

WORK SESSION: HB 2047, HB 2048

TAPES 57, 58 A/B

HOUSE REVENUE COMMITTEE

FEBRUARY 24, 1997 8:30 AM HEARING ROOM A STATE CAPITOL BUILDING

MEMBERS PRESENT: Rep. Tom Brian, Chair

Rep. Lee Beyer, Vice-Chair

Rep. Tony Corcoran

Rep. Randall Edwards

Rep. Leslie Lewis (Absent 9:20 a.m. - 9:35 a.m.)

Rep. Anitra Rasmussen (Absent 9:30 a.m. - 9:45 a.m.)

Rep. Lane Shetterly

Rep. Mark Simmons

Rep. Ken Strobeck

MEMBER GUESTS: Sen. Ken Baker

Sen. Neil Bryant

Sen. Tom Hartung

Sen. Dukes (Arrived 9:22 a.m.)

(Sen. Revenue Committee members attended the portion of this meeting regarding the Attorney General Opinion on HB 2047)

WITNESSES PRESENT: Hardy Myers, Oregon Attorney General

David Schuman, Deputy Attorney General

Robert Muir, Attorney General, Tax Division

STAFF PRESENT: James Scherzinger, Legislative Revenue Officer

Barbara Guardino, Committee Assistant

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TAPE 057 SIDE A

005	Chair Brian	Called meeting to order at 8:40 a.m. Welcomed Senate Revenue Committee, Attorneys General.
016	Hardy Myers	Gave an overview of Attorney General opinion concerning interpretation of M47. Refer to Opinion (EXHIBIT A); Summary of Opinion (EXHIBIT B). Most critical question posed: How to calculate the maximum tax for 1997-98. Comparison years 1994-95 and 1995-96, do the taxes of those comparison years include or exclude taxes levied to pay bond debt? Conclusion: For purposes of calculating the maximum tax for 1997-98, tax in those comparison years includes bond debt. Second critical question: How does the growth limit for tax years after 1997-98 get calculated?
044	Myers	Conclusion: Provisions of measure are ambiguous whether, in calculating the 3 % growth, to include or exclude bond debt from the preceding year. The more reasonable interpretation is that bond debt is excluded. Third critical question: Whether there is any provision of Oregon Constitution, including M47, which would prohibit legislature from providing a more restrictive formula in calculating maximum tax for 1997-98.
046	Myers	Conclusion: There is nothing in Oregon Constitution to prohibit the General Assembly from enacting exclusion of the bond debt from those comparison years.
079	David Schuman	Explained the process of interpreting a constitutional amendment. The purpose is to find out the intent of the enactors. The best source to find intent is the text of the enactment, and context in which it appears.

- Rules of syntax and grammar. This is considered the first level. If all questions are answered from first level, attorneys don't go beyond it.
- 113 Schuman In applying these rules, attorneys general concluded there was only one way to read that provision. Did not have to move to the second level, legislative history.
Referred to page 16 of opinion, Subsection 2, provisions for calculating tax for 1997-98. "The ad valorem property tax on each property ... shall not exceed the lesser of the following ..."
- 130 Myers This text clearly includes bond taxes.

Whether this was intention of proponents or not can be disputed. Formula does not exclude bond taxes.
Page 19, Subsection 4. Caveat: Acknowledged attorneys general cannot be certain of what Supreme Court would say. Recognizes assessment of impact of M47 is of considerable importance to budget issue. Believes conclusions are sound.
- 164 Myers
- 203 Vice Chair Commented about Myer's press conference statement concerning consequences of untrained people writing laws.
Beyer
M47 is only the most recent of situations in which measures have not done what proponents intended them to do. It points out the difference between lawmaking process and initiative process. This legislature will put forth bills to require preliminary petitions to be reviewed before for clarity they go into the initiative process.
- 216 Myers

In regard to many issues in M47, there may be litigation for many years.
- 256 All Questions and discussion concerning Attorney General opinion.
- 288 Vice Chair Perhaps revenue committees should write a tax rewrite to reflect what the voters really want.
Beyer
Other provisions of opinion concerning bonds:

Concerning first question: Article XI, Section 11 g (1), (2)of the Oregon Constitution.
- 343 Robert
Muir Concluded bonded indebtedness must be legally dedicated to payment of bond debt.

Elsewhere in opinion: Bonds mean all forms of bonded indebtedness, but does not include notes, certificates of participation.
- 430 Muir Oregon Constitution Article XI Section 11 g (3)(b): Concluded words mean what they say, if voters approved issuance of bonds, taxes levied to pay those bonds excluded from voter requirements.

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- 043 Muir Conclusions with regard to elections issues: Measure did not define "new" or "additional" taxes. Determined "new" means "new kinds of taxes." An expiring serial levy does not require a vote because it does not constitute a new kind of tax. "Additional" does not mean more taxes per se, it means taxes in addition to those

- otherwise imposed under M47.
- 090 Chair Brian Question about Page 5 of opinion (C) (1), concerning replacing a levy that is expiring.
- 096 Muir This means to replace the amount that is expiring. A serial levy would not require a have to meet super-majority requirements.
- 116 Muir The 3 % cap invokes the term, "additional," and voter approval is required to go above it.
- 132 Muir This situation, even if under or over the cap, raises allocation issues if a serial levy is not simply renewed, but increased.
- 150 Chair Brian Limit applies to aggregate of property taxes, not individual tax.
Referred to Opinion p. 5, section (c) (2), "tax approved by voters before Dec. 5, 1996 ..."
A tax approved before this date is not excluded from limitations of the measure when they come into effect (1997-98).
- 158 Muir Voter override of cut or cap requires voter approval.
- 192 Muir Concerning elections held in November 1996, only if voter approval of specific questions can an override occur.
- 200 All Questions and discussion concerning the effect on tax base increases approved by voters in November 1996.
- 260 All More discussion concerning M47 opinion.
- 270 Vice Chair Beyer Committee must assume voters knew what they were doing.
Referred to Opinion Page 5 (C) (3) "A tax levied on or after December 5, 1996 ..."
- 295 Muir Referred to pages 33-34 of opinion.
- 326 Sen. Chair Baker Senate members left at 9:28 a.m. to convene Senate Revenue Committee meeting.
- 341 All Questions and discussion concerning taxes levied to paid bonded indebtedness.
Considered question of general obligation bonds. Backed by full faith and credit of the State of Oregon. Power to collect ad valorem taxes to pay them. State doesn't do this but could. Question of whether that would require voter approval is being considered now.
- 385 Muir
- 404 Rep. Rasmussen Referred to Opinion Page3, (d) concerning bonds levied to paid bonded indebtedness.
- 418 Muir Those taxes are not subject to the limitation.

TAPE 057 SIDE B

Questions and discussion concerning bonded indebtedness, understanding literal

- 036 All wording.
- 092 Rep. Shetterly Noted upon reading the explanatory statement in M47, that it differs from the language within the measure.
- 121 Rep. Edwards The Attorney General opinion concludes that nothing in the Oregon Constitution prevents the legislature from enacting more restrictive limitations on ad valorem property tax. Asked whether the committee could take language completely out.
Yes. Committee may enact more restrictive legislation, enact legislation that reflects voters' assumptions, or take other steps that are not necessarily consistent with those assumptions.
- 123 Muir
- 130 Rep. Edwards If language became more restrictive, by having legislative intent and history as to why, would that be sufficient to prevent counter-suits?
Court should defer to it. Nothing in Constitution or M47 that prohibits more restrictive legislation.
- 161 Muir
- 187 Rep. Shetterly If the legislature has the ability to give greater tax relief, can it distinguish between districts that approved M47 and those that didn't?
That would constitute an unequal form of taxation, which is unconstitutional in Oregon.
- 211 Muir
- 228 Rep. Edwards Questioned Scherzinger about his calculations of bonds in the base. Does the Attorney General opinion change any assumptions as to what bonds are included or excluded?
If bonds are in the base, they are all in the base. On the exclusion side, in 1997-98, some things excluded in his runs, particularly some urban renewal levies. On the other hand, some things not excluded in his calculations that will be paid for out of operating levies.
- 232 Scherzinger Excluded from exemption - certified bond levies, urban renewal, Portland school district bond levy.

287 Chair Brian Adjourned meeting at 9:54 a.m.

Submitted by, Reviewed by,

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Barbara Guardino Kim James

Committee Assistant Revenue Office Manager

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EXHIBIT SUMMARY:

A. HB 2047, Myers, Department of Justice opinion, 64 pp.

B. HB 2047, Myers, Summary of Attorney General's Opinion, 5 pp.