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Joseph M. Kortenhof S.Ed.
University of Michigan Law School

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MUNICIPAL CORPORATIONS—CHARTER AMENDMENT—SUBMISSION OF THREE PROPOSITIONS IN THE FORM OF ONE QUESTION—The council of defendant city adopted a resolution whereby the city charter was to be amended to authorize a limitation of 1% per annum on property taxes, an excise tax of 1% per annum on salaries, commisions and profits of both nonresidents and residents, and disposition of the monies received by the income tax. The proposed charter revision was approved by the qualified electors by a margin slightly less than two to one. The plaintiffs, electors and residents of the city, obtained an injunction against enforcement of the charter amendment. On appeal, *held,* affirmed. The charter revision was ineffectual since three distinct propositions were submitted to the electors in the form of one question, contrary to a Michigan statute.[1] *House v. City of Saginaw,* 334 Mich. 241, 54 N.W. (2d) 314 (1952).

It is generally said that two or more propositions cannot be submitted in the form of one question on a ballot.[2] The policy consideration behind the general limitation has been expressed in this manner: "The vice of 'doubleness' in submissions at elections is universally condemned. It is regarded as a species of legal fraud, because it may compel the voter, in order to get what he earnestly wants, to vote for something he does not want."[3] As a practical matter, however, the courts were not slow to recognize that in some situations it may be highly desirable to allow submissions of two propositions in the form of one question.[4]

[1] Mich. Comp. Laws (1948) §117.21.

[2] 29 C.J.S., Elections §170 (1941); see Hart v. Board of Education, 299 Mo. 36 at 40, 252 S.W. 441 (1923), where the court said: "If it can be said that the proposed improvements are not naturally related or connected, then it is clear that separate submissions are required."

[3] Hart v. Board of Education, supra note 2, at 39.

[4] See Cary v. Blodgett, 10 Cal. App. 463 at 470, 102 P. 668 (1909), where the court said: "The elector cannot complain because he was not afforded the opportunity to vote for one proposition or against the other. . . . The fact is that the elector can scarcely ever vote upon the precise proposition which, of all the possible and authorized propositions he prefers."

Accordingly, the courts worked out an exception to the limitation which is generally called the reasonable relation rule.[5] Thus where the practical aspects of one proposition are so entwined with a different proposition that one cannot be done without the other, the courts will usually allow submissions of both in the form of one question on the theory that they are reasonably related.[6] While the rule stated is broad, there is a fair unanimity of decisions.[7] The difficulty comes, however, not in the rule, but in its application to facts. As might be expected, some courts have gone far in giving a liberal interpretation to "reasonable relation,"[8] while others so restrict the rule that it is doubtful whether two propositions may be submitted on the ballot in the form of one question no matter how closely related.[9] The great bulk of the decisions lie somewhere between the two extremes.[10] The instant case clearly shows the desirability of allowing reasonably related propositions to be presented as a single question and the unfortunate effects of requiring separate submissions. The city officials cannot afford to reduce the property tax limit unless assured of the other source of revenue. They could probably not secure passage of the income tax amendment without guaranteeing to the voters a reduction in property taxes. By submitting the two proposals together, they allow the residents to choose between alternative methods of taxation. Practically, this choice may now be denied those residents, since it will now be necessary to secure the passage of the income tax authorization as a separate proposition, with no assurance to the voters that a corresponding reduction in property taxes will be forthcoming.[11] The Michigan court, however, is not responsible for abandonment of the reasonable relation rule. In 1939 the Michigan Legislature enacted a statute which completely destroyed the reasonable relation rule in Michigan.[12] It provided, inter alia, that "Any proposed amendment shall be confined to 1 subject and in case a subject should embrace more than 1 *related*[13] proposition,

[5] 29 C.J.S., Elections §170 (1941).

[6] Lewis v. Leon County, 91 Fla. 118, 107 S. 146 (1926); Aylmore v. Hamilton, 74 Wash. 433, 133 P. 1027 (1913); Clark v. Manhattan Beach, 175 Cal. 637, 166 P. 806 (1917).

[7] See 4 A.L.R. (2d) 619 (1949).

[8] Blaine v. Hamilton, 64 Wash. 353, 116 P. 1076 (1911); Coleman v. Eutaw, 157 Ala. 327, 47 S. 703 (1908).

[9] In re Validation Bonds, 170 Miss. 886, 156 S. 516 (1934); Cain v. Smith, 117 Ga. 902, 44 S.E. 5 (1903).

[10] 4 A.L.R. (2d) 623 (1949).

[11] Another example of the practical problems that arise when the reasonable relation rule is not applied may be found in TIME MAGAZINE, p. 124 (Nov. 24, 1952) where it is reported: "In Waldick, N.J., the borough council pondered the situation handed them when the electorate, on three referendums, voted: 1) to start a full-time marshal system, 2) to keep the old marshal system (one man on call for 24 hours), 3) to refuse the council's request for $20,000 to pay for full-time marshal protection."

[12] Mich. Pub. Act No. 279, effective Sept. 29, 1939. This act amended §§2257 and 2261 of the Compiled Laws of Michigan (1929). Previous to the act, there was no statutory provision regarding the number of propositions that might be submitted in the form of one question.

[13] Emphasis supplied.

each proposition shall be separately stated. . . ."[14] Before enactment of the statute, Michigan was counted among the followers of the reasonable relation rule.[15] However, there is some indication that the Michigan court is not completely satisfied with the statute and has circumscribed it to the extent that Michigan might be said to be among the more conservative followers of the rule.[16] This is done by terming the reasonably related propositions a single proposition and thus avoiding the statute in an exceedingly meritorious case. Apparently, the court in the instant case did not feel that the case for submission of the three proposals in the form of one question was sufficiently strong to merit judicial avoidance of a statute. While the result seems poor, the court is not without justification since the function of the judiciary, in the absence of constitutional limitations, is to apply, and not avoid, legislative actions. The responsibility for the present situation in Saginaw lies with the legislature and not the court.

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[14] Mich. Comp. Laws (1948) §117.21.

[15] Kelly v. Laing, 259 Mich. 212, 242 N.W. 891 (1932); Westcott v. Bonner, 230 Mich. 317, 202 N.W. 931 (1925).

[16] Michigan Public Service Co. v. City of Cheboygan, 324 Mich. 309 at 334, 37 N.W. (2d) 116 (1949). The court used the following rather pragmatic language in the face of the statute: "If they [related propositions] were to be submitted separately, the authority to issue bonds might be approved while the constitutional requirement for a franchise to set up terms in event of a default might be rejected."