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The Texas Constitutional Amendments of 1960

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INSTITUTE OF PUBLIC AFFAIRS
AUSTIN : THE UNIVERSITY OF TEXAS : 1960

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Foreword

In recent years, the Institute of Public Affairs has prepared and published analyses of state constitutional amendments which were subsequently voted on by the Texas electorate. Because of the favorable reception accorded these analyses and continuing requests for this particular service, this study has been made of the four amendments to be voted on in the 1960 general election.

As in the case of earlier studies of constitutional amendments, the purpose of this publication is to provide interested Texas citizens with an impartial, objective discussion of each amendment to be voted upon. For each amendment there are three component elements in our presentation. First, there is a brief explanation of what the amendment is designed to accomplish; second, the background of the particular provision is discussed, both in terms of general development and specific origins; and third, there is an analytical section which presents and explains relevant factual data having a bearing upon the specific proposition and which discusses some of the issues involved in its adoption or rejection. Throughout each section, an attempt has been made to examine all aspects of each proposition from a nonpartisan point of view, and no recommendations for or against any proposition are made or intended.

The principal author of this publication is Fred Gantt, Jr., Research Associate on the staff of this Institute. Dr. John T. Thompson, Research Associate, read the entire manuscript and made suggestions for its improvement. Mr. Elmer McVey, Assistant Attorney General in charge of the Finance Law Division of the State Attorney General's Office, supplied pertinent data and reviewed the final manuscript on the amendment relating to regulation of loans and lenders; for his cooperation and assistance in this regard we are most grateful. We also are indebted to Mr. Arthur B. Scharlach, former Executive Director, and Mr. John Parker, present Executive Director, of the Veterans' Land Board for supplying certain data and information with respect to the amendment which proposes to increase the interest rate on veterans' land bonds.

This study has been made and published in furtherance of the Institute's assigned function of conducting objective research on public problems of significance to the citizens and public officials of this state. While The University of Texas recognizes its obligation in making such research services available, it should be emphasized

that neither The University nor its Institute of Public Affairs takes any official position or makes any endorsement of the specific amendments which are discussed herein. All statements, views, and interpretations expressed are those of the authors who accept full responsibility therefor.

LYNN F. ANDERSON
Acting Director

Austin, Texas
August, 1960

Introduction

To assist in solving a large number of complex public problems faced by the state, Texans have found it necessary to amend their eighty-four year old Constitution on many occasions. The amending process, set forth in Article XVII of the Texas Constitution, begins with the introduction of a joint resolution at a regular session of the legislature. The resolution, which contains the text of the proposed amendment and indicates the election at which it is to be voted on by the public, must receive a majority of two-thirds of the members elected to each house for passage. Before the election, the amendment must be printed in a newspaper in each county where a newspaper is published. This publication must occur once a week for four weeks and begin at least three months before the election. The proposed amendment is then voted on at a special or general election as designated in the original resolution, and a simple majority of those voting in the election is required to ratify the proposal. Eleven of the seventeen articles in the present constitution have been amended in this fashion.

Since the adoption of the Texas Constitution in 1876, well over 2,000 proposals for amendments have been offered in the legislature. A total of 236 of these proposals have received the necessary two-thirds vote for referral to the Texas citizenry, and every legislature that has met under the present constitution except that of 1885 has participated in the passage of one or more of these submissions. Of the 236 passed by the legislature, 140 have been adopted, 89 have been rejected, and four are up for decision in the general election of 1960. Through failure of administrative officials, three were never submitted to a vote by the electorate.

The Texas voter in 1960 will find his task of passing on constitutional amendments somewhat lighter—at least insofar as the number of proposals is concerned. Compared with an average of almost ten amendments in each biennial period of the past decade,[1] the Fifty-sixth Legislature in 1959 referred only four proposed changes to be voted upon in the general election on November 8, 1960. These four, encompassing a variety of complex matters of timely importance to the people of the state

[1] Prior to 1959–60, the average number of amendments referred to the voters during each biennium of the previous decade was 9.8. Beginning in 1949, the number referred by individual legislatures was as follows: 51st (1949), 10; 52nd (1951), 7; 53rd (1953), 11; 54th (1955), 9; and the 55th (1957), 12.

and their governments, include: (1) authorization of hospital districts in three additional counties; (2) an increase in the maximum interest rate on bonds issued to finance the veterans' land program; (3) the adoption of annual salaries for members of the Texas Legislature; and (4) a plan for giving the Legislature the authority to classify and regulate loans and lenders. The discussion of each amendment which follows will be given in the same order in which the amendments are to appear on the ballot in the November 8 election.

I

Hospital Districts in Three Counties

The first amendment on the 1960 ballot authorizes the Texas Legislature to create special hospital districts in three counties widely scattered throughout the state: Lamar County, which is located in the Red River Valley section of northeast Texas; Hidalgo County, which is adjacent to the Mexican border; and a portion of Comanche County, which lies in the ranch country of Central West Texas. This amendment would add Sections 6, 7, and 8 to Article IX of the Constitution. The districts established under its authority would be three new separate and distinct units of government with power to acquire, operate, and levy a tax for support of hospital facilities for the residents of their respective areas.

Section 6 deals with Lamar County, of which Paris is the county seat. The hospital district would be coextensive with the boundaries of the county and would be permitted to levy a tax not to exceed the rate of 75 cents per $100 valuation of taxable property for the operation of a hospital. The district would be subject to practically the same limitations as those placed upon Wichita County by the preceding section of the Constitution adopted in 1958. Specifically, those requirements include that "no tax may be levied until approved by a majority vote of the participating resident qualified property taxpaying voters who have duly rendered their property for taxation." The tax rate may be changed so long as the maximum is not exceeded and the obligations of the district are not impaired. Other political subdivisions lying within the same boundaries would be prohibited from levying a tax to provide for hospital facilities, since the special district would assume their responsibilities of assisting in the medical care of indigent persons. It is further required that the maximum rate submitted to the voters must be sufficient to take care of the obligations thus assumed; however, the Legislature may authorize the issuance of tax bonds for the purpose of acquiring and/or improving facilities and equipment, such bonds being payable from the 75-cent maximum tax levy.[1]

Section 7 of the amendment applies to Hidalgo County, in which the cities of Edinburg, McAllen, Mission, and Weslaco are located. Upon first reading of this section, it appears that the provisions are practically identical

[1] *Constitution of Texas*, Art. IX, sec. 5 (a).

with those of Section 6, except that the rate of taxation is fixed at the much lower figure of 10 cents per $100 valuation. However, a careful analysis reveals an obvious technical error in the drafting of the amendment. It states that a district may be created in Hidalgo County "with the limitations presently provided in Article IX, Section 5 (a) of the Constitution of Texas, as it applies to Hidalgo County . . ." Since there is no mention of Hidalgo County in the section referred to,[2] there is no exact way of judging what limitations were intended by the Legislature. This could raise a number of questions that will have to be decided by the officials responsible for placing the district into actual operation. Some of the points that might have to be considered are: Would the whole amendment become inoperative because one section of it is drafted with a technical error? What effect would the approval of the amendment have upon the creation of the Hidalgo County Hospital District? If it were created, would the limitations upon the Hidalgo District be comparable to those placed upon districts in Wichita and Lamar counties? Could it possibly mean that there would be no limitations upon this particular district? Since there is no indication of a comparable situation having arisen in the past, there is a distinct possibility that the courts may have to be called upon to assist in clarifying this matter.

Section 8 allows the creation of a hospital district within the boundaries of Commissioners' Precinct Number 4 of Comanche County. The maximum rate of taxation for this district is 75 cents per $100 valuation, and limitations similar to those placed upon Lamar and Wichita counties are provided. An additional feature of this section empowers the Legislature to enact a law permitting the county government to render financial assistance to the district, which is to come from a tax not to exceed the rate of 10 cents per $100 valuation upon "all property within the County but without the County Commissioners Precinct No. 4 of Comanche County." In the event such a tax is authorized, the hospital district will assume the obligations of the county government for hospital assistance to the needy, and thereafter the county may not then levy further taxes for hospital facilities.

The last clause in the proposed amendment permits the Legislature to pass enabling acts in anticipation of approval on November 8 so that the actual organization of the districts will not be delayed until the next meeting of the Legislature. Pursuant to this provision, the Fifty-sixth Legislature in 1959 enacted statutes which will govern the organization and operation of each of the three districts. The principal difference among these

[2] Section 5a of Art. IX applies to the City of Amarillo and Wichita County.

three laws is in the government of the districts. In Lamar County, the district is to be administered by a board of managers appointed by the Commissioners' Court. In Hidalgo Couny, the Commissioners' Court becomes the *ex officio* governing board for the hospital district. The statute refers to an "elective or appointive board" for the Comanche County district.[3]

Background

American governments at all levels—federal, state, and local—are concerned today as never before with the health of the community, and attitudes toward the responsibility of government in the matter of promoting the public health have undergone significant changes. No longer is it expected that private philanthropic and church groups will be able to provide adequate hospital facilities for the public and to care for all indigents as they once did. Instead, there has been an increased reliance within the past three or four decades upon the expenditure of public funds to build or modernize hospitals, to conduct medical research, and to assist in providing medical care for the needy.

The rapid population growth, the increasing number of aged persons, technological advances in the field of medical science, and the skyrocketing costs of medical care have been major contributing factors in expanding the responsibilities of government in the field of health and hospitals. To assist in meeting the needs, there has been a marked cooperation on the part of each of the levels of government in the building and expansion of general hospitals. Since the passage of the Federal Hospital Survey and Construction Act of 1946, more than 4,300 hospitals, public health centers, and related health facilities in the United States have been approved. About 2,840 of these are completed and rendering service; 1,160 are under construction, and the remainder are in planing and drawing board stages. Total cost for these projects is over $3.6 billion; it is being met by $2.5 billion in state and local funds and $1.1 billion in federal aid.[4]

Texas counties and cities have actively participated in this expansion of publicly-owned hospital facilities. At the beginning of 1960, there were 130 general hospitals owned or operated by political subdivisions in every section of the state. Ninety-four counties, twenty-four cities, and six special taxing districts were operating hospitals, and there were seven areas in which cities and counties were jointly maintaining hospitals.[5]

[3] *V.A.C.S.*, Arts. 4494q; 4494q-2; 4494q-3.

[4] *Book of the States, 1960-61*, p. 341.

[5] Compiled from Texas State Department of Health, *Texas State Plan for Construction of Hospitals, Rehabilitation Facilities, Diagnostic and Treatment Centers, Nursing Homes and Public Health Centers, Fiscal Year 1961*, pp. 31–73.

Although these 130 jurisdictions have been able to establish general hospitals for their citizens, many of them have found that, once the hospitals were established, financial hardships were created because of large numbers of indigents and constantly increasing costs. Other areas have been precluded by their existing conditions from providing any kind of publicly-owned hospitals. In many instances, the financial difficulties of the state's political subdivisions have been brought about by the strict limitations placed by the Constitution upon their power to tax and borrow.

The Constitution of 1876 was drafted at a time when there was extreme reaction against all forms of governmental authority. The framers had just undergone the difficulties and frustrations of the reconstruction era, and for a time the state was under military rule. They determined not to let that situation occur again, and consequently, they sought in every way possible to limit the actions and powers of the state government, particularly by curbing the power to tax. In several places in the Constitution, they spelled out the purposes for which money could be collected and spent and the rates at which taxes could be levied. Since the beginning of statehood, the general property tax had been the backbone of Texas' revenue system, and it was therefore natural for the writers of the present constitution to fix the maximum rates to be charged by those political subdivisions levying property taxes. These maximums have been altered during more recent years, but even at the present time the Constitution contains set limits on the property tax rates which may be levied by the two principal, general-purpose units of local government—the cities and counties.[6] It is these tax limits, together with the existence and operation of the property tax by the state government, which have been causative factors in the creation of special district governments. To simplify the technicalities involved, an illustration will be used.

County X, wishing to expand one of its existing functions to meet the needs expressed by its citizenry, finds

[6] Under Art. XI, Sections 4 and 5 of the Constitution, cities and towns with populations of 5,000 or less are limited to a total property tax rate of $1.50 per $100 of assessed valuation; those with more than 5,000 population are limited to a total rate of $2.50. Both limits apply to combined levies for operating and debt service purposes.

Under Art. VIII, sec. 9 of the Constitution, counties are limited to a total of 80 cents for the four constitutional funds: general, road and bridge, jury, and permanent improvement. This same provision authorizes the legislature to levy an additional 15-cent tax for road maintenance purposes, and this has been authorized by statute (art. 7048). Another provision, Art. VIII, sec. 1-a, authorizes counties to levy a maximum tax of 30 cents for farm-to-market and flood control purposes. The only unlimited property tax which counties may impose is that to service county-wide road bonds issued under Art. III, sec. 52 of the Constitution.

that an additional $100,000 in new tax revenue will be needed to finance costs involved. This amount of money may be procured by increasing the tax rate by 50 cents for each $100 of assessed valuation or by increasing the assessments upon which the tax is computed by $20,000,000. The first of these alternatives is impossible, because the county is already levying the maximum tax rate permitted by the Constitution. The second is possible, because County X—like all Texas counties—is only assessing its taxable property at a fraction of the full market value permitted by law. Unfortunately, an increase in county assessed values would not only increase the tax bill of the county's citizens for this new county service, but would also increase their state property tax bill because the same assessment by the county tax assessor is used to compute both obligations. The taxpayers in this particular county object to any increase in their state property tax payments, and therefore the alternative, an increase in assessed valuations, is ruled out. They explore the situation further and find that the door previously closed to them—an increase in the county's tax rate—can be opened by creating a new unit of government, a special district coterminous with the county boundaries, and authorizing it to levy the required 50-cent rate on the existing low valuations. In this manner, the county gets its new service without any increase in the state property tax bill of its citizens.

In response to this financial situation, and for other reasons of a less compelling nature, the special district has enjoyed a phenomenal growth in recent years. According to the 1957 Census of Governments there were 27,000 more special district governments in the United States than all other units combined. Texas had its fair share of these special districts, with 1,792 school districts and 645 non-school districts, or a total of 2,437 at that time.[7] Although these special districts exist for a wide variety of purposes (public housing, fire prevention, water supply, for example), one of the fastest growing types is the hospital district. From a total of eight in the entire United States in 1942, the number of hospital districts had increased to 345 by 1957. In Texas, the number of such districts has increased from zero to six within the past six years.[8]

The first attempt to authorize the use of hospital districts in this state was soundly defeated by the voters in 1949. However, in 1954, the voters approved the first constitutional amendment authorizing the creation of such districts in specific areas of the state. This amend-

[7] U.S. Bureau of the Census, *1957 Census of Governments*, Vol. I, No. 1, Governments in the United States (Washington, D.C., 1957), p. 14.

[8] The numbers here refer only to tax-supported districts. In addition, there is one known non-taxing city hospital authority in the state.

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ment permitted counties with populations of 190,000 or more, along with Galveston County, to organize special districts with taxing power for the purpose of supporting a publicly-owned hospital. At that time, nine counties were eligible to come within the terms of the amendment; but during the first two years after its adoption, only Dallas and Bexar Counties took advantage of the opportunity. Proposals for the establishment of districts within Harris, El Paso, and Tarrant Counties were overwhelmingly rejected, but subsequently the latter two counties have reconsidered. El Paso County citizens approved the creation of a district in November, 1958, and Tarrant County voters followed suit in April, 1959.

The statute enacted to implement the 1954 amendment has served as the general pattern for later legislation, and an examination of its major provisions will explain the usual organization and operation of a hospital district in Texas.[9] The basic requirement is that an election must be held within the boundaries of the proposed area in which *a majority of the property taxpaying voters participating in the election* give approval to the establishment of the special district. A governing body (known as the Board of Hospital Managers) is appointed by the Commissioners' Court of the county for two year terms without pay. The Board, with approval of the Commissioners' Court, may enter contracts, sue and be sued, and make rules for the operation of the hospital system. The district has the power of eminent domain, but the Commissioners' Court may stipulate accounting and purchasing procedures to be followed. The Court also serves as the district's agent in matters of taxation and debt, and it must approve the budget of the district.

The adoption of the amendment and the creation of districts in several counties caused public interest in the use of hospital districts to spread to the less populous areas. By 1957, the Legislature was besieged with requests for authorization for the creation of additional districts, and it responded by enacting four laws on the subject. One of the laws pertained to Harris County only and has not been used to this time. A second "population-bracket" law, applicable only to Brazoria County, permitted that county to organize a district for the operation of a hospital.[10] Two very important deviations from all previous legislation may be noted in that statute: the creation of a district *not* coextensive with county boundaries was permitted, and an elective rather than an appointive board was provided. In view of the constitutional prohibition on special legislation, some doubt as to the constitutionality of this special law has been raised,

[9] *V.A.C.S.*, art. 4494n.
[10] *V.A.C.S.*, art. 4494o.

but to date no litigation has been instituted to test it.[11]

A third act passed by the 1957 Legislature authorized cities either alone or jointly with other cities, to organize hospital "authorities." Cities were permitted to finance hospitals only by the issuance of revenue bonds to be paid for out of net revenue derived from the operation of the district. Since they were not authorized to levy additional taxes, this meant that the hospital systems had to be so organized as to at least break even. The law has not proved popular, and only one city in the state, Mesquite in Dallas County, has used it.

The most important of the four actions concerning hospitals in 1957 was the submission of a constitutional amendment allowing the creation of four hospital districts in three counties. Its major significance was that, for the first time, a constitutional amendment was designed to permit the districts to be formed in an area smaller than a county—a step that could lead to extreme fragmentation of governmental units. Specifically, the proposal authorized the creation, with the approval of taxpaying voters in the area, of districts in the City of Amarillo, the County of Wichita, and two sections in the County of Jefferson—one of the areas to be coextensive with the Port Arthur Independent School District and the other to coincide with the boundaries of Jefferson County Drainage District No. 7. The electorate adopted the amendment by a vote of 332,061 to 262,381, thus driving an entering wedge for future amendments to be offered concerning the remaining 240 counties not already included under one of the existing amendments or statutes.

The last session of the Legislature in 1959 once more was confronted with the question of hospital districts, and its response was the submission of the present proposal concerning Lamar, Hidalgo, and Comanche Counties. In most respects, the current amendment is patterned after the one adopted by the voters two years ago.

Analysis

Before attempting to assess the statewide ramifications of this amendment, it may be helpful to inquire into the local situations existing in the three counties specifically concerned. The one thing they all have in common is that they need additional money if they are to operate publicly-owned hospitals. The county governments of Hidalgo and Lamar Counties already own hospitals, as does the city of DeLeon in Comanche County; but each of these hospitals has been faced with real financial difficulties in recent years. Costs have continued to mount, and this has magnified the burden of caring for the indigents who can-

[11] Woodworth G. Thrombley, *Special Districts and Authorities in Texas* (Austin: University of Texas, Institute of Public Affairs, 1959), pp. 92–93.

not pay their own way. In at least one of the counties, the possibility of closing the publicly-owned facility has been debated, but there is much public opposition to such a move. In all three cases, citizens and public officials have explored the situation and have concluded that the most feasible way to finance their hospitals is to create a district with taxing power to produce additional income. Although plans at this stage are not firmly crystallized, presumably the hospital districts would assume the operation of publicly-owned hospitals already established rather than attempting to erect new plants.

