence

<u>Writer</u>	<u>Pro</u>	<u>Con</u>	<u>Sought information</u>	<u>Total</u>
Business	1	8	0	9
Citizens	<u>63</u>	<u>14</u>	<u>66</u>	<u>143</u>
Subtotal	64	22	66	152

GRAND TOTALS 323 102 108 533

Timeline for Property Tax Reform

<u>Event</u>	<u>By</u>
Task Force Report	Friday, December 31, 2004
Report Considered by Legislators	Tuesday, March 1, 2005
Approve Public Questions for Ballot	Monday, August 1, 2005
General Election on Holding a Convention	Tuesday, November 8, 2005
Delegates Convene	Friday, December 16, 2005
Convention Adjourns	Monday, July 31, 2006
General Election on Convention Proposals	Tuesday, November 7, 2006

APPENDIX #5

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Section Chief
(609) 292-9106

December 1, 2004

Honorable Leonard Lance
119 Main Street
Flemington, New Jersey 08822

Dear Senator Lance:

This letter is in response to your recent request for information on state constitutional conventions since 1970 that have prohibited legislators from being delegates. The two states that have this prohibition are Montana and Tennessee.

Montana:

During the legislative session which authorized Montana's convention, the issue arose as to whether legislators could be delegates. Article V, section 7 of the 1889 Montana constitution stated: "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state."

In *The Forty Second Legislative Assembly v. Lennon*, 481 P.2d 330 (1971), the Montana Supreme Court interpreted this section to prohibit members of the Legislature in 1971 from serving in the 1972 convention.

The Court found that the position of delegate to a constitutional convention is a civil office under the state. According to the Court: "To draw a distinction between other state officers and delegates to a constitutional convention, both of whom act as agents of the people exercising sovereign powers in their behalf, is to deny our basic concept of government."

The Court then discussed the purpose of restricting legislators and other officeholders from serving as delegates. First, such a restriction ensures independent consideration of the provisions of

Honorable Leonard Lance

December 1, 2004

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the new constitution. Second, it reduces the concentration of political power at the convention. Third, it prevents incumbents from creating new offices for themselves or increasing their own salary or compensation.

Tennessee:

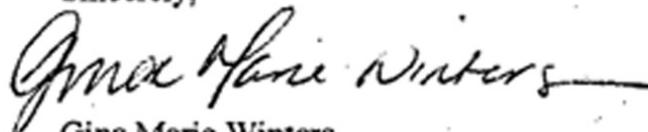
Article II, Section 26 of the Tennessee Constitution states:

"No judge of any court of law or equity, secretary of state, attorney general, register, clerk of any Court of Record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this state hold more than one lucrative office at the same time; provided, that no appointment in the Militia, or to the Office of Justice of the Peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either House of the General Assembly."

Tennessee Attorney General Opinion 68 (August 4, 1971) stated that persons holding state jobs, including members of the General Assembly, were not eligible to serve as delegates to the Constitutional Convention. According to the opinion, members of the General Assembly, as well as constitutional convention delegates, are state officers and that the office they hold is a lucrative office under the meaning of this provision of the Tennessee Constitution.

I hope this information is a satisfactory response to your request. If you have any questions or concerns, or require further research, please contact me at (609) 292-9106.

Sincerely,



Gina Marie Winters
Associate Research Analyst

COMPENSATION OF DELEGATES AND THE COMPOSITION OF STATE CONSTITUTIONAL CONVENTIONS

G. Alan Tarr and Robert F. Williams

Members of the Task Force have raised a question as to whether paying delegates would affect the sorts of people who could afford to serve in the constitutional convention. The concern was that if delegates were not paid, ordinary citizens could not afford to leave their jobs to serve and that as a result, the composition of the convention would be unrepresentative. Although this may make sense intuitively, the available research (summarized and interpreted in this paper) reveals no connection between compensation of delegates and the social composition of state constitutional conventions.

We begin with two caveats. First, no research has directly addressed the connection between delegate pay and the composition of conventions, so we are extracting data collected for other purposes and attempting to draw conclusions based on those data. Second, because there have been few conventions in recent years, the available data are from thirty or more years ago, and one must consider whether the conclusions drawn from those data would hold up in the present day.

Historical Practice

Until about 1960, the standard practice was not to pay convention delegates. Thus, the failure to pay delegates to the 1947 New Jersey convention coincided with the prevailing practice. Since 1960, the practice has been to pay delegates to unlimited conventions but not to pay delegates to limited conventions. Thus, the failure to pay delegates to the 1966 New Jersey limited convention coincided with the prevailing practice. It appears that the distinction drawn between limited and unlimited conventions relates to the expected length of those conventions and hence the financial burden of serving as a delegate.

Level of Compensation

Even when convention delegates were paid for their service, the level of compensation varied considerably from state to state. For example, delegates to the New Mexico convention of 1969 received \$20 per day; delegates to the Michigan convention of 1961 received \$1,000 a month for seven months; delegates to the Connecticut convention of 1965 and the Maryland convention of 1967 received \$2,000 for four months service; delegates to the Hawaii convention of 1968 received the same pay as legislators--\$2,500 plus a per diem for a two-month session; and delegates to the New York convention of 1967 received \$15,000 for less than six months service.

The varying levels of compensation affect financial incentives. A study of the Maryland convention concluded that few legislators served as delegates, in part because, having been paid a low salary for their work as legislators, they could not afford to take further time away from their occupations to serve as delegates, also at a low salary.

Compensation and the Composition of Conventions

The most detailed study available is of the Maryland convention of 1967, in which delegates were paid \$2,000 for four months service. The 142 delegates to the convention included:

- 74 lawyers
- 19 small business owners
- 15 educators
- 12 housewives
- 5 government employees
- 3 union members
- 1 technical worker

85% of the delegates had a college degree, and 65% had a postgraduate degree, with almost half making more than \$20,000 a year (the highest category of income in the survey of delegates). 13% were women, and the percentage of African-Americans was 11% lower than their representation in the population of the state. Eleven state legislators ran, and all were elected. Twenty-two delegates were former legislators. The main study of the Maryland convention concluded that "the modal delegate was a white, protestant, middle-aged lawyer who worked in a city and lived in a suburb." (Wheeler & Kinsey, 1970, p. 30) In comparison with the Maryland legislature at the same point in time, lawyers, educators, and housewives were over-represented at the convention, while small business people and technical workers were significantly underrepresented. It seems fair to conclude that modest pay for delegates did not lead to the election of a cross-section of the population of the state.

Comparative studies of delegates at various conventions provide less detail. One can divide the conventions into those with no salary (Rhode Island), low salary (Maryland and New Mexico), and high salary (Hawaii and New York). The data in the table below are expressed in percentages above that group's representation in the overall population of the state. For example, a figure of 41% on gender would mean that the percentage of delegates that were males was 41% higher than the percentage of males in the state's population. A figure of 2% on race would mean that the percentage of delegates that were white was 2% higher than the percentage of whites in the state's population. Similarly, a figure of 56% on education would mean that the percentage of delegates that ranked high on education was 56% higher than the percentage of those with a high level of education in the state's population, and a figure of 41% on occupation would mean that the percentage of delegates with a high-status occupation was 41% higher than the percentage of people within the state with a

high-status occupation. Taking the available data on over-representation of males, whites, those with high education, and those with high-status occupations, and relating that to the salary of delegates (no salary, low salary, high salary), one finds:

	<u>No salary</u>	<u>Low salary</u>	<u>High salary</u>
Gender	+41%	+38% +37%	+43% +47%
Race	+2%	+11% -----	+21% +2%
Education	+56%	+70% +64%	+78% +77%
Occupation	+41%	+57% +42%	+56% +65%

We interpret these data as indicating that there is at best a minimal connection between whether/how delegates are compensated and the characteristics of those delegates. Insofar as there is any connection, the unpaid delegates to the Rhode Island convention appear more diverse than those serving in conventions in which delegates are paid. This finding is exactly contrary to the expectation that by paying delegates one would ensure a more demographically representative convention.

