

1962

ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

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of directors for a business that expends annually over two billion dollars.

Members of the Legislature attend sessions each year; they frequently must be on the job 14 hours or more in the day. Between sessions, they serve on interim committees charged with formulating legislation for the next general session. The members between sessions are the closest source of communication between the citizens and the several departments of State Government.

The salary of members of the Legislature, which has remained unchanged since 1954, is fixed by Section 2(b) of Article IV of the California Constitution at only \$500 per month.

The election and retention in the Legislature of able and conscientious citizens is of the utmost importance to all of the people of California. Senate Constitutional Amendment No. 1 will provide that the salary of members of the Legislature shall be fixed by law, but shall not exceed \$834 per month. Under this provision, the monthly salary of members of the Legislature could be increased by statute from \$500 to an amount which does not exceed \$834 per month.

Good Government demands good men. Here is a practical means of achieving that result. Vote "Yes" on Proposition No. 17.

RICHARD RICHARDS,
Member of Senate, 38th District
STANFORD C. SHAW,
Member of Senate, 36th District

Argument Against Proposition No. 17

In different words, this is almost the same proposal as Proposition No. 1 on this same ballot. Proposition 17 would let the Legislature at once increase its own base pay from \$6,000 a year for just a few months work annually to

more than \$10,000 plus very generous expense allowances. Pay plus allowances would mean an actual tax-paid income to our assemblymen and state senators of close to \$16,000 annually. And most members of the Legislature still conduct their own businesses or professions in addition to their service with the Legislature.

The Legislature already has voted itself a most generous pension benefit. Members with long service can even retire at full pay. For every dollar legislators contribute to their own retirement, taxpayers now contribute four dollars.

In the main, the same arguments apply against both proposals. The Legislature itself, by its own actions has given the most persuasive argument against the proposed pay increase. In total, during just the last five years, our state legislators have approved increased spending by the State that exceeded new revenues by \$150,000,000 and did so in spite of the fact that heavy new taxes, combined with higher revenues produced by existing taxes, increased total state tax revenues in 1959 by more than \$270,000,000 annually.

Again and again the Legislature over protest has adopted new tax spending programs building up a grave threat to the taxpayers of 1964, 1965, 1966 and the succeeding years ahead of us.

We feel that any approval of a salary increase would be taken by legislators as voter approval of this spending program.

We urge a NO vote on Proposition 17.

**THE PROPERTY OWNERS TAX
ASSOCIATION OF CALIFORNIA**
PAUL SHEEDY,
Executive Vice President
MELVIN HORTON,
Secretary

18 **ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD.** Senate Constitutional Amendment No. 9. Provides for staggered four year term appointment of members who may be removed by Governor or Legislature for cause. Defines review power of the Board to include whether the findings are supported by substantial evidence in the light of the whole record viewed in its entirety, including the body of evidence opposed to the department's findings.

YES	
NO	

For Full Text of Measure, See Page 26, Part II

Analysis by the Legislative Counsel

This measure would amend Section 22 of Article XX of the Constitution relating to the Alcoholic Beverage Control Appeals Board.

It would provide four year terms for members of the Board and would allow the Governor to remove a member within this term only for dereliction of duty, corruption, or incompetence. Under the existing constitutional provision a member of the Board has no fixed term of office and may be removed from office by the Governor at the pleasure of the Governor.

The measure would also broaden the Board's power to review decisions of the Department of

Alcoholic Beverage Control. Under the existing constitutional provision the Board's review function is limited to, among other things, determining "whether the decision [of the Department] is supported by the findings, and whether the findings are supported by substantial evidence in the light of the whole record." The courts have held this language requires the Board to uphold the Department's decision if any substantial evidence supports the decision, no matter what contrary evidence is in the record. This measure would add to the language quoted above the words "viewed in its entirety, including the body of evidence op-

posed to the department's findings." The new language would permit the Board, in reviewing the Department's decisions, to consider evidence opposed to the Department's decision even if substantial evidence supports that decision.

If approved by the voters the measure will become operative on January 1, 1963.

Argument in Favor of Proposition No. 18

Proposition 18 is the first proposed revision of liquor administration as adopted by constitutional amendment in 1954. It will strengthen the processes of obtaining fairness in administrative decisions and reduce the numbers of appeals from these decisions to the courts, reduce costs, and speed the process of liquor license enforcement and control. The changes in this proposition are vital to good government.

This proposal results from an appraisal of experience under the 1954 changes and a detailed study by the Legislature of present procedures. Although the section amended deals with the entire function of alcoholic beverage control, changes in this proposition are limited to scope of review and term of office of the Alcoholic Beverage Control Appeals Board.

A "YES" vote will insure that any person who had his liquor license revoked or suspended or application denied or (on the other side) had his protest overruled, and who feels that the decision of the department director was not a fair one, will have the right to request that the Appeals Board review that decision under an effective, fair and impartial proceeding.

This is accomplished by giving the appeals agency the authority to look at ALL the evidence, rather than just that portion favorable to the decision of the Department Director as is now the case. This proposed procedure has been followed by the federal government for years and has proven effective and desirable.

Existing provision for subsequent review by the courts are unchanged.

Proposition 18 also provides that the three members of the Appeals Board shall be appointed by the Governor for four-year staggered terms. Now they may be removed by the Governor at any time. Under this proposal the members may be removed by the Governor or the Legislature for dereliction of duty, corruption or incompetence.