The three counties are not only widely scattered geographically, but also they are very different in size and population. Hidalgo County, containing 1,541 square miles, is larger than the entire state of Rhode Island. Lamar County has 906 square miles as compared with 972 square miles in Comanche County. Hidalgo County is also the largest of the three counties in population and the only one to experience a steady increase within the past quarter of a century. In 1960, the number of inhabitants in the county was only slightly less than 180,000. On the other hand, Comanche County, with a 1960 population of 11,735, lost almost one-fourth of its residents within the past decade. Lamar County also lost some 9,000 persons in ten years, and its 1960 population was listed as 33,973. On the basis of the urban-rural distribution, Hidalgo County was predominantly urban, Comanche County was approximately 75 per cent rural, and Lamar County was about equally divided.

Existing hospital facilities throughout the state were enumerated in a recent survey of the United States Public Health Service. At the beginning of 1960, that report showed a total of 50 "acceptable" beds in two hospitals in Comanche County; one of the hospitals was owned by the City of DeLeon and the other by individuals. In Lamar County, there were 227 "acceptable" beds in three hospitals, one of which was owned by the county, another by individuals, and a third by a church group. Hidalgo County had nine hospitals with a total of 279 "acceptable" beds and additional facilities under construction to provide 194 more beds. The ownership of these hospitals was: one by the county, two by municipalities, two by non-profit associations, and four by individuals.[12]

A companion study prepared by the United States Department of Health, Education, and Welfare divided the state into regions for purposes of assessing the adequacy of existing facilities. Using standards fixed by Public Health Service Regulations, the percentage of needs met in the various areas was calculated in order to establish a priority list for participation in federal grants under

[12] Texas State Department of Health, *op. cit.*, pp. 38, 41, 66. Bed capacities refer only to general hospitals.

the Hill-Burton Act, passed by the national Congress many years ago. On the basis of existing facilities and current population, it was estimated that the area of which Hidalgo County was a part had 61 per cent of the needs met; the area in which Comanche County was located had 86 per cent of the needs already met; and 100 per cent of the needs had been met in Lamar County.[13]

As pointed out above, a major purpose in the creation of special districts is the anticipation of additional revenue. On the basis of the assessed property valuations listed in the 1959 Report of the State Comptroller of Public Accounts, the income of the districts in Amendment Number 1 may be estimated as follows:

ANTICIPATED REVENUE OF
PROPOSED HOSPITAL DISTRICTS

District	Assessed Property Valuation	Tax Rate	Estimated Income
Hidalgo	$138,072,776	10¢ per $100	$138,072
Lamar	27,016,205	75¢ per $100	202,621
Comanche	7,728,579*	75¢ per $100	57,964*

(*Based upon 60 per cent of the total evaluation of $12,880,965. The tax assessor-collector of Comanche County estimated that 40 per cent of the assessed valuation was outside Commissioners' Precinct No. 4).

Under the terms of the amendment, the Legislature could authorize the county government in Comanche County to render financial aid to the hospital district by levying a tax not to exceed 10 cents per $100 valuation upon "all property within the county but without the County Commissioners' Precinct No. 4." Using the assessor-collector's estimate that 40 per cent of the total valuation was outside Precinct No. 4, the county's share would approximate $5,125 a year, thus making available a total for the district of $63,116.

While it appears that these potential revenues could provide substantial assistance in the operation of the public hospitals involved, it is not known for how long they would be adequate in each case. If they prove to be insufficient in the future, the result will likely be a subsequent amendment to increase the maximum permitted tax rate. For reasons explained previously, any large-scale increase in district assessments appears to be clearly out of the picture.

In the process of weighing the local situations, the broader significance of the special district amendment method cannot be overlooked. It raises the perennial question of whether to include detailed, statutory authorizations in the state's basic law. That this has been done on numerous occasions previously is one of the

[13] *Ibid.*, pp. 107–121.

principal explanations as to why Texas has one of the longest constitutions in existence today.

If medical costs continue to advance,[14] it is quite possible that many other governmental units may be confronted with financial crises in providing and maintaining public hospitals. Judging from the past, Texans may expect a periodic recurrence of the question of whether to include new authorizations for special hospital districts via constitutional amendments. Carried to the ultimate, this could mean that hundreds of commissioners' precincts in the 240 counties not already covered might petition the Legislature to pass hospital district amendments for their localities. Moreover, there is a distinct possibility that some of those districts already established may require higher maximum rates of taxation. Within a few years, the Constitution could easily have fifty or more amendments dealing with special hospital districts.

In view of these possibilities, this might be an appropriate time to re-evaluate the special district method of dealing with hospital problems—and other functions—in various sections of the state. In favor of the special district method, it may be argued that, as a practical matter, additional sources of revenue are opened up for the expansion of functions that cannot be carried out by the general purpose units of local government. At the same time, the establishment of a new district may be the easiest immediate answer to a problem because it does not upset the *status quo*; present officeholders are not affected and no jobs are abolished or consolidated. Some would argue that the functions handled by special districts are "taken out of politics" because they are removed from the hands of professional politicians and put in the hands of representative citizens, who may be inclined to use "businesslike" methods for operating the district.

Despite these claims there are definite disadvantages in the use of special districts. The creation of more units of government tends to complicate an already confused situation at the local level because the general purpose units become eroded with a multiplicity of additional governments. This situation may leave the citizen completely bewildered as to the operation and control of governmental units for which he is ultimately responsible. With more units of government, there is more opportunity for "passing the buck," and undoubtedly there will be at least some duplication of functions. Usually less pub-

[14] At the beginning of June 1960, the Consumer Price Index was 126.3, an all-time high. Of the components of the index, medical costs had increased by the largest percentage to reach 155.9. These index figures were computed on the basis of average prices in 1947–1949 being 100. U.S. Department of Commerce, *Survey of Current Business*, July, 1960, p. S-6.

licity is given to the activities of special districts than those of general purpose governments such as the city and county, and consequently the public is less informed about their activities. This sometimes leads to the belief that special district governments tend to be less democratic than general purpose units.

A realistic appraisal of the special district method of providing hospitals—and other functions—introduces some long-range issues that deserve consideration. A vital question is whether or not this is, in the long run, really the best method for financing increased hospital costs. If the trend continues toward the creation of additional governmental units relying upon the property tax as the source of their income, the time is sure to arrive when the property tax will no longer be able to bear an additional burden. It will have been pressed to the limit, and at that time, other sources of revenue will of necessity have to be discovered.

This being the case, a re-examination of possible alternatives is in order. No doubt the best approach would be the complete modernization of the Constitution to eliminate the archaic provisions designed for reconstruction days and to remove unrealistic limitations upon government. The time for constitutional revision in Texas is long overdue, but it may be years before such a move is undertaken. The next best alternative would seem to be authorization to revise and reorganize county government with a view to making it possible for officials to install more effective management methods. Possibly a new county home rule amendment is the answer. The fact that ninety-four county govenments operate hospitals strongly suggests that general purpose governments are quite capable of administering hospitals successfully.

If it remains inevitable that special districts are appropriate, perhaps a single, all-inclusive amendment could be adopted authorizing hospital districts to be created in any part of the state on a "local option" basis. An amendment of this kind would place the responsibility for decision squarely upon those who were directly affected. At the same time, it would free voters in the remote corners of the state from passing upon matters in which they had little knowledge or interest. Moreover, the time of the Legislature would be saved, and the expense of statewide elections held on near-identical issues every two years would be eliminated. After all, is it not the democratic way to allow residents of an area to decide for themselves on purely local matters such as the services they desire to provide for themselves at their own expense?

II

Increased Interest Rate on Veterans' Land Bonds

This proposal would amend Section 49-b of Article III of the Texas Constitution by authorizing the Veterans' Land Board to pay a higher rate of interest on bonds it sells to finance the veterans' land program begun in 1949. The present constitutional maximum of three per cent would be increased by one-half per cent per year.

Background

The Texas Veterans' Land Program is in keeping with an old American tradition that those who serve their country in time of emergency should be compensated in various ways. As early as 1775, pensions for disabilities incurred in service were granted by American governments; and by the middle of the nineteenth century, widows and children of servicemen were provided with financial aid at government expense. Millions of acres of land were given to soldiers and sailors and their dependents following the Revolutionary War, the War of 1812, the Mexican War, and the Indian wars prior to 1855.

During and after World War I, the federal government began to offer many other kinds of benefits such as vocational rehabilitation, government life insurance, and hospital care. Following the second World War, Congress provided veterans with loans, mustering-out pay, unemployment compensation, and educational benefits.

On a smaller scale, state governments followed the patttern set by the federal government. It is estimated that the states spent more than $590 million for cash bonuses to veterans of World War I. Naturally, the question rose again in the 1940's, and in all but five of the states, it was considered either by the legislature or by the electorate. Such a proposal, which would probably have cost around $500 million, was defeated by the Texas Legislature in 1947. Two years later, another bill granting a cash bonus was introduced, but no legislative action was taken. Instead, Texas chose to recognize the efforts of her servicemen by inaugurating a program under which the state would purchase lands for them on very generous terms. Similar plans had been undertaken by several states in the West previously, and appeared popular with returning service personnel.

Even before the official outbreak of World War II, the General Land Office received a number of letters of inquiry from men who had volunteered or who had been called into active duty concerning how they could buy a

tract of land when they were discharged from military service. In response to the increasing demand, the Commissioner of the General Land Office addressed the Legislature on March 28, 1945, and proposed the establishment of a Veterans' Land Fund.[1]

The original suggestion had been to transfer $25 million from the Permanent School Fund, but the proposal was fought strongly by school people throughout the state. As finally worked out by a conference committee in the Legislature, a constitutional amendment was drafted which provided that the program would be financed by the issuance of bonds to be sold by the state at an interest rate not to exceed 3 per cent per year. By unanimous vote, the Legislature adopted the proposal and submitted it to the electorate in the general election of November, 1946. Although the voters approved by a margin of more than 2 to 1, the next session of the Legislature did not enact enabling legislation. It was not until Governor Beauford Jester signed the law on June 6, 1949, that the Veterans' Land Program became a reality.

Initially, the administration of the program was vested in a Veterans' Land Board composed ex-officio of the Governor, the Attorney General, and the Commissioner of the General Land Office. The Board was charged with the responsibility of issuing and selling at sealed bid auction $25 million worth of negotiable state bonds at a rate of interest not to exceed 3 per cent per annum. The sum was to be spent by the Board to purchase individual tracts for resale *at the same price* to veterans of World War II. The terms of the sale for the veterans at that time were: a down-payment of 5 per cent of the value; payments extended over a period up to forty years; and interest on the unpaid balance at the rate of 3 per cent.

The sale of the $25 million in bonds occurred between October 1949 and July 1950, the effective interest rate paid by the state averaging 1.71 per cent. From the proceeds, some 4000 purchases were made. Public support of the program was so favorable that in 1951 the voters approved an amendment authorizing the sale of an additional $75 million in veterans' land bonds, bringing the total for the program to $100 million. Coverage was expanded to include veterans of the Korean conflict. Shortly after the last sale of this issue, newspapermen uncovered a number of irregularities in the administration of the program. The widely-publicized "block deals" resulted in an extensive investigation by the Legislature, the Attorney General, the Department of Public Safety, and the State Auditor. A new Commissioner of the General Land Office was appointed, and the program was suspended during the period in which the irregularities were being corrected.

[1] State of Texas, *Report of the Commissioner of the General Land Office, 1946–48*, p. 21.

To assist in "cleaning up" the Veterans' Land Program, still another constitutional amendment was approved in 1956. Under its provisions, the ex-officio Veterans' Land Board was abolished and a new citizen member board substituted. The new board was composed of the Commissioner of the General Land Office and two members appointed by the Governor with the consent of the Senate. One of the members was required to be well-versed in veterans' affairs, the other in matters of finance. The Legislature was authorized to fix the salary of the citizen members and it decided upon a salary of $3600 per year plus travel expenses. Moreover, the amendment provided for the sale of another $100 million in bonds, bringing the total authorization of the program to $200 million. Again, the rate of interest was not to exceed 3 per cent per annum.

Under the new procedures and controls, the Veterans' Land Program started functioning once more in October, 1955. One of the most publicized reforms was the placing of applications on file in the exact order they were received and then processing each application in its turn. Under this system, approximately two years is now required between the date of inquiry and the date of purchase.

Analysis

Since the inception of the program, the Veterans' Land Board has issued twelve series of bonds. A tight money market has prevailed during the past few years and the Board has been faced with an almost constant increase in effective interest rates. The following table shows clearly the trend over the years:

BONDS SOLD TO FINANCE
TEXAS VETERANS' LAND PROGRAM

Bonds Sold Under Amendment Adopted in:	Issue	Effective Date	Amount (Millions)	Effective Rate of Interest
1946	1	October 1949	$ 5	1.67%
	2	April 1950	10	1.72
	3	August 1950	10	1.72
1951	4	December 1951	15	1.94
	5	October 1952	10	2.22
	6	April 1953	10	2.38
	7	September 1953	15	2.66
	8	April 1954	15	2.34
	9	September 1954	10	2.09
1956	10	December 1957	12.5	2.70
	11	April 1958	12.5	2.89
	12	July 1958	12.5	2.94
		TOTAL	$137.5	2.33% (Average)

(Source: Adapted from information furnished by Executive Secretary, Veterans' Land Board, State of Texas).

The last sale of bonds was consummated on June 18, 1958. Since that date, the money market has continued to remain tight, and despite the good credit rating of the State of Texas, there has been no time when Veterans' Land Bonds could have been sold at 3 per cent or less as provided in the Constitution. The most recent report of the Commissioner of the General Land Office indicates that about two months after the last sale, the Dow-Jones yield index of twenty representative state and county bonds read 3.58 per cent. It stated further that, "State of Texas Veterans' Land Bonds would not sell at an average interest rate of 3 per cent or less unless the Dow-Jones yield index would read in the vicinity of 3.07 to 3.08."[2] In mid-July 1960, the Dow-Jones yield index stood at 3.55 per cent. In this situation, financial advisers believe that Texas Veterans' Land Bonds might sell at 3.25 to 3.35 per cent.[3]

The Veterans' Land Board thus finds itself unable to sell under present market conditions the additional $62.5 million in bonds authorized by the Constitution. This has prompted officials charged with the administration of the program to request an increase of one-half per cent in the rate they may pay on the bonds. It is their opinion that this increase would be adequate to sell the remainder of the bonds. Unless the bonds are sold prior to December 1, 1965, the money derived from their sale may not be used for the purchase of land for resale to veterans. After that date, the present constitutional provision requires that all moneys received from the program (including the sale of additional bonds) must be used to retire the outstanding bonds. After maturity of the last bonds, any remaining sum from the program will be credited to the General Revenue Fund to be appropriated by the Legislature.[4]

Whether the Veterans' Land Program is continued in the future probably hinges on the outcome of the vote on this amendment. The inability of the Board to sell additional bonds has already caused a slow-down. During the first half of 1959, approximately 300 tracts a month were being sold, but during the comparable period of 1960, about 65 tracts a month were sold and in July, 1960, only 58 transactions were completed. Officials estimate that available money will be used up by the spring of 1961 unless additional bonds are sold.

What has the program done for the veterans thus far? At the end of June 1960, more than 2,108,000 acres of land had been purchased for 22,369 veterans at a total of $147,633,254. Of the purchases, more than 1800 had been paid in full although the maximum pay period was forty

[2] *Report for the Biennium 1956–58*, p. 13.

[3] Information supplied by Executive Secretary, Veterans' Land Board.

[4] *Constitution of Texas*, Article III, Sec. 49-b.

years from date of purchase. The state's investment at that time was $136,158,555. There were 38,650 applications on the waiting list and additional applications were arriving at the rate of 300 a week. The Legislature had set the maximum amount of any individual purchase at $7,500 and had authorized an increase in the interest rate paid by the veteran to 4 per cent; however, in July, 1960, the Veterans' Land Board had not found it necessary to charge the maximum, but was charging 3½ per cent.

Some legislators have called the program "inadequate." They would advocate its extension to include loans for improvement and modernization as well as for purchase of land. This argument brings up the fundamental issue at stake as to how far the citizens desire the state to go in assisting their veterans.

If additional bonds are sold, the continuation of the program would afford opportunity for hundreds of veterans to get the benefits that, for one reason or another, they have not been able to secure up to the present. Moreover, a program of this nature costs the state far less than practically any other kind of veterans' benefit program that could be adopted. In fact, it is quite possible that when the last bonds are retired, there will be a surplus to be converted into the General Revenue Fund for appropriation by the Legislature. If this program is continued, it is probable that any pressure for cash bonuses in the future would be removed completely.

Those opposed to the continuation of the land program would answer very quickly that it is out of tune with current economic developments in that there has been a decided trend toward urbanization and a decline in the number of farms and in farm income. They would also argue that the state might better use its credit for purposes to benefit a larger segment of the population, such as the building of more highways, schools, or water development projects. Whatever the voter's views may be, the question to be decided boils down, in the final analysis, to whether to continue the land program begun eleven years ago or whether to let it die for lack of loan funds.

III

Annual Salaries for Texas Legislators

Under the terms of the third amendment to be submitted in November, Section 24 of Article III would be amended to increase the pay of each member of the Texas Legislature to $4800 annually from the present $3000 per regular session. The proposal also allows a per diem of $12 for expenses during the first 120 days of regular sessions and 30 days of each special session, making a total maximum expense allowance of $1440 for regular sessions and $360 for each special session. Moreover, each member is granted ten cents a mile to be computed by "the nearest and most direct route" to his county seat, but no one would be entitled to mileage for any extra session called within one day after adjournment of the previous session. A final provision limits the length of regular sessions to 140 days.

Background

The problem of legislative pay is not new to Texas voters. The question has been submitted to them a dozen times since the adoption of the Constitution; but only twice (in 1930 and again in 1954) have increases been approved. The Constitutional Convention of 1875, after considerable discussion of the matter of legislative pay, realized the great popular distrust that prevailed toward the Legislature and recommended that the per diem paid to members at that time be decreased. Accordingly it was agreed to set the rate at $5.00 per day automatically decreasing it to $2.00 per day after the first sixty days of the session. That original scale remained in effect for more than half a century, even though during the same period seven proposals for change were rejected by the electorate. In 1930, an amendment was adopted which increased the per diem to $10 for the first 120 days of the regular session and reduced it to $5.00 thereafter. This rate served as the basis of compensation for Texas legislators for the next twenty-four years.

After World War II, the general rise in prices and salaries prompted Texans to think about compensation increases for members of the Legislature, and only two sessions since then have failed to offer amendments on the subject. At a special election in August, 1945, the voters rejected an amendment that would have allowed the per diem of $10 to run continuously "during tenure in office." Again in 1949, they defeated a plan providing

for annual sessions and salaries of $3600 per year.

The Fifty-third Legislature, meeting in 1953, submitted an amendment broader in scope than any of the previous ones. The proposal called for increases not only for lawmakers, but also for certain state executives whose salaries had been fixed by the Constitution. It set a daily compensation of $25 for members of the Legislature for 120 days of the regular session, after which no payment was to be provided. The same rate applied to special sessions, limited to 30 days. This amendment was adopted at the general election in November, 1954, and for the past six years it has been the basis of compensating legislators.

The problem of legislative pay, however, has been a recurring one. In 1957, the Legislature referred a plan to the electorate providing for an annual session and a salary of $7500 for each member. Opposition developed against the annual meetings, the salary figure, and also the ambiguity of a per diem expense allowance authorized in the amendment. The voters soundly defeated the proposal in November, 1958, by the overwhelming margin of 441,803 to 195,993.

Again this year, the voting public is called upon to weigh the question of compensation for its lawmakers by passing upon the amendment which was introduced during the early days of the Fifty-sixth Legislature in 1959. The original proposal fixed a salary of $6500 plus an expense allowance "not to exceed $50 per month during the interim." However, after careful consideration by the committees and membership of both houses, the amount of compensation was whittled down to the present figure of $4800 annual salary and $12 per diem for expenses. To say the least, the amendment was not hastily passed through the Legislature; it was not finally enacted until near the end of the regular session—some three and one-half months after its introduction. Although some legislators felt that the figures proposed by the final version were still inadequate, others believed that this plan was the closest approach to the public opinion on the subject. In fact, members in the latter group doubted that any higher figure would stand a chance of passage in view of the fact that the amendment calling for $7500 had been defeated in 1958. They also felt that, should the plan be adopted, it would represent a decisive step in the right direction.

Analysis

At best, it is difficult to determine the exact amount of compensation that a lawmaker should receive. Many variables must be considered. Conditions are different from state to state and even from district to district in a state as large as Texas. Among other factors having a bearing on the problem are family needs, cost of living, fre-

quency of trips necessary to the home district, whether housing must be maintained both in the capital and in the home district, and the amount of entertainment of constituents that is expected of the member.

Since the founding of the nation, there has been much discussion of the question of remuneration of public officials. Generally, the ideas on the subject have fallen roughly into three categories: those who favor no compensation; those who advocate a token compensation only; and those who believe the compensation should be sufficient to make public service attractive to capable people.

In the early days, and particularly during the nineteenth century, a widespread belief prevailed that there should be no compensation for public officials because the honor of being elected to high office was adequate remuneration. However, it appears that a majority of the American people have always accepted the principle that state legislators should be paid something to offset the sacrifices entailed by absence from their regular vocation and the cost of living away from home. This notion was emphasized a few years ago by the Committee on American Legislatures of the American Political Science Association, which recommended that: "Legislators should receive salaries at least sufficient to offset personal sacrifice as measured by average income."[1]

Recently, an increasing number of authorities have urged the idea that, in order to get the most capable people, adequate compensation must be offered to make government service attractive. They point out that jobs with comparable responsibilities in industry pay far greater salaries and that a large number of well-qualified persons are kept out of public life because they cannot make the financial sacrifices necessary to hold office. One outstanding student of state government has written that, although salary increases have been granted in most states, "the increase has failed to match the rise in living costs, so that state legislators actually find themselves worse off than in 1940," and he concludes that today's legislative salaries are "ridiculously small."[2]

While it is impossible to prove that higher salaries alone will necessarily produce more competent officials, there are few persons who would agree that an individual should suffer a financial penalty for serving the state as a legislator. Nevertheless, in 1956 the Texas Legislative Council found that the "composite Texas legislator" was in fact spending an average of $3,157 *more* than he made in a regular 120-day session. Further-

[1] Belle Zeller (ed.), *American State Legislatures* (New York, Thomas Y. Crowell Co., 1954), p. 88.

[2] Austin F. Macdonald, *American State Government and Administration*, 6th Edition, (New York, Thomas Y. Crowell Co., 1960), pp. 106–108.

more, the average campaign costs to become a member of the Texas Legislature were $2,722. The study pointed out that the basic question then was not one of what the legislator was worth, but that it should be "What is necessary in the way of compensation in order to obtain for the State competent, conscientious legislators of integrity?"[3] In essence, this is still the fundamental issue now at stake in Amendment Number Three.

In assessing this question, the voter of 1960 will find it helpful to take a look at the legislative pay practices of the other states. The latest reports show that basic pay rates were increased in at least ten states during the past biennium. A total of twenty-two had either adopted or referred plans concerning legislative remuneration.[4] Recent thought on the question was well summarized in the 1959 report of the National Legislative Conference Committee on Legislative Processes:

> From the viewpoint of good public service, and in the light of increasing amounts of time that legislators normally devote to session and between session duties, the compensation of legislators in most states is now too low. Flat salaries rather than a per diem should be paid. Salary and expense reimbursement for necessary expenses sufficient to permit competent persons to serve in legislatures without financial sacrifice should be provided . . .[5]

By 1959, thirty-four states were using the annual-salary plan, although only fifteen years earlier, less than half used it. Salaries per biennium in these states ranged from $200 in New Hampshire to $15,000 in New York, the median figure being $3,600. On the other hand, nineteen states employed a daily pay plan (three using a combination of both salary and per diem). The range for the per diem states was from $5.00 in Rhode Island, Kansas, and North Dakota to $50.00 in Louisiana, the median being $15.00.

In addition, many states now provide living expense allowances, which take the form of a per diem in nineteen states and a lump-sum or monthly payment in eight others. All states except New Jersey and Hawaii grant travel allowances in some form. Several states compensate legislative leaders in recognition of greater demands upon their time, and fourteen currently provide retirement pension plans for members. Except for the apartments provided for the presiding officers, Texas does not offer additional compensation to any legislative leaders, nor does she provide any retirement plan for legislators.

Among the states in the nation, Texas ranks sixth in population. However, as indicated in Table I, a compari-

[3] Texas Legislative Council, *Compensation of Legislators and Frequency of Legislative Sessions, A Report to the 55th Legislature* (Austin, 1956), pp. ii, 2, and 30.

[4] Council of State Governments, *American Legislatures: Structures and Procedures* (Chicago, 1959), pp. 12–16.

[5] Quoted in *Book of the States, 1960–61* (Chicago, 1960), p. 32.

TABLE I

COMPARISON OF LEGISLATIVE COMPENSATION IN THE SIX MOST POPULOUS STATES

COMPENSATION	*STATES*					
	TEXAS	NEW YORK	CALIFORNIA	PENNSYLVANIA	ILLINOIS	OHIO
Compensation per biennium	$25.00 per day (120 days—$3,000) $25.00 per day special sessions (maximum 30 days)	$15,000	$12,000*	$12,000	$12,000	$10,000
Expense Allowances	Contingent expenses determined at session	$1,000 per session	$19 per day; $20 per day in interim (maximum of 60 days)	.....	$50 for postage and stationery	Postage and stationery
Travel Allowances	10c per mile one round trip	Round trip per week	5c per mile one round trip; 15c per mile in interim	10c per mile round trip per week	10c per mile round trip per week	10c per mile round trip per week

* California voters in November will vote on whether to increase the monthly salary from $500 to $750 per month for the term of office.

Source: Adapted from *Book of the States, 1960–61*, pp. 38–39, and Council of State Governments, *American Legislatures: Structures and Procedures* (Chicago, 1959), p. 14.

son of the six most populous states reveals that this state lags far behind others in legislative remuneration. On the other hand, if comparison is made with the surrounding states (Table II), Texas is about in line with regional practice. In fact, of all the adjoining states, only Louisiana far surpasses Texas in legislative pay practices.

Although there is no job exactly comparable with that of state legislator, it is logical to draw a rough analogy between the legislator and his counterparts in other levels of government, the Congressman at the national level and the councilman in mayor-council type of government in the larger cities. Of course, the problems that each of these classes of lawmakers face are vastly different in scope and complexity, but all three are representatives of the public and enact the laws for their respective jurisdictions.

A member of Congress receives $22,500 a year plus a travel allowance, office space and a staff, and free postage. Councilmen in cities of more than 500,000 population are paid salaries ranging from $3,000 to $12,000 annually, the median figure being $7,000.[6] In October, 1960, Houston will hold a charter amendment election, and if the new provision is approved, the compensation of members of the council will be doubled to $7,200 annually.

Another basic consideration in any rational analysis of legislative compensation must necessarily be the nature and complexity of the lawmakers' duties. While these tasks are generally known to Texas citizens, a definitive job description for the Texas legislator has never been made. In the absence of such a work, a very excellent and thorough analysis of the legislator's job in California may be instructive to the Texas voter.

Faced with an amendment calling for an increase in legislative pay, the California Legislature created a Citizens Legislative Advisory Commission to assist in the study of the problem. In turn, the Commission employed a consulting firm to analyze the duties of the legislator and to make recommendations concerning salary rates. An intensive survey of the actual work performed by members of the California Legislature resulted in the preparation of a job description for the typical legislator. This job description indicates that the legislator:

1. Develops and carries a legislative program derived from a variety of sources—constituents, committees, political party, friends and acquaintances, and various interest groups.

2. Senses the need for new legislation through a process of self-education on many subjects and a study of problems in his district and the entire state, and initiates bills and amendments to that end; opposes bills which

[6] International City Manager's Association, *The Municipal Yearbook, 1960* (Chicago, 1960), p. 87.

TABLE II

COMPARISON OF LEGISLATIVE COMPENSATION IN TEXAS AND SURROUNDING STATES

COMPENSATION	*STATES*				
	TEXAS	NEW MEXICO	OKLAHOMA	ARKANSAS	LOUISIANA
Regular session compensation per biennium	$25 per day (120 days)	$20 per day (60 days)	$15 per day (75 legislative days including intervening days) otherwise $100 per month*	$2400	$50 per day (90 days)
Compensation for special sessions	$25 per day (30 days)	$20 per day (30 days)	$15 per day (75 legislative days including intervening days) otherwise $100 per month	$6 per day (15 days)	$50 per day (30 days)
Expense Allowances	Contingent expenses determined at session	Stationery, postage, telephone, telegraph allowance	Postage, stationery, telephone, telegraph, shipping legislative supplies	$20 per day for 60 days	$150 per month while not in session
Travel Allowances	10c per mile one round trip	10c per mile one round trip	10c per mile one round trip	5c per mile one round trip	8 round trips; 4 round trips in budget session held every second year

* At an election held July 5, 1960, Oklahoma voters rejected an amendment providing for $200 per month for the entire term plus $15 per day for 75 legislative days, including intervening weekends and other recess days.

Source: Adapted from *Book of the States, 1960–61*, pp. 38–39, and Council of State Governments, *American Legislatures: Structure and Procedures* (Chicago, 1959), p. 16.

do not accord with his conception of public needs, or which might be detrimental to the interests of his district.

3. Attends floor sessions and takes part in debate; votes on bills, resolutions, and amendments.

4. Exercises a watch over the administrative branch of government through committee hearings, personal contacts, review of reports, and investigations of constituents' complaints.

5. During sessions, reviews bills proposed and the Journal of his house to determine progress of proposed bills and measures on which he is expected to vote.

6. Answers correspondence daily; assigns and supervises work of one or more secretaries.

7. Reports to his constituents.

8. Attends committee meetings.

9. Acts as liaison between people of his district and the many state agencies, providing personal assistance in handling their problems.

10. Assumes an active role in the community which he represents and speaks before many groups.

11. Assumes an active role as member of his party (or faction).

12. Takes part in ceremonial functions.

13. Travels to State Capitol as required.

14. Performs a variety of related activities.[7]

While no one would claim that this job description would apply universally to every Texas legislator, it is obvious that members perform many important tasks that require skill and competence. Moreover, with the rapid economic and population changes of recent years, a multitude of new problems have been thrust into the lap of the Texas lawmaker. Perhaps never before in the history of the state have the demands upon his time been greater or the subjects about which he must have some knowledge more complex. To mention only a few, he must know something about the planning, construction, and maintenance of super highways; mental health programs; institutions of higher education; water problems; and the tax structure. In the four sessions of 1959, he was asked to pass upon a total of 1,810 proposed bills concerning a wide variety of subjects. Of this number, almost one-third became new laws on the Texas statute books. Furthermore, there was a total of seventy-six proposed constitutional amendments that he had to consider and act upon.

In recent years, increasing use has been made of interim legislative committees to study special problems.

[7] Adapted from the study by Alexander Cloner and Richard W. Gable, "The California Legislator and the Problem of Compensation," *Western Political Quarterly* XII, No. 3, September, 1959, pp. 714–715.

Two interim committees, the Texas Legislative Council and the Legislative Budget Board, have been established on a permanent basis and have made invaluable contributions to the legislative process through their studies and recommendations over the past decade. At the most recent session of the Legislature, 36 resolutions were passed calling for interim studies covering a multiplicity of subjects. Obviously, much of the legislator's time between sessions will be consumed by attendance at these committee meetings and in travel over the state connected with committee activities.

In view of the variety and scope of the functions performed, the question might well be raised as to the amount of time the member finds it necessary to devote to the job. Inevitably, discussion arises as to whether legislative service should be considered as full-time or part-time. So far, the consensus is that most state lawmakers may (indeed must) have another profession. Nevertheless, as early as 1946, a study in New York disclosed that "the average legislator can devote no more than one-third of his time to his own business affairs during the session and considers himself fortunate if he can devote as much as two-thirds of his time to earning a living after the session."[8] The California survey referred to above discovered that almost one-third of the Senate and one-fourth of the lower house work full-time as legislators between sessions on such functions as committee work, answering correspondence, meeting constituents, and providing them with personal services. A far greater percentage of members devote more than half of their time in the interim to legislative work. It is only logical to assume that as the variety of governmental problems becomes more complex, the amount of time required on the job will continue to increase.

Since the average member can reserve at most only half of his time to personal business, undoubtedly the states are deprived of the services of many capable persons who cannot afford the financial sacrifice necessary to being in the Legislature. Usually it is very difficult for those employed by others—the large group of salaried white-collar workers—to adjust their work schedules so as to permit service in the Legislature. In many instances they must resign their jobs if they are to offer as candidates for the post. Most people who are not self-employed simply cannot afford the sacrifice.

In view of these limitations, it may be worthwhile to look at the occupational breakdown of a recent Texas legislature. The Fifty-sixth Legislature, which met in 1959, followed the customary pattern of being composed largely of attorneys, ranchers and farmers, and businessmen. Of the total membership of 181, there were 88 law-

[8] State of New York, Legislative Document (1946) No. 31, p. 167.

yers; 24 ranchers and farmers; and 21 in various fields of business. There were eight each in the teacher and student categories. The remainder of the group was composed of a wide diversity of occupations, and only one member was classified as a "full-time legislator."[9]

It is obvious that the vast majority of members are either self-employed or have been able to adjust their working schedules to allow attendance at the sessions. Several professions are not represented among the group, possibly indicating that those people cannot afford to leave good incomes to serve for the $25 per diem or that service in the Legislature is not attractive enough to draw them away from their usual jobs.

To evaluate this amendment properly, the voter will desire to know the costs of the proposed amendment as compared with the present plan. If total base pay is computed under the present system, the amount would be $271,500 annually, and under the salary plan, it would be $868,800 annually. However, both methods are affected to some extent by the number of special sessions called by the governor. In order to compare costs accurately, it will be necessary to make an assumption that special sessions will continue to be called as they frequently have been in the past.[10] For purposes of illustration, a situation similar to that which occurred in 1959 might be used. During that year, there were three called sessions, the last of which continued for only twenty-one days. In order to simplify the example, however, let us assume that there will be the regular session and three called sessions lasting the maximum of thirty days each. Computation of the salaries of individual members and the total membership for the biennium under the two plans would be that shown in the table on page 33.

The annual reports of the Comptroller of Public Accounts indicate that over the years the amount spent for the legislative function constitutes only a small percentage of the total expenditures of state government; recently, the legislative function has cost approximately one-fourth of one per cent of total state expenditures. The report for fiscal year 1959 indicates that a total of $1.16 billion was spent by the state for all governmental purposes, but that only $2.98 million went for legislative

[9] *Texas State Directory*, 12th Edition (Austin: Texas Publishing Co., 1959), pp. 129–195.

[10] The proposed amendment would limit the length of regular sessions to 140 days—the approximate average length of regular sessions in recent years. However, the expense allowance would be provided only for the first 120 days. The remaining 20-day period would presumably be used to take care of last minute details and to provide the Legislature a deadline to finish its work, thus preventing the session from going on indefinitely. It should be pointed out that the regular session could be terminated prior to the 140 day limit, and special sessions could then be called any time thereafter.

ILLUSTRATIVE COMPUTATION OF LEGISLATORS' PAY

	Present Rate		Proposed Rate	
	Per Member	Total Membership	Per Member	Total Membership
FIRST YEAR:				
Regular Session (120 days)				
$25 per diem (base pay)	$3000	$543,000	None	None
Salary (base pay)	None	None	$4800	$868,800
$12 per diem (expenses)	None	None	1440	260,640
Special Sessions (3–90 days)				
$25 per diem (base pay)	$2250	$407,250	None	None
$12 per diem (expenses)	None	None	$1080	$195,480
Total for First Year of Biennium	$5250	$950,250	$7320	$1,324,920
SECOND YEAR:				
No sessions held				
Salary	None	None	4800	868,800
Biennial Total	$5,250	$950,250	$12,120	$2,193,720

costs in a year in which there were four sessions of the Legislature.[11]

Opponents of the amendment will argue that the new salary schedule will cost the state additional hundreds of thousands of dollars each year. Advocates of the pay increase will not deny that. Rather they will point out that it is only logical to expect an increase in the cost of the legislative function along with the increased costs of other activities of government. They will also claim that more competent persons may be attracted to run for the office who otherwise might not be willing to make the financial sacrifice. Furthermore, they believe that any temptation to accept financial assistance from outside sources by members may be lessened if a more attractive salary is offered.

Whatever else may be said, it is true that whether the annual salary plan is adopted or not, the expenditures for the conduct of the Texas Legislature will comprise only a small portion of the total expenditures of the state government. It remains then for the voter to determine the question of whether this amendment will assist in

[11] *Annual Report of the Comptroller of Public Accounts of the State of Texas, 1959,* Part I, p. 4. The $2.98 million represents all legislative expenditures, and includes expenses in addition to legislators' renumeration.

making service in the Legislature more attractive and whether Texas is to follow the lead of the other thirty-four states that have already adopted the annual-salary plan for their legislators.

IV

Regulation of Interest Rates and Lenders

Amendment Number Four on the November ballot is frequently called the "loan shark" amendment. It authorizes the Texas Legislature to classify various kinds of loans and lenders, to license and regulate money lenders, to define interest and to fix maximum rates. At the present time, Article XVI of the Constitution declares that all contracts charging interest in excess of 10 per cent per annum shall be deemed usurious; but for contracts in which a rate is not specified, the maximum legal rate shall be 6 per cent per year. The proposed change continues these same rates in effect unless the Legislature fixes other maximums. It also provides that lenders may have the right of appeal to the courts in cases where their permits are cancelled or refused by the regulatory body established to enforce the law.

Background

The American economy has undergone innumerable changes during its long history, but certainly one of the most striking developments of recent years has been the rapid and widespread extension of consumer credit in the years following World War II. As shown in the following tabulation, total consumer credit in the United States increased from $5.7 billion in 1945 to $52.8 billion in 1960. Of particular interest here is the fact that one component of consumer credit—personal loans—increased from $1.0 billion in 1945 to $10.4 billion in 1960.

Year	Total Consumer Credit (in billions)	Total Personal Loans (in billions)
1945	$ 5.7	$ 1.0
1950	21.4	2.8
1955	38.7	6.2
1960	52.8	10.4

(Source: U.S. Department of Commerce, Office of Business Economics, *Business Statistics, 1959 Biennial Edition*, p. 87, and *Survey of Current Business* (July, 1960), p. S-17).

These personal loans are made when the borrower needs cash immediately, and, in a majority of the cases, they have been found to be used for such necessitous or constructive purposes as: consolidation or payment of debts; doctor bills or medical expenses; purchase of food or clothing; payment of tuition or educational expenses; or funeral costs. Regardless of purpose or circumstance,

there are many sources from which the individual may borrow. These include: personal loan departments of commercial banks, savings and loan associations, credit unions, loan brokers, personal finance companies, consumer finance companies, and individuals. The combined lending activities of all these groups during the present century has resulted in what is known as the "small-loan industry"—a new field primarily for the extension of cash loans between $5 and $3000.[1]

The advent of the small loan business has brought with it an increased emphasis upon an old problem, *i.e.*, how to protect the public against unscrupulous money lenders. The question of regulation has been present since Biblical days when the Mosaic Code required that loans without interest should be given the poor. Subsequent generations have developed their own particular schemes for handling the matter, but most have approached it through some kind of legislation prohibiting the lender from charging usurious interest. Except for the period 1869–1876, Texas has had some kind of usury law ever since the Republic of Texas adopted an act to regulate interest in 1840. The writers of the present constitution in 1876 deemed the matter of sufficient importance that they included it in Article XVI. Amended in 1891, Section 11 of that article now reads:

> All contracts for a greater rate of interest than ten per centum per annum, shall be deemed usurious, and the first legislature after this amendment is adopted, shall provide appropriate pains and penalties to prevent the same; but when no rate of interest is agreed upon, the rate shall not exceed six per centum per annum.

A great deal of the difficulty encountered in this state in the matter of regulation of money lending stems from this rigid prohibition, and the present amendment is aimed at making the situation more adaptable to changing conditions.

Because of the constitutional limits, fluctuating economic conditions, and the high administrative costs of small loans, a number of legitimate lenders have not been able to compete fully within the scope of the law. Consequently the way has been opened for the operation of "loan sharks"—lenders who have capitalized upon the misfortune of uninformed individuals needing cash. Besides charging exorbitant rates of interest, these loan sharks frequently add a number of extra expenses such as "service charges" and insurance fees. It is even more common for them to add "brokerage" charges as a subterfuge for collecting more money from the borrowers, and they use all kinds of methods of harassment and

[1] A good discussion of the growth of the industry and its problems is given in Donald A. Tyree, *The Small Loan Industry in Texas* (Austin: University of Texas Bureau of Business Research Monograph No. 19, 1960).

intimidation in attempting to force payment such as threatening lawsuits, notifying employers of the debt, placing periodic phone calls to the person or his neighbors, and a host of other undesirable tactics.

During the depression of the 1930's, the loan shark problem became particularly acute. By the end of the decade, Texas had the sad distinction of being first among the states in volume of loan shark business, and since that time it has frequently been referred to as the leading loan shark state. From time to time, metropolitan newspapers, chambers of commerce, and other civic organizations have declared open war upon these unscrupulous lenders. Though lessening the problem for the time being, these campaigns have not had lasting effects, and the state today is confronted with the problem as never before. Within the past several years, other states have passed laws to rid themselves of such lenders only to have those lenders migrate to Texas and set up operations. In the early 1950's, for example, the state experienced a large influx of lenders from Nebraska where they had been shut down.

The anti-loan shark campaigns in the various sections of Texas always bring out into the open a number of abuses of innocent borrowers by unethical lenders. One of the best descriptions of the operations was written by a newspaperman in one of the drives to rid the state of loan sharks in 1938:[2]

> So devious are the methods of the loan sharks that the borrower rarely knows just how much interest he is paying. Interest is charged on the full amount borrowed even though it has been partially repaid. If the borrower misses a payment, a few dollars are added to the amount he owes. The borrower gets no receipts for payment unless he requests them, and even they usually are given on plain paper and often signed only with initials. He gets no copy of the note or other papers which he signs. Usually the note is for the face value of the loan and the interest is agreed to in a separate instrument. When the borrower has finally paid off in full, he does not get the note; the loan shark simply tears off the signature and gives that to the customer.

Only a few examples need to be cited to illustrate the long history of abuses on the part of these lenders. As early as 1908, Houston lenders were charging white borrowers 240 per cent per year and Negro borrowers 360 per cent a year. Some twenty years later, many abuses were uncovered in Dallas; for example, one person borrowed $10 and paid back $1.60 per week on the loan for 10 years. In 1938, examination of a thousand complaints in Dallas revealed annual interest rates ranging from 120 per cent to 1131 per cent, with the average being 271 per cent. The same year, the *Houston Press*

[2] Quoted in Edmunds Travis, *A Century of Usury in Texas* (Dallas: Cordova Press, 1940), p. 32.

reported a case of an individual's borrowing $175, paying back $2,810, and still owing the original $175.[3]

Recent surveys by metropolitan newspapers show that the pattern has been changed but little with the passage of time. This fact was vividly confirmed by testimony at public hearings held during 1958 by the Small Loan Study Committee of the Texas Legislative Council. An extreme example of recent abuses involved a citizen of Houston who made three $50 loans at one time from three separate lenders. In an attempt to pay off the loans, the borrower obtained further loans from other sources and went deeper into debt. Although the individual paid approximately $10,000 to some 39 lenders over a period of four and one-half years, still he had failed to take care of the original $150 debt, and faced claims from lenders that he owed an additional $2,884. This case came about through what is known in the loan business as the process of "pyramiding," which means that the borrower is forced to make a new loan in order to pay off what he owes. In this process, the individual may frequently have to borrow from two or three sources to pay the original loan, and, more often than not, the two or three new loans are made by several companies owned by the same person. Obviously, pyramiding may result in a state of perpetual debt for the individual.[4]

Another example of small loan practice came out of a 1959 trial at Kingsville. In that case, the borrower testified that he had borrowed $10 about eight months previously from a loan company. He stated that the original loan had been for thirty days at a charge of $2.60, but for eight months he had paid back $2.60 per month in order to renew the loan. The net result was that he testified to paying $20.80 on the loan, but he still owed $12.60.[5]

Within the past few years, there has developed considerable pressure among lenders to have small loan borrowers furnish certain types of insurance: health, life or accident insurance on the borrower, or some type of insurance on the goods purchased by installment. In Texas, there has been an upsurge in the practice of requiring all borrowers to subscribe to a group insurance policy offered by the loan company. He must buy the

[3] Texas Legislative Council, *The Small Loan Business in Texas, A Report to the 56th Legislature* (Austin, 1958), pp. 50–53. This report is a comprehensive coverage of the small loan problem, its history and present status. It includes practices of other states in regulating the problem and is credited with having stimulated the interest which culminated in the proposed amendment.

[4] *Ibid.*, p. 57. This reference gives a detailed explanation of how pyramiding works.

[5] Ken Burns, "Texas Attorney General Will Wilson vs. Illegal Lending in Texas," *Personal Finance Law Quarterly Report*, Vol. 14, No. 3 (Summer, 1960), p. 110.

insurance if he is to get the loan and, of course, this serves to increase the total amount he is forced to pay.

Analysis

In appraising this amendment, it should not be presumed that all small loan merchants engage in such unethical or inhumane practices as have been enumerated here. However, the fact that some of the members of the industry engage in these practices focuses public attention upon the matter. Many of our lending institutions, such as banks, savings and loan associations, and credit unions are already regulated by law and are ethical in their dealings with the general public. So are many of the finance companies that deal almost exclusively with secured small loans. These companies are sometimes known as "low raters" because they charge relatively lower interest rates than some of their unregulated colleagues; more frequently they are referred to as "certificate lenders" because the borrower who makes the loan is required to buy an investment certificate equal to the amount of the loan. His monthly payments then go toward the purchase of the certificate and not toward the loan. At the end of the investment certificate contract, it may be sold back to the loan company and the loan then retired with the cash from the sale of the certificate. Companies operating under this plan probably represent the largest volume of small loan lending in Texas. The business is conducted by large, responsible corporations and all are well regulated by the Banking Commission, the Securities Board, and the Attorney General's Office.[6] But there still remains in the state an untold number of lenders who deal almost exclusively in unsecured loans in amounts below $100, and this group is practically unregulated in its operations.

In 1958, the Attorney General's Office undertook a strenuous campaign to enforce the anti-usury laws of the state. Suits were filed to test the constitutionality of the law under which the certificate lenders operate, and the Third Court of Civil Appeals has held the statute to be unconstitutional.[7] Appeals were filed by defendants in the cases, and in August 1960, the matter was pending before the Supreme Court of Texas.

The only available means of enforcing the campaign against alleged usurers is through the use of injunction proceedings. Under a statute enacted in 1943, the Attorney General, district attorneys, or county attorneys may file suit to enjoin violators from continuing their illegal practices.[8] However, the statute remains inade-

[6] Certificate lenders operate under Article 1524a–1, *V.A.C.S.*, known usually as the "Industrial Loan Law."

[7] *State* v. *Community Finance & Thrift Corp.*, 334 S.W.2d 559 (Tex. Civ. App., 1960); *State* v. *Household Finance Corp.*, 334 S.W.2d 569 (Tex. Civ. App., 1960).

[8] *V.A.C.S.*, sec. 4646b.

quate in certain respects. It does not provide for the closing down of those parties found to be in violation, but only authorizes the courts to issue an injunction against "continuing" the making of loans in excess of 10 per cent per annum. In cases of enjoined corporations, it is relatively easy for the ownership to create another new corporation, which *has not been enjoined* from operating illegally. Enforcement of the law then necessitates another lawsuit. Moreover, there is no criminal penalty attached to the violation unless the enjoined party disregards the injunction and is held in contempt of court. No fines or jail sentences are imposed upon those who charge in excess of legal rates as is done in many other states. In civil suits for damages, the most that can be recovered by the injured party is double the amount of the usurious interest.

Despite the inadequacies of the law, within two years the Attorney General has filed 365 suits involving 465 individuals or companies in the courts in various parts of the state. At the time of this writing, sixty of these cases had been finally disposed of; and in each case, the state successfully enjoined those lenders found to be in violation of the law. It is quite obvious that the process of enforcement through the use of injunctions is both time-consuming and expensive, and a rigid enforcement campaign probably will require the enlargement of the staff dealing with anti-usury laws.

Little information is obtainable concerning the characteristics of small-loan lenders in the state, but it is a known fact that they concentrate mainly in the urban areas. In 1958, there were several hundred small loan lenders known to be operating in the state, and the number is probably larger by this time. Recent editions of telephone directories in the state's two largest cities—Houston and Dallas—showed in the "yellow pages" that there were 105 and 109 addresses respectively listed under the caption "Personal Loans." Just as it is impossible to estimate the number of lenders with accuracy, so it is difficult to tell much about the total volume of loans. However, it was recently reported that "an estimate of the total volume of loans made in Texas [by loan offices of the types described above] might be $300 million a year."[9]

Small loan credit, when used properly, performs an important and necessary social and economic function in our society. It is the only source of cash for many segments of the population. According to the most recent study, the "average borrower" from the certificate lenders in Texas was found to be between 21 and 35 years of age and a skilled or semiskilled worker earning about $327 monthly who had obtained a loan to refinance or consolidate some of his debts. Furthermore, the average

[9] Tyree, *op. cit.*, p. 127.

size of loans made by certain member companies of the Texas Consumer Finance Association was around $465 and the period of repayment usually was sixteen or seventeen months.[10] The "average borrower" of amounts less than $100 came primarily from the low annual income brackets of $2400 or below. Persons of Latin-American or Negro extraction, who were unskilled workers or domestic servants, constituted the majority of this group.[11]

There is a tremendous amount of paper work, record keeping, and accounting in the small loan business, and this fact causes small loan credit to be most expensive. It has been estimated that there is more paper work involved in making and servicing an average small loan of $500 than there is in making and servicing an average commercial loan of $50,000. Furthermore, the amount varies little in relation to the size of the loan. In fact, it may be said that it costs the lender almost as much to make a $100 loan as it does to make a $1000 loan, interest excluded. Because of the economics of the business, therefore, many reputable lenders are prevented from engaging in this type of operation. For example, it simply is not profitable for a lender to receive only 84 cents in interest for an unsecured loan of $50 for three months, which is the maximum amount he may charge under present law. As a consequence, all kinds of charges have to be added to the amount of the loan so that the lender is able to realize a profit. This situation leads to many malpractices.

For more than half a century, the question of how best to deal with the small loan problem has been debated in practically every state of the Union. Various remedies have been tried, but there has been increasingly general acceptance of the idea that stringent regulatory legislation together with flexible interest rate ceilings must furnish the basis for any constructive program. Governor Nelson Rockefeller summarized the problem in a recent veto message to the New York Legislature:[12]

> The State has a strong interest in seeing to it that credit at reasonable rates is available to those who need it in the form of small loans and are unable to borrow from banks. The licensed lender system was created to fill an important need and it has been doing so. Thus, the State must seek to strike a careful balance between providing incentive to the companies to make the loans, on the one hand, and protecting the borrowers, on the other.

Basically, two approaches have been followed in the past: (1) to fix maximum rates in the constitution, and (2) to empower the legislature to set maximum rates by

[10] *Ibid.*, p. 128.
[11] Texas Legislative Council, *op. cit.*, p. 32.
[12] Quoted in *Personal Finance Law Quarterly Report*, Vol. 13, No. 3 (Summer, 1959), p. 82.

statute. The first of these methods is the more rigid and inflexible, requiring approval of a constitutional amendment before rates may be changed. At present, only four states have the maximum rates set by the constitution, and in each of them, the rate is 10 per cent per year. However, Oklahoma has authorized its legislature to alter the maximum, so that only in Texas, Arkansas, and Tennessee are the voters required to pass upon a change in the rates. Since many small loans to consumers cannot be profitable at the 10 per cent rate, it may be concluded that the constitutional limitation has proved to be the major stumbling block to effective small loan laws in those four states.

The remaining forty-six states vest the power to determine maximum rates in their representative assemblies. Many of these states recently have either adopted new laws or modified the maximum rates allowable. Kentucky was the last to join the group with a new small loan law which became effective in June, 1960. At the present time, all states have some limitation of interest if no rate is agreed to by contract, and all except four limit the contract rates that may be agreed to by borrower and lender.

Most of the states adopting legislation have followed the two basic principles of the Uniform Small Loan Law: (1) to allow lenders a rate of interest adequate to recover expenses of operation and to make a fair and reasonable profit; and (2) to license and regulate lenders, and to provide adequate and effective supervision by a regulatory agent in order to prevent abuse of borrowers.[13] That law was aimed at exempting only lenders for whom legislation had already been adopted. The most common maximum rates found in the regulated states are 3 per cent per month on the unpaid balance of smallest loans ($150 or less) and 2 per cent per month on the unpaid balance of larger loans (up to $1000).

What are the arguments to be advanced for and against legislative fixing of interest rates as opposed to the constitutional provision for maximum rates? One of the major contentions in favor is the flexibility it affords. Over the long run, economic conditions fluctuate considerably. Since the present constitutional provision was adopted, Texas has experienced the heights of prosperity and depression. There has been inflation and deflation; war and peace; cheap money and tight money. All of these conditions had an impact upon the value and availability of money and the prevailing interest rates; yet the maximum legal rate has remained constant for the past 69 years. The removal of the limitation obvious-

[13] A philanthropic organization, the Russell Sage Foundation, became interested in protecting small borrowers early in this century. It developed the Uniform Small Loan Law, and has revised the draft six times on the basis of its continuing research in the small loan field.

ly would allow adjustment to changing economic situations.

Another argument advanced for the legislative approach is that it would provide for fair and reasonable rates for each class of lenders. As has been pointed out above, there are many differences among classes of lenders—the people they serve, the types of loans they make, the size of their loans, their methods of operation, and their overhead expenses. What is reasonable and practical for the commercial bank may not be best for the small loan company that makes an unsecured loan. Moreover, it might be desirable under certain conditions to vary the rate according to the size of the loan. What would be a reasonable interest rate for a loan of $5.00 might not be so for a loan of $500 or $1000. The Legislature would be able to use its best judgment, taking into consideration the economic conditions of the moment.

Perhaps the most convincing argument of all is that the method of legislative determination is used so widely with success throughout the country. Although it could not be said that the mere fixing of rates by the legislature solves the small loan problem, it has been estimated recently that there is "adequate" protection of citizens in those states that have adopted small loan laws or that permit valid, licensed small loan operations. Such states include approximately 80 per cent of the country's population.

Turning to the opposing argument, the strongest point is that much pressure could be exerted upon the Legislature if it had the power to fix interest rates. One of the favorite methods of loan sharks in the past has been to get some well-meaning but misinformed person to denounce the exorbitant rates authorized by a proposed law, not realizing that those rates are low compared with the interest, "service" charges, and insurance fees usually charged by the loan shark. That there is a possibility of the establishment of a powerful lobby by the lenders may not be denied, but an appropriate question is: Would this be any more likely to occur in the lending field than in any other field where the Legislature exerts comparable regulatory power?

Likewise, it could be suggested that, in the event a regulatory agency were endowed with authority to issue or cancel licenses of lenders, great pressures would be brought to bear upon agency administrators, which might result in decisions adverse to the public interest. In examining this contention, it must be observed that there are dozens of state agencies satisfactorily enforcing regulatory and licensing laws in other fields of business and industry. There is no reason to believe that pressures upon the regulatory agency enforcing the small loan law would be much greater than upon those exist-

ing agencies in other regulatory fields.

Some attorneys have felt that an unfortunate addition to this amendment was the provision requiring a trial *de novo* in cases of refusal or cancellation of a permit by the regulatory agency. They believe that this clause might possibly throw a greater burden upon an already-overworked judiciary since many cases would wind up in court on appeal from an administrative agency. This could mean that juries would have to decide upon the issuance of a lender's permit—a function they would be ill-equipped to undertake. The question should be raised, however, as to whether resort to the courts in these cases is any more likely than in other regulated industries. Indeed, the possibility is that there will be just as many —or more—cases requesting injunctions under present enforcement procedure as there would be cases of trial *de novo* under the proposed amendment. In either event, the judiciary will bear a part of the responsibility for law enforcement.

Recently the anti-usury campaign of the Attorney General and the findings of the Legislative Study Committee on the Small Loan Business have served as a stimulus for public interest in Texas' small loan problem. There appears to be more accord than ever before that something needs to be done. Whether the voters decide to retain the present system and rely upon the Attorney General to use the injunction proceedings, or whether by a new amendment they give the Legislature the power to regulate through the passage of a small loan law as most states have already done, it may well be the hope of every citizen that a satisfactory balance will be achieved between protection of the citizenry from exorbitant interest rates and their accompanying abuses and the provision of adequate incentive for lenders to make the small loans required by the present economy.