What might account for this finding? Although compensating delegates might remove the financial disincentive discouraging ordinary citizens from serving as delegates, it does not ensure that they will be elected as delegates. Even if more ordinary citizens campaign to become delegates, there is no guarantee that they will be elected. Rather, what the scholarly literature suggests is that the key factor determining the composition of state constitutional conventions is the mode of selection of delegates (partisan/nonpartisan, large district/small district), rather than the compensation of delegates.

SOURCES

Cornwell, Elmer E., Jr., Jay S. Goodman, and Wayne R. Swanson. *State Constitutional Conventions; The Politics of the Revision Process in Seven States*. New York: Praeger, 1975.

Sturm, Albert L. *Thirty Years of State Constitution-Making: 1938-1968*. New York: National Municipal League, 1970.

Wheeler, John P., Jr., and Melissa Kinsey. *Magnificent Failure: The Maryland*

Constitutional Convention of 1967-1968. New York: National Municipal League 1970.

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December 1, 2004

Honorable John H. Adler
1916 Route 70 East
Suite 3
Cherry Hill, New Jersey 08003

Honorable Joseph J. Roberts, Jr.
Brooklawn Shopping Plaza
Route 130 & Browning Rd.
Brooklawn, New Jersey 08030

Honorable Leonard Lance
119 Main St.
Flemington, New Jersey 08822

Honorable Kevin J. O'Toole
573 Valley Rd., Suite 2
Wayne, New Jersey 07470

Dear Senators Adler and Lance and Assemblymen Roberts and O'Toole:

You have asked for a legal opinion as to whether legislation to convene a State constitutional convention may provide that members of the Legislature or other elected officials are ineligible to serve as delegates to that convention.¹ You have also asked whether members of the Legislature may serve as delegates to such a convention if delegates are compensated for their service as delegates or if delegates are not compensated but receive reimbursement of expenses.

For the reasons set forth below, you are advised that legislation to convene a State constitutional convention may provide that members of the Legislature or other elected officials

¹ The New Jersey Constitution is silent in regard to the holding of a constitutional convention. Nevertheless, the authority for convening a convention is implied and is derived from the sovereignty of the people and vested in the Legislature. In general, the question of holding a convention is submitted for approval by the voters. 16 C.J.S. Constitutional Law §8 (1984). Delegates to the 1947 and 1966 New Jersey Constitutional Conventions were elected by the people. Members of the Legislature served as delegates at both conventions. Delegates were not compensated, but delegates to the 1947 convention received \$10 per day for expenses and in 1966 delegates were reimbursed for actual expenses.

are ineligible to serve as delegates to the convention. You are also advised that members of the Legislature would be precluded from serving as delegates if the position of delegate is compensated, even if legislator-delegates are excluded from receiving compensation payable to other delegates. Finally, it is our opinion that reimbursement of delegates for expenses, in the absence of the payment of compensation, would not preclude members of the Legislature from serving as delegates.

Your first question concerns whether the holding of more than one public office may be prohibited by law. Certain forms of dual office holding are prohibited by the State Constitution. For instance, members of the Legislature and the Governor are prohibited from serving in Congress or holding a federal or State office or position, of profit. N.J. Const. Art. IV, Sec. V, par. 3; Art. V, Sec. 1, par. 3. Supreme Court Justices and Superior Court Judges are similarly prohibited from holding another federal or State office or position, of profit. N.J. Const. Art. VI, Sec. VI, par. 7.

Other forms of dual office holding are currently prohibited by statute.² A person may not simultaneously hold more than one of the following offices: Presidential elector, United States Senator, member of the House of Representatives, member of the Legislature, or county clerk, register, surrogate or sheriff. A person may not be elected to the House of Representatives, or as a Presidential elector, who holds an office of trust or profit under the United States. N.J.S.A.19:3-5. It is unlawful for a person to simultaneously hold an elective county office and an elective municipal office. (However, legislators may hold an elective or appointive office or position in county or municipal government.) N.J.S.A.40A:9-4. A freeholder is ineligible for appointment to certain offices or positions filled by the freeholder board. N.J.S.A.40A:9-23. A county sheriff may not hold other civil office, but may simultaneously serve as county disaster coordinator provided that no compensation is received for that position. N.J.S.A 40A:9-108.

The power to legislate in this area by either authorizing or prohibiting the simultaneous holding of public offices or positions is only limited by what may be expressly limited in the

² The common law also prohibits the holding of incompatible offices. Offices are incompatible when they cannot be executed by the same person, when they cannot be executed with care and ability, where one is subordinate to or interferes with the other, or where one office is under control of the other. State ex rel. Clawson v. Thompson, 20 N.J.L. 689, 690 (Sup. Ct. 1846); N.J. Sports and Exposition Auth. v. McCrane, 119 N.J. Super. 457, 542 (Law Div. 1971) aff'd 62 N.J. 248 (1973). We do not believe that the common law doctrine is implicated if legislators were to serve as convention delegates.

Constitution.³ The generally accepted view of prohibitions on dual offices is that they do not adopt an unconstitutional qualification for eligibility in the Legislature;⁴ nor are they violative of equal protection under minimal or heightened scrutiny analysis.⁵

The New Jersey Supreme Court has stated that the constitutional proscriptions against certain forms of dual office holding were not intended by the framers to be exclusive and that the Legislature is free to prohibit other forms of dual office holding by statute. Reilly v. Ozzard, 33 N.J. 529, 539, 550 (1960). Accordingly, the Legislature may, consistent with the provisions of the State Constitution, prohibit an individual from holding more than one public office.

Thus, legislation providing for the convening of a State Constitutional Convention may provide that members of the Legislature or other elected officials are ineligible to serve as delegates to that convention.

Your second question requires an examination of whether under the provisions of the New Jersey Constitution which prohibit a member of the Legislature from holding another State office or position, of profit, a member would be precluded from serving as a delegate to a State constitutional convention if compensation for services or reimbursement of expenses is paid to delegates.

Three provisions of the State Constitution are relevant:

1. No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as

³ See Ahto v. Weaver, 39 N.J. 418, 423-424 (1963); 63C Am Jur 2d, Public Officers and Employees, §69.

⁴ See State v. Musto, 187 N.J. Super 264, 286 (Law Div. 1982), citing Reilly v. Ozzard, 33 N.J. 529, 539 (1960); Joyner v. Mofford, 706 F.2d 1523, 1528-1531 (9th Cir.), cert denied, 464 U.S. 1002 (1983).

⁵ Joyner, supra, 706 F.2d at 1531-1533; see also State v. Musto, supra, 187 N.J. Super. at 310-311.

Governor or as a member of the Senate or General Assembly.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature. [N.J. Const., Art. IV, Sec. V, pars. 1, 3 and 4]

Whether a compensated delegate to a State Constitutional Convention holds an office or position of profit is a question of first impression in this jurisdiction. Nevertheless, in Vreeland v. Byrne, 72 N.J. 292 (1977), it was held that a State senator's appointment to the New Jersey Supreme Court violated paragraph 1 above because legislation enacted during his service in the Legislature increased the salary of justices, notwithstanding that the legislation made the increase inapplicable to present members of the Legislature who may subsequently be appointed to the court, the latter provision being impermissible special legislation.⁶

Thus, under paragraph 1, a member of the Legislature serving when legislation convening a constitutional convention is enacted and the position of delegate "created", would be ineligible to serve as a delegate to that convention if a delegate holds a State office or position of profit. If that is the case, a member accepting the position of delegate would vacate his seat in the Legislature pursuant to paragraph 3. Similarly, under paragraph 4, a person serving as a delegate would be ineligible to be elected or selected to serve in the Legislature.

In analyzing the language of N.J.S.A.2C:51-2 which provides that a person forfeits public office, position, or employment upon conviction of certain crimes, the Superior Court, Appellate Division stated that, "Our courts have recognized that such terms as 'public office' or 'public position' should be broadly construed, 'especially in dealing with questions of integrity in government.'" (citations omitted) Pasture v. County of Essex, 237 N.J. Super. 371, 379 (App. Div. 1989), cert. denied, 122 N.J. 129. (1990).

⁶ See also Student Public Interest Group of New Jersey v. Byrne, 86 N.J. 592 (1981), holding that appointment of an assemblywoman as a commissioner of the Board of Public Utilities was not invalid where legislation increasing the commissioners' salaries was enacted after the assemblywoman resigned from the Legislature.

Whether service as a delegate to a state constitutional convention constitutes a state office or position of profit was considered by the Illinois Supreme Court in Livingston v. Ogilvie, 250 N.E. 2d 138 (1969). The court held that judges were ineligible to serve as delegates to a state constitutional convention under a provision in the Illinois constitution providing that "Judges shall...not...hold any other office or position of profit under...this State," notwithstanding that the act convening the convention provided that, while delegates would be compensated, public officials serving as delegates would not be compensated.⁷ The court determined that excluding public officials serving as delegates from receipt of compensation payable to delegates generally, "does not make such membership, which is a position of profit, not a position of profit." Livingston, 250 N.E. 2d at 144.⁸

While decisions of the courts of other states are not binding on the New Jersey courts, they are instructive and may be looked to for guidance. Chamber of Commerce E. Union Cty. v. Leone, 141 N.J. Super. 114, 130 (Ch. Div. 1976). Thus, the holding of the Illinois Supreme Court in Livingston may serve as persuasive authority in this jurisdiction for the proposition that a compensated delegate to a constitutional convention holds a State office or position of profit within the meaning of the language used in the New Jersey Constitution.

Accordingly, it would appear that if the legislation convening a State Constitutional Convention provides for the payment of compensation to convention delegates, members of the Legislature would be precluded from serving as delegates. In addition, it appears that this

⁷ Ill. Pub. Act 76-40, §8 and § 9 (1968). Delegates were paid \$650 per month and received \$75 per day for expenses as well as a mileage allowance and postage allotment.

⁸ Under other provisions of the Illinois Constitution (containing wording that was different from that applicable to judges), the court in Livingston concluded that members of the General Assembly could serve as delegates. See also Forty-Second Legislative Assembly v. Lennon, 481 P. 2d 33. (Mont. 1971) in which the Montana Supreme Court held that a provision in the Montana Constitution banning dual office holding prohibited legislators from serving as convention delegates.

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Honorable Kevin J. O'Toole

ineligibility could not be cured by including a provision in the legislation providing that delegates will be compensated, but that legislators who are delegates will not be compensated.⁹

Nevertheless, it is well-settled that the allowance of expenses necessary to enable public officials to perform their duties is not a grant of extra compensation. O'Donnell v. Board of Chosen Freeholders of County of Morris, 31 N.J. 434 (1960). Indeed, numerous statutes provide for the reimbursement of expenses to members of bodies on which members of the Legislature serve.¹⁰ None have been challenged on the grounds that such reimbursement renders an uncompensated position one "of profit" within the meaning of the State Constitution.

In conclusion, you are advised that legislation to convene a State Constitutional Convention may provide that members of the Legislature or other elected officials are ineligible to serve as delegates to the convention. You are also advised that members of the Legislature would be precluded from serving as delegates if the position of delegate is compensated, even if legislator-delegates are excluded from receiving compensation payable to other delegates. Finally, it is our opinion that reimbursement of delegates for expenses, in the absence of the payment of compensation, would not preclude members of the Legislature from serving as delegates.

Very truly yours,

Albert Porroni
Legislative Counsel

By: Peter J. Kelly
Peter J. Kelly
Principal Counsel

AP: K/aa

⁹ However, this issue could be addressed by a temporary constitutional amendment allowing legislators to serve, either with or without compensation, if compensation is to be paid to delegates generally. Such an amendment would require voter approval at the same general election at which the voters decide on whether to convene a convention.

¹⁰ See for example, N.J.S.A.26:2C-8.19 (Low Emission Vehicle Review Commission); N.J.S.A.34:15C-3 (State Employment and Training Commission); N.J.S.A.34:15C-18 (State Council for Adult Literacy Education Services); and N.J.S.A.52:16A-25 (New Jersey State Council on the Arts).

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May 29, 2002

Honorable John H. Adler
231 Route 70 East
Cherry Hill, New Jersey 08034-2421

Dear Senator Adler:

You have asked, through Doug Wheeler of the Senate Democratic Office, for a legal opinion as to the constitutionality of the provisions of Senate Bill, No. 478 or Assembly Bill, No. 540 of 2002: which direct the Chief Justice of the New Jersey Supreme Court to certify that proposals made by the constitutional convention to be convened pursuant to this legislation do not exceed the convention's instructions or limited purpose before those proposals may be placed on the ballot for voter approval; and which authorize the convention to submit for voter approval revisions to the statutes that the convention deems necessary along with any amendments to the State Constitution that it may propose.¹

S-478/A-540 would provide for the convening of a State constitutional convention for the purpose of reforming the system of property taxation in this State. The question as to whether a convention should be convened would be placed on the ballot at a general election.² Upon

¹ You have indicated that your inquiry was prompted by an unpublished essay "Constitutionalizing the Convention," by G. Alan Tarr, Professor of Political Science at Rutgers-Camden. Professor Tarr argues that the provision directing the Chief Justice to review the convention's proposals prior to placement on the ballot violates Article VI of the New Jersey Constitution which prescribes the power of the Supreme Court. He also asserts that the provision authorizing the convention to propose legislative changes is inconsistent with Article IV of the Constitution which vests the legislative power in the Senate and General Assembly.

² Since both bills were introduced during the 2000-2001 legislative term and prefiled for introduction in the current legislative term, the references to specific dates will need to be updated if the bills are released from committee.

approval by the electorate of the holding of the convention, 80 delegates (two from each legislative district) would be elected at a special election held the following March. Ten additional delegates would be selected by a committee consisting of the Chief Justice of the New Jersey Supreme Court and four members of the New Jersey President's Council, an organization representing public and private institutions of higher education in this State. The Governor and all former Governors would also be delegates. The convention would convene in April, complete its work by August, and provide for the submission of its proposals to the voters at the next general election.

Section 2 of the legislation sets forth the convention's mandate:

2. The convention shall recommend amendments to the New Jersey Constitution and revisions to the statutes which, while revenue neutral in their overall impact, eliminate inequities in the current system of property taxation, ensure greater uniformity in the application of property taxes, reduce property taxes as a share of overall public revenue, provide alternatives which lessen the dependence of local government on property taxes, and provide alternative means, including possible increases in other taxes, of funding local government services. As used in this act, "revenue neutral" means that the aggregate amount of all revenues enacted under powers of the State, as accurately as can be estimated and measured, shall be the same after changes recommended by the convention as they were before such changes. The convention shall be limited to considering and making recommendations in regard to the aforesaid matters and the implementation thereof.

Section 20 provides that when the convention has completed its work and agreed upon a proposal of amendments to the State Constitution reforming the system of property taxation, as well as any necessary revisions to the statutes:

[t]he Chief Justice shall review the convention's proposal and, within two days, determine whether the convention has complied with its instructions as voted by the people and not exceeded those instructions or its limited purpose in any way. Upon determining that the convention has complied with its instructions and not exceeded those instructions or its limited purpose, the Chief Justice shall certify to the convention that it is in compliance with its instructions. Upon receipt of the certification from the Chief

Justice, the convention shall form the question and interpretive statement to be placed upon the ballot.

The New Jersey Constitution confers upon the State Supreme Court "appellate jurisdiction in the last resort in all causes provided in this Constitution." N.J. Const. Art. VI, Sec. II, par. 2. The court also is directed to make rules governing administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. In addition, the court has jurisdiction over admission to the practice of law and the discipline of attorneys. N.J. Const. Art. VI, Sec. II, par. 3.

Although the State Constitution, unlike the federal constitution, contains no express language limiting the judicial power to actual cases and controversies, the State Supreme Court "will not render advisory opinions or function in the abstract." In re Camden County, 170 N.J. 439, 448-449 (2002). In effect, S-478/A-540 directs a single member of the court to perform an action which is not authorized by the Constitution, namely to render an advisory opinion in a matter which has not been brought before the court on appeal. Although various statutes direct the Chief Justice to perform administrative responsibilities related to the courts and to make appointments to certain public bodies, such as the State Commission of Investigation (N.J.S.A. 52:9M-1), these laws do not require the Chief Justice to make a judicial decision in a matter not properly before the court.

The New Jersey Constitution is silent on constitutional conventions. However, it is well-established that, absent specific direction in the Constitution otherwise, the Legislature may provide for calling a convention. II, Monograph, George, "Amendment and Revision of State Constitutions," 1947 Constitutional Convention, 1759-1765; Jackman v. Bodine, 43 N.J. 453, 474 (1964); Bessemer v. Birmingham Electric Co., 40 So.2d 193 (Ala. 1949); Stander v. Kelley, 250 A.2d 474 (Pa. 1969) cert. den. and appeal dismissed 395 U.S. 827 (1969).

It would appear, however, that the convention can only be authorized to propose amendments to the constitution which will be submitted for the approval of the voters:

A constitutional convention is not a coordinate branch of the government, and exercises no governmental power, but rather is a body raised by law, in aid of the popular desire to discuss and propose amendments which have no governing force so long as they remain propositions. The fundamental difference between the two is that the legislature has the power to take final action--that is, to make the laws--whereas the constitutional convention has a more narrowly limited power to propose changes for submission to a vote

of the people. Thus, a constitutional convention has no enacting capacity, unless an incidental one of narrow range is implied as necessary for the purpose of preparing questions of revision and submitting them to the people. Delegates to a constitutional convention exercise no part of the state's sovereign power delegated by the people to the three branches of government. [16 Am Jur. 2d Constitutional Law §25 (1998)]

Similarly, there is authority to the effect that:

... in the absence of constitutional provisions regarding the convention, a convention if called acts under the constitution in existence, and by such constitution the exercise of executive, judicial, and regular legislative power are expressly conferred upon existing organs of government, which cannot properly be replaced until a new constitution framed by the convention is put into operation. Where the existing constitution provides that a certain power shall be exercised only by an organ of the existing government, as in provisions that money shall not be paid from the state treasury except under the authority of a legislative act, it is undoubted that a convention assembled under such a constitution may not exercise the power ... [Walter Fairleigh Dodd, The Revision and Amendment of State Constitutions, 103-104 (1910)]

Thus, it would appear that while a convention may submit proposed constitutional amendments to the voters for their approval, it is without authority to similarly submit proposed statutory changes, the power to enact laws having been delegated under the constitution to the Legislature subject to the approval of the Governor.

In conclusion, it is our opinion that the provisions of S-478/A-540 which provide for the convening of a constitutional convention cannot properly direct the Chief Justice to review and certify constitutional amendments proposed by the convention prior to placement of those amendments on the ballot for voter approval and that the convention would be without authority

Honorable John H. Adler

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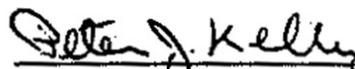
May 29, 2002

to propose for voter approval statutory changes implementing proposed constitutional amendments.³

Very truly yours,

Albert Porroni
Legislative Counsel

By:



Peter J. Kelly
Principal Counsel

AP:K/sl

c Doug Wheeler

c Senator Martin, Assemblymen Roberts and Geist, and Assemblywoman Greenstein pursuant to P.L. 1999, c.244 (N.J.S.A. 52:11-61h).

³ Professor Tarr's rather creative solution of reframing the bills into constitutional amendment proposals to overcome the constitutional challenges by "constitutionalizing the convention" appears to raise other policy concerns. A less dramatic and more conservative approach would be to cure the offending provisions by amending them to ameliorate their effects as noted.

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December 8, 2004

Honorable Leonard Lance
119 Main Street
Flemington, New Jersey 08822

Dear Senator Lance:

You have asked for a legal opinion as to whether constitutional amendments, as well as possible statutory changes, proposed by a State constitutional convention¹ convened for the limited purpose of reforming the State's system of property taxation may be submitted for voter approval as a single ballot question.

Your question requires us to consider the nature of a constitutional convention as well as whether the New Jersey Constitution's requirements that "every law shall embrace but one object," N.J. Const. Art. IV, Sec. VII, par. 4 (the "single object" rule), and that multiple constitutional amendments must be voted on "separately and distinctly," N.J. Const. Art. IX, par. 5 (the "separate vote" requirement), have application in the context of a constitutional convention which is authorized to propose constitutional amendments and which may be authorized to propose statutory changes.

The New Jersey Constitution sets forth in detail the manner by which amendments to the constitution may be proposed by the Legislature and approved by the electorate. It is silent, however, on the subject of constitutional conventions convened for the purpose of recommending constitutional amendments or a new constitution for voter approval. Nevertheless, New Jersey has had three constitutional conventions - in 1844, 1947 and 1966 - convened to replace or revise

¹ The New Jersey Constitution vests the lawmaking power in the Legislature. N.J. Const. Art. IV, Sec. I, par. 1. Accordingly, a constitutional convention has no authority to recommend statutory changes to the voters unless a constitutional amendment, albeit temporary, authorizing it to do so is adopted first.

the State Constitution, despite the fact that this issue is not addressed in either the current constitution or its two predecessors.²

When a State constitution, such as New Jersey's, is silent in regard to the holding of a constitutional convention, the authority for convening a convention is implied and derived from the sovereignty of the people and vested in the Legislature. 16 C.J.S. Constitutional Law §8 (1984). "A convention has no inherent power, but only delegated powers; the convention derives its whole authority from the people's vote." 16 AmJur 2d, Constitutional Law §26 (1998). Thus, a convention is an expression of the sovereign will of the people under powers reserved to them upon adoption of the State Constitution.

Accordingly, the State Constitution's limits on the manner by which the Legislature may enact legislation, such as the "single object" rule, or by which the Legislature may propose constitutional amendments, like the "separate vote" requirement, do not appear to apply when the people have approved legislation convening a constitutional convention and that legislation addresses the manner in which the convention may place its proposals before the electorate. (See McKnight v. City of Decatur, 37 S.E.2d 915 (Ga. 1946), in which the Georgia Supreme Court held that the state constitution's separate vote requirement for constitutional amendments did not apply to the adoption of a revised or new constitution; and 16 C.J.S. Constitutional Law §13 (1984).)

This argument is further supported by the fact that the New Jersey Constitution of 1844, which was in effect when the 1947 constitutional convention was convened, contained a separate vote requirement for constitutional amendments proposed by the Legislature. N.J. Const. Art. IX (1844). Nevertheless, the act convening the 1947 convention directed the convention to submit its proposals to the voters "either as a whole or in such parts and with such alternatives, as the convention may deem desirable." P.L.1947, c.8, s.3. Thus, the separate vote requirement was not seen as an impediment to the ability of the convention to submit its proposal to the voters in its entirety for approval or disapproval. Similarly, the legislation convening the 1966 constitutional convention to conform legislative districts with the one-person, one vote doctrine,

² The generally accepted procedure for holding a convention is as follows. The Legislature and the Governor must enact a law putting the question of whether a convention should be convened before the State's electorate. The holding of a convention must be approved by the voters who also elect delegates to the convention. The delegates to the convention may agree upon proposed amendments to the constitution or a proposed new constitution. The proposed amendments or new constitution must be submitted to the voters for approval. The legislation convening a convention may limit the scope of the convention's authority and the convention may not propose amendments which are beyond the authority delegated to it.

directed the convention to "agree upon its proposal" and submit it "for approval or rejection by the voters." These precedents suggest that the legislation convening a constitutional convention controls the manner in which the convention may place its proposals before the electorate.

A brief review of the single object rule and the separate vote requirement may, nevertheless, be helpful. Both doctrines were recently examined by the New Jersey Supreme Court in Cambria v. Soaries, 169 N.J. 1 (2001), which held that the separate vote requirement did not prevent the use of one constitutional amendment to dedicate two types of State revenues to the Transportation Trust Fund. The court indicated that the purpose of both the single object rule and the separate vote requirement was to prevent "logrolling", a practice in which popular and unpopular proposals are combined in a single act or constitutional amendment in order to secure passage of the unpopular measures. The court noted that the single object rule is intended to ensure "relatedness" among the components of a piece of legislation:

All that is required is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one subject. The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification. [Cambria, 169 N.J. at 11 (quoting New Jersey Association on Correction v. Lan, 80 N.J. 199, 215 (1979).]

Thus, the single object rule has been broadly construed. In interpreting the separate vote requirement applicable to constitutional amendments, the court indicated that a more strict interpretation was appropriate in view of the serious nature of amending the constitution. "Put simply, to meet the separate vote requirement of the New Jersey Constitution, any proposed amendment must not make two or more changes to the constitution unless they are closely related to one another." Cambria, 169 N.J. at 19.

Thus, as a general rule, legislation passed by the Legislature must comply with the single object rule and constitutional amendments proposed by the Legislature must conform to the separate vote requirement. However, as discussed above, the fact that the constitution is silent

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on the subject of constitutional conventions and that the power to convene a convention is implied, suggests that a convention operates outside the scope of these limitations. This is further supported by the unique responsibility of a constitutional convention, which may be charged with significantly revising or replacing the State Constitution. In addition, the concept that a constitutional convention could be authorized to propose statutory changes, as well as constitutional amendments, appears to be unusual. The only other convention that we are aware of to have this responsibility was held in Ohio in 1802 when Ohio was seeking statehood. Accordingly, there is no precedent on the issue of whether amendments and statutory changes proposed by a convention must be voted on separately or may be voted on as a single unit. It may be that the amendments and statutory changes are so interrelated that separate consideration would simply be impossible and that for the convention to fulfill its mandate the amendments and statutes must be voted on together. These limits would certainly not apply to the convention's proposals if the temporary constitutional amendment necessary to allow the convention to propose statutory changes were to specifically address this issue.

In conclusion, it is our opinion that a State constitutional convention convened for the limited purpose of reforming the State's system of property taxation that is authorized in the legislation creating it to propose only constitutional amendments may submit its proposal for voter approval as a single ballot question or as separate choices as may be authorized by its implementing legislation. It is also our opinion that constitutional amendments, as well as statutory changes proposed by a convention which is authorized by a temporary constitutional amendment to propose statutory changes, may be submitted for voter approval as a single ballot question, but that any doubt in this regard could be resolved by including a provision to this effect in the temporary constitutional amendment necessary to authorize the convention to propose statutory changes.³

Very truly yours,

Albert Porroni
Legislative Counsel

By: Peter J. Kelly
Peter J. Kelly
Principal Counsel

AP:K/sl

³ We do not believe that a temporary constitutional amendment authorizing a convention to propose statutes *and* present its proposals for constitutional amendments and statutes as a single ballot question would be inconsistent with single object or separate vote requirements.

STATEMENT OF SENATE MINORITY LEADER LEONARD LANCE

I dissent from the recommendation set forth in the *Report of the Property Tax Convention Task Force to the Governor and the Legislature* regarding the scope of the proposed constitutional convention. I believe that it is essential to include spending as well as revenue measures in the convention's mandate.

Any lessening of the overall property tax burden in relation to other forms of taxation will only be temporary unless spending proposals are included in the convention's recommendation to the people. For the convention to succeed in achieving the goal of proposing significant and enduring property tax reform the delegates must be entrusted to examine - within prescribed limits - those matters that propel the continued escalation of the property tax burden.

Contrary to the majority recommendation of the task force, I believe that discussions of government spending can be properly limited to matters related to property tax reform -- I would suggest that discussion be confined to Article VIII, the Taxation and Finance Article of the Constitution -- and should not include divisive social issues.

Without including a debate on spending proposals the convention will provide merely temporary property tax relief and not true property tax reform for the people of the State.

DISSENT

from the report of the Property Tax Convention Task Force

Respectfully submitted by

ASSEMBLYMAN KEVIN J. O'TOOLE

I must respectfully dissent from this report because it does not include specific recommendations that I believe are of paramount importance to the ultimate goal of providing relief to the property tax payers of New Jersey: that the Legislature begin direct action as soon as possible on comprehensive property tax reform, regardless of whether or how it eventually chooses to constitute a convention; and on what specific areas the Legislature and/or a convention could focus in order to achieve such reform.

PURPOSE

The purpose of this dissent is to facilitate those deliberations by identifying factors contributing to the property tax problem, comment on the responsibilities of the various parties involved, and specifically identify topics for the consideration of either body in seeking a solution. It is my sincere desire and hope that should these topics be considered and suggested changes be enacted, containment of property taxes will be an attainable goal.

THE CURRENT CRISIS

Over the past decade, each of the two major political parties has had a period of simultaneous control of the Executive and Legislative branches of state government, and thus had the opportunity to enact significant property tax relief. Both parties have addressed the problem in one way or another, but unfortunately for New Jersey taxpayers, lasting reform has remained elusive.

Property taxes have never been higher, and the rate of increase also has never been higher than it has been over the past couple of years. Property taxes have skyrocketed by 7% or more in each of the last two years, far beyond the rate of inflation and a huge 43% spike in the rate of increase compared to the average over the previous 10 years.

As a legislator, and more recently as a member of the Property Tax Convention Task Force, I have heard taxpayers from all around New Jersey relate their personal stories as to how they are trying to cope with the unprecedented escalation in property taxes in recent years. Seniors on fixed incomes are struggling to pay ever more in

property taxes, many attempting to stay in their long-time family homes and, in too many cases, ultimately being forced out of those homes. They and others are faced with the choice of paying for higher government spending or putting food on the table; paying inflated tax bills or buying their prescription medications. Young and growing families are being forced to stay in homes they have outgrown, or to delay indefinitely the American dream of owning a home, as property tax hikes are pricing them out of the housing market. Many are simply moving out of New Jersey.

The property tax system has long been in need of reform, but the problem of soaring property tax rates has never been more severe nor more acute than it is right now. Property taxes are doing more harm than just draining incomes; they are financially strangling retirees, workers, and families all across New Jersey. This crisis cannot be effectively quelled with more tinkering of the kind that has been tried in the past. Immediate and comprehensive reform, using bold strokes determined by “thinking outside the box,” is the only way to address the current crisis and provide real and lasting property tax relief.

THE LEGISLATURE’S RESPONSIBILITY

Remedying the problems associated with high property taxes is a legislative responsibility; and ... [t]here is a need for the Legislature to convene in a special session dedicated solely to addressing property tax reform in this State

- Assembly Concurrent Resolution No. 99 of 2004
(also found in Senate Concurrent Resolution No. 20 of 2004)

The passage above is part of a resolution that would require the Legislature to convene a special session on property tax reform. The resolution carries the names of 52 members of the General Assembly -- well over the majority of 41 needed to guarantee passage -- and 18 members of the State Senate, which is nearly half and includes the Senate President and Acting Governor. Clearly, there is a consensus even in the Legislature on what the taxpayers already know: that the Legislature has a duty to act on the issue of property tax relief.

It would be difficult to argue with critics who may say that the lack of action on this resolution, or on any other serious effort to reform and reduce property taxes, by the Legislature only proves that the Legislature is unwilling to act, or incapable of acting, on this issue. Nevertheless, it remains the Legislature’s responsibility to do so, and no one should be given the impression that calling for a constitutional convention or any other vehicle to address the problem is an acceptable substitute for legislative efforts to provide relief as soon as possible.

Regardless of whether legislation authorizing a convention is eventually approved, there is no reason legislative action cannot take place while the legislation is being considered or even as the convention process takes place. The Legislature should not abdicate its responsibility just because another body is examining the issue. Such inaction in the midst of the current crisis would be like leaving an accident victim unaided just because an ambulance may be on the way.

Even under the most accelerated process possible, a convention would not be able to submit its proposals to the voters at a general election until 2006 at the earliest, meaning that any reform would not be in place until around the beginning of 2007, and taxpayer relief would not be realized until some time after those reforms have begun to have an impact. It would be simply unconscionable for the Legislature to stand idly by and point to a process that may provide far-off reform while property tax payers continue to suffer.

Members of my caucus in the General Assembly have embarked on an effort designed to produce a plan for consideration in the near term. We hope the rest of the Legislature will join us in agreement on this plan, or bring other plans to the table, or both.

However, as a member of this task force my intent is not to speak for my caucus, and so I do not do so in this statement. Rather, my duty is to share my thoughts and ideas with fellow task force members and the public, and to listen to theirs, in an effort to provide the best possible advice to the Legislature. This statement reflects and expands upon the comments I have made during the course of the task force's work, and I hope it is a helpful part of the public discussion needed on real reform.

THE TASK FORCE'S RESPONSIBILITY

The purpose of this statement is not solely to dissent from the substantive recommendations of the task force. The members of the task force, with the able assistance of its own staff and the Office of Legislative Services, have conducted serious discussions and produced a significant package of recommendations on the topics mandated by P.L.2004, c.85, the statutory charter of the task force. However, as a member of that body I note that the statute includes the following in its "findings" section:

[T]he immediate convening of a task force of experts for the purpose of making concrete recommendations by a date certain to determine how to bring about all possible property tax relief within the current system and how a constitutional convention to consider systemic change should be composed is imperative to ensure that the long-standing problem of property taxes is addressed in the most effective, efficient and fair way possible. [emphasis supplied]

It appears, then, that in addition to making recommendations concerning the establishment and operation of a constitutional convention, the task force should also develop recommendations on how all possible relief can be provided. In accepting appointment to the task force I accepted a charge to do as much as possible to advance any and all ideas for bringing about property tax relief.

Inherent in that challenge is a mandate to determine how to reduce the government's dependence on property taxes. The solution to the problem of high and continuously escalating property taxes is not to simply create a new tax or increase an existing one in hopes of achieving a "reduction" in property taxes. As the task force has been told repeatedly during its hearings, that approach has been tried several times in the past and has proven not to be effective. That fact should be self-evident; if the tax-hike approach were effective, this task force would never have been created.

Further, reliance on a steeply progressive personal income tax structure is problematic because the income tax is intrinsically unstable. As has been seen over the past few years, income tax revenue is highly susceptible to changes in the stock market. When high income earners see a decline in their personal income due to declines in the stock market, the state naturally sees a concomitant reduction in anticipated income tax revenue. In addition, many investors fearing further declines and seeking greater stability will shift their investments to the tax-exempt bond market, further reducing income tax revenue to be realized by the state.

The solution to the property tax problem lies in efforts to find creative and innovative ways to control and reduce government spending at all levels, and thereby reduce the need for increasing property taxes to sustain government as we know it. To be realistic and intellectually honest with taxpayers, public officials must acknowledge that we have to think differently, and some pain must be realized, to achieve real and lasting property tax relief. The so-called solutions of the past have not worked, so we must go in a new direction if we are serious about lightening the load for middle class homeowners and saving seniors from choosing between taxes and subsistence.

ISSUES FOR CONSIDERATION:

There are a number of issues the Legislature and/or the convention should examine when considering property tax reform and relief, including the overall structure of local government and taxation in New Jersey, and spending by the state and local governments. Below I note some of the specific areas that I believe should be reviewed and considered as part of this process. They include some difficult and thorny matters, but they should not be ruled out on that basis.

The existing system of property taxation and of the local governments (county, municipal, and school district) that drive property tax rates has evolved over hundreds of

years, and is certainly not a structure that would be chosen if designed today from scratch. True reform of the system would be a monumental undertaking, but it is possible to move in that direction if there is a willingness to put all tax-driving elements on the table for reconsideration and reform.

Avoiding difficult choices and controversial ideas is what has brought us to this point, and there cannot be any lasting reduction of the property tax burden unless elected officials, including legislators and future delegates to a constitutional convention, have the fortitude and intellectual honesty to deal with the real factors contributing to the present crisis. Taxpayers deserve nothing less from those they entrust with public office.

Spending issues must be fully addressed in order for the convention, or any other overall property tax reform effort, to have any credibility at all and to have any lasting impact. These issues include both local and state government components.

School funding: Any serious reappraisal of government spending must begin with an examination of the present allocation of resources. The largest part of the property tax bill is the share for school funding, so it is clearly necessary to revisit the formula by which the state awards school aid. The most significant issue regarding state funding remains the allocation of school aid to the so-called Abbott districts, which currently are funded by the state at amounts calculated to guarantee per-pupil spending at levels equal to the those in the highest-spending non-Abbott districts. Thus, decisions by school boards in relatively affluent school districts are presently driving billions of dollars in state spending for payments to 31 school districts.

This system involves an unbalanced allocation of state funds among school districts, but the Legislature has failed to adequately review and reform the system as it must for the benefit of all students in all districts. Students in Abbott districts have not been well served by a system which is neither thorough nor efficient in providing them with the education they need and deserve. This task force has heard testimony that, despite massive infusions of state money into those districts, the students are still being provided a substandard education and thus are being cheated out of their prospects for a better economic future.

Years of experience have shown that a lack of resources in the Abbotts is not the problem; rather, the problem is a system that remains ineffective, inefficient and unaccountable to the students, their parents and the taxpayers. Continuing to pour a grossly disproportionate share of overall state education dollars into that system will not solve the problem, and may in fact contribute toward it by promoting inefficiency, ignoring accountability, and rewarding ineffectiveness.

The state must continue to give special attention to the Abbott districts, owing to their special problems, but school districts across the state have proven that a quality education can be provided at a more reasonable cost. Accountability must be stressed,

and that could be accomplished by promoting more disciplined budgetary decision-making that focuses on the areas that truly contribute toward a complete and effective education.

Proposed constitutional amendments presently before the Legislature would address the Abbott funding issue, including one -- sponsored by fellow task force member Senator Leonard Lance and others -- that would require the state to fund Abbott districts so that per-pupil spending in those districts would equal the statewide average expenditure per pupil. The entire matter of school funding must be examined, and these proposals deserve consideration as part of that examination.

State borrowing: Another constitutional matter requiring more attention is the state's practice of borrowing more and more to fund various programs. Although the constitution limits the state's ability to borrow without voter approval, creative ways of evading those limits have been employed on a regular basis, leading to huge amounts of debt being placed on taxpayers who were given no direct say on the matter despite the clear intent of the constitutional provision. State payments forever increasing debt are encumbering resources that could instead be used for property tax relief. Further, debt incurred without voter approval is generally subject to a higher interest rate than voter approved debt, and thus is more expensive to the taxpayers whose approval is circumvented.

While the Supreme Court recently upheld a challenge to a particularly egregious borrowing scheme and ordered the state not to undertake a similar scheme in the future, avenues continue to exist by which the state can borrow without voter approval. A constitutional amendment to close these loopholes and guarantee that the state must have voter approval before issuing more debt should be considered.

Government spending caps: Over the years there have been attempts to cap state and local spending, but these caps are riddled with exceptions and loopholes and have not done enough to slow the rate of property tax increases. This year the Legislature tried again, but failed to give careful consideration to the proposals and failed to take enough input before acting. As a result, a school spending cap was enacted that requires school districts to "spend down" their surplus and thereby practically guarantees property tax increases in the near future. The county and municipal cap revisions leave many exemptions intact. This issue must be revisited in a deliberate and thoughtful way. As part of this review, a comprehensive plan to cap all state and local government spending increases according to inflation, as indicated by the Consumer Price Index, should be developed and considered.

Waste and fraud: Whether by accident or, as in too many cases, by design and intent, waste and fraud in government spending exists and contributes to high property tax rates. Despite this, there is no agency or body dedicated to auditing the spending of public funds at every level of government. Various proposals have been considered by

the Legislature from time to time, yet no significant action has been taken in this area. An agency whose sole continuing mission is to reduce waste and fraud, and to increase efficiencies and economies wherever possible, at every level of government could be established and would more than pay for itself through its work. Such a body could be modeled on the federal Grace Commission or Government Accountability Office, or could be an expanded version of the State Commission of Investigation or of the Office of the State Auditor. Agencies with similar purposes established in other states could be reviewed in order to determine the most effective model.

Local government spending: Part of such an agency could be devoted to providing local government budget review teams for voluntary audits of local governments upon request. Unannounced spot audits should also be considered as a way to ensure that local governments give continued attention to budget efficiency issues, including not only reviews of budget line items but also routine practices such as contracting and purchasing procedures.

In addition, specific aspects of local government operations must be addressed by the Legislature or the convention, including:

- ***Duplication of services among state and local governments.*** In recent years laws were enacted to encourage sharing of services among local governments. However, these incentive programs have not been fully funded, which appears to be part of an unfortunate lack of seriousness by the state to do all it can to reduce unnecessary local administrative costs. The state should fully fund, and aggressively promote, incentive grants for shared services, and should further maintain a continuing effort to identify and eliminate unnecessary duplication of services between local governments, and between the state and local governments.
- ***Small town administrative costs:*** There are nearly 200 municipalities in New Jersey with populations of fewer than 5,000. The state should encourage, and perhaps should even consider mandating, the merger of administrative municipal services in adjacent small towns.
- ***The role of county governments:*** County governments were established at a time when an intermediate level of government between the state and its municipalities had administrative advantages, but their necessity in modern times is open to question. Proposals presently before the Legislature would provide for a review of county governments. Such a review should be performed, and the gradual elimination of county government over five years should be considered.

Special education funding: State funding to offset the cost of special education has been inadequate to keep much of the cost from being passed on to property tax payers. The situation is worsened by the fact that the federal government has not been

meeting its responsibility to pay 40% of such costs, and has been paying less than half the necessary amount. The state must step in and provide more of the funding for special education, and should cover all costs above a given percentage. The state must also be more aggressive in pressing the federal government to pay its fair share.

Education tax credits: The costs of the public education system would be much higher if it were not for the many thousands of parents who pay property taxes and have the right to send their children to public schools, but choose to send them to private schools or educate them at home. However, escalating property taxes may have the effect of foreclosing on those options as parents find themselves less and less able to handle both the tax payments and the costs of private or home schooling. Should more of the children who are currently attending private school or are home schooled begin to enter the public school system, property taxes will rise even further and overcrowding of the public schools will become an even worse problem. To prevent further overburdening of the public school system and related property tax increases, a state income tax credit could be provided to parents for each child who attends a private school or is home schooled.

State spending: There must be a serious effort to reform state government spending in order to free more resources for additional aid to schools and municipalities. Personnel costs constitute an enormous part of state and local budgets, and therefore must be reviewed if any significant savings are to be found. Some areas of possible reform are virtually self-evident, particularly when state policies are compared to the private sector. The vast number of private sector workers in New Jersey are paying taxes to support benefits for public employees that are much greater than those they themselves enjoy.

It is well known, and has been for some time, that the state pension system is not only generous but is structured in ways that make it ripe for abuse. Pensions are generally determined by formulas designed to provide the maximum possible payment, and are not necessarily related to the retiree's actual contributions to the system. These formulas should be reviewed, and consideration should be given to whether pensions should bear a greater relationship to the contributions made and salary earned over the entire course of the retiree's service. Political insiders should not be allowed to artificially enhance their pensions through a salary spike in their last few years of service, which is generally done through appointment to high-paying positions.

Savings could also be realized through reforms to the State Health Benefits Program that average taxpayers would find to be reasonable and fair. For example, copayments that are generously low could be set at levels that bear more resemblance to those found in the private sector, with annual adjustments made by the State Treasurer based on changes in the copayments of private health plans. This and other ideas should be part of an overall review of personnel costs.

Property tax cap: If issues such as those noted above are addressed in an effective way, it may be possible to place direct limits on property taxes. One of the common criticisms of the current property tax system, and a valid one, is that the tax rate varies considerably depending on where the taxpayer lives. If any progressivity is to be maintained in the system, the tax rate will have to be related to the value of the property. However, there should be more uniformity and predictability in how the rate is determined.

A cap on the property tax rate providing that the tax cannot exceed one percent of the property's true assessed value could be part of a comprehensive property tax reform plan. For example, the owner of a \$300,000 home should not have to pay more than \$3,000 in property taxes. This would provide for greater fairness in the system, and would keep government spending and tax levels under control.

In summary, this statement represents an initial, and by no means exhaustive, delineation of ideas intended to address issues that, by their very nature and the costs involved, demand public debate if one is serious about controlling property taxes.

CONCLUSION

The above suggestions are provided for two reasons: to identify some specific areas where the Legislature and a convention could find savings and efficiencies, and to illustrate that a sincere effort to reduce and control property taxes must involve a willingness to consider ideas on their merits, and not just on their political implications. For too long taxpayers have been left to suffer by elected officials who subordinate taxpayers' interests to political interests. This must change. The desire to avoid controversy cannot continue to trump the need for reform. Every element of the current system must be on the table for discussion.

There is much work to be done in order to provide needed relief to the property tax payers of New Jersey. Further delay will only allow the present crisis to get worse. Action must begin immediately, regardless of whether there will ever be a constitutional convention. The most important recommendation this task force could and should make is that the Legislature begin 2005 with a commitment to consider all options necessary to deliver property tax reform as soon as possible, and a determination to keep working until relief has been achieved. I must respectfully dissent from a final report that does less.

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THE PROPERTY TAX REFORM TASK FORCE

Cy Thannikary's Statement at the Closing Session on Tuesday, December 21, 2004

Mr. Chairman, Mr. Vice Chairman and Members of the Task Force.

I want to thank you, Mr. Chairman and Mr. Vice Chairman, for your leadership in guiding us through this complex process of defining a constitutional convention to reform New Jersey's most oppressive property tax system. You have been fair and respectful of all those who appeared before this Task Force. You have been gracious and eloquent in expressing your views. For all of that, I extend my sincere thanks to you both. I also want to thank the staff, Eric Shuffler, Ed McBride and Jack Donnelly, for a remarkable job in summarizing this complex issue in a mere 20-page report. My gratitude to all the members of the Task Force for their contributions.

In my professional capacity I have traveled quite extensively all around the world, mostly in developing countries, and I have seen places where there is no democracy, freedom and no opportunity to express one's views without the fear of going to jail. The work of this Task Force, to me, is democracy in action. I am grateful that I have been a part of this democratic process.

Now, I wish to share a personal experience I have had in this process. Here is a letter I received (show the letter) from a lady who lives in Matawan, New Jersey. Her name is Norma Gene (not her real name). She is 80 years old. She has lived in her house for 40 years. She has raised 3 children, sent them to school, provided for her family and always paid her taxes on time. "I don't go shopping, to the beauty parlor or on trips", she wrote. She has been working for the past 8 years at minimum wage to supplement her small social security income and to pay for her medicine and property taxes. Lately she has not been able to work due to illness and a few hospitalizations. And today she has a lean on her house, because she cannot pay her property taxes. She lamented in vain and wrote, "Everything is out of control to the point of being immoral".

A 79 year-old man from Marlboro, New Jersey, told me that he simply couldn't afford to pay his ever-increasing property taxes. Now, he has to make a choice ... to pay for his life-saving medicine or to pay for his property taxes.

An 80-year-old man from Montclair, New Jersey called and told me that he has lived in his home all his life. Now, his taxes are \$20,000, which he cannot afford. He pleaded to all of us do something about this most hated tax.

These older Americans, to me, are both our bridge to all that is precious in our history and to the enduring foundation on which we build our future. And yet they are unable to stay in their homes, that "they worked their whole lives to own", with dignity and without the fear of a possible eviction.

Even our young people cannot afford to live in New Jersey anymore. My friend's son moved from New Jersey to Pennsylvania because he could not afford to pay his property taxes and, at the same time, support

his young family. His parents are devastated, because they cannot see their beautiful young granddaughter as often as they used to. The system is tearing our families apart.

These young people are those who pledge their allegiance to the flag every morning - - *"One nation, under God, indivisible, with liberty and justice for all"* - - with an abiding faith in the system and in their elected officials. And yet, the system and our elected officials failed to provide them with the justice and fairness that has always been promised. They have been left without any choice except to pick up and leave the state.

These are the stories of people who have paid their dues, paid their taxes on time and played by the rules. These are amazing people. They are people who are hurting. And yet, they still rise to tell their stories again and again with grace and eloquence, if there is someone to listen.

The former Governor was right when he said, at the opening of this Task Force meeting, New Jersey's "property tax is a tax without a conscience".

This Governor was right when he said that the system is "literally tearing our communities apart". And if you ask Norma Gene, the lady who wrote to me, she will say, "it has reached the point of being immoral".

Therefore, on behalf of our statewide coalition and in the name of millions of senior citizens, middle class and poor families, who have suffered too long under New Jersey's unjust and unfair property tax system, I respectfully ask the Governor and our distinguished legislators to accept the recommendations of this Task Force. We ask them to support the proposed property tax reform convention. We ask them to give us the opportunity to be citizens, not as spectators, to find a solution to this problem and be a part of the renewal of our cities, our schools and our neighborhoods.

We respectfully ask our legislators to set aside their political differences and introduce a bi-partisan bill calling for a restricted property tax reform convention. By supporting the proposed convention, you can help to write the next chapter in the remarkable story of "We, the people", a story that began more than 200 years ago - - and hasn't ended yet. This could be your legacy.

As for us, we plan to stay active until the job is done. We have already served notice to two gubernatorial candidates that we plan to make property tax reform a campaign issue at the next year's State elections.

Mr Chairman, we came a long way. The people of New Jersey have waited too long -- over 30 years -- at least, to have an open discussion about this issue. Some believe that the convention should discuss spending issues. I understand and respect their viewpoint. But we need to start someplace. I believe we came up with a respectable set of recommendations. What we have today may not be all that we wanted. At least we have a good beginning. We must build on these recommendations. Therefore, I support the recommendations of the Task Force. Now, if the legislature wants to introduce bills to cut spending at all levels, we will be there to support them on that issue as well.

In supporting these recommendations, we, the Citizens for Property Tax Reform, have a vision for New Jersey where every person has a chance to achieve the American dream to buy a home, earn a decent living, provide for their families and, for seniors on fixed income, to stay in their homes without having to choose between paying for their medicine or for their taxes.

Members of the Task Force, I thank you for your support. Thank you Mr. Chairman.

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Our Mission
To Support A Property Tax Reform Convention
www.Citizens4propertytaxreform.org