Fixed terms are established for other agencies exercising similar functions and the system is universally recognized as the best method, preserving the independence in the exercise of judgment in this semijudicial function.

Proposition 18 was overwhelmingly adopted by both Senate and Assembly and has the approval of the Department of Alcoholic Beverage Control and the Appeals Board.

These proposals result from the thorough investigation by the Senate Fact Finding Committee on Business and Commerce which unanimously recommended their adoption.

A "yes" vote is a vote for revision in proceedings of liquor control overwhelmingly recognized as necessary and desirable for efficiency, economy and fairness in the administration of the liquor laws in California.

Vote "YES" on Proposition 18 and insure the continued honest and impartial enforcement of the liquor laws in this state.

LUTHER E. GIBSON
Senator for Solano County
EDWIN J. REGAN
Senator for Shasta and
Trinity Counties

Argument Against Proposition No. 18

S.C.A. 9, with its companion Senate Bill 311, would give the Alcoholic Beverage Control Appeals Board greater power to review in considering appeals from decisions of the Department of Alcoholic Beverage Control. In other words, while the power of licensing the sale of alcoholic beverages in this state remains in the Department of Alcoholic Beverage Control, the measure would allow the Appeals Board to apply a different legal test to determine whether the Department's decision should be affirmed or reversed.

The newly created Board would be given 4-year terms and could only be removed for cause by the Governor or the Legislature. The principle is wrong. Additional power to various boards has already gone too far in our state.

The added power of the Appeals Board would be an amendment to Section 23084(d) of the ABC Act. The subsection now reads: "Whether the findings are supported by substantial evidence in the light of the whole record." The amendment adds the following phrase to the sentence: "viewed in its entirety, including the body of evidence opposed to the Department's findings."

The Amendment, if passed, would further estop the ABC Department from its responsibility to the State. Vote NO!

JOHN A. MURDY, Jr.
State Senator, Orange County

on warrant of the county auditor of the county. Payments of aid shall be commenced as of the first day of the month in which the application is granted, unless otherwise directed by the State Social Welfare Board in cases in which an appeal is taken, but in any event the beginning of aid shall not antedate the date of application.

(e) Section 3420 of the Welfare and Institutions Code of the State of California is amended to read as follows:

3420. State appropriation. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated to every county in the State, maintaining, supporting, or caring for, as hereinafter provided in this chapter, any blind person, resident of such county, aid not in excess of eight hundred fifty dollars (\$850) per annum for each such blind person so maintained, supported and cared for, or aid not in excess of one thousand twenty dollars (\$1,020) per annum in the event such blind person has no county residence as provided in this chapter.

(f) Section 3472 of the Welfare and Institutions Code of the State of California is amended to read as follows:

3472. Order for aid. Amount: Income not to be considered: Computation of additional income. If the county board of supervisors is satisfied that the applicant is entitled to aid under the provisions of this chapter, it shall, without delay, issue an order therefor. The amount of aid to

which any applicant shall be entitled shall be, when added to the net income of the applicant from all other sources, eighty-five dollars (\$85) per month.

Net income from any of the following sources of a combined total value not exceeding eight hundred dollars (\$800) per annum shall not be considered for any purpose:

(a) Income from applicant's labor or services;
(b) The value of foodstuffs produced by the applicant or his family for his use or that of his family;

(c) The value of firewood and/or water produced on the premises of the applicant or given to him by another for the applicant's use;

(d) The value of gifts;

(e) The value of the use and occupancy of premises owned and occupied by the applicant;

(f) The net income from real and personal property owned by the applicant.

Income in addition to the above specified shall be computed on the basis of net income.

All laws of this State that are inconsistent with any of the provisions of this Section 4 including all laws re-enacted and revived and declared to be fully and completely effective by this Article are hereby repealed.

All or any sections of the Welfare and Institutions Code of the State of California hereby amended, may be further amended or may be repealed by the Legislature.

17	PAY OF LEGISLATORS. Senate Constitutional Amendment No. 1. Provides salaries of members of Legislature shall be fixed by law not to exceed \$834 per month.	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>

(This proposed amendment expressly amends an existing section of the Constitution; therefore, **EXISTING PROVISIONS** proposed to be **DELETED** are printed in **STRIKEOUT TYPE**, and **NEW PROVISIONS** proposed to be **INSERTED** are printed in **BLACK-FACED TYPE**.)

PROPOSED AMENDMENT TO ARTICLE IV

That the Constitution of the State be amended by amending the first paragraph of subdivision (b) of Section 2 of Article IV thereof, to read:

(b) Each Member of the Legislature shall receive for his services the sum of five hundred dollars (\$500) for each month of the term for which he is elected.

(b) Salaries of Members of the Legislature shall be fixed by law, not to exceed eight hundred thirty-four dollars (\$834) per month for each month of the term for which he is elected.

18	ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD. Senate Constitutional Amendment No. 9. Provides for staggered four year term appointment of members who may be removed by Governor or Legislature for cause. Defines review power of the Board to include whether the findings are supported by substantial evidence in the light of the whole record viewed in its entirety, including the body of evidence opposed to the department's findings.	YES	<input type="checkbox"/>
		NO	<input type="checkbox"/>

(This proposed amendment expressly amends an existing section of the Constitution; therefore **EXISTING PROVISIONS** proposed to be **DELETED** are printed in **STRIKEOUT TYPE**, and **NEW PROVISIONS** proposed to be **INSERTED** are printed in **BLACK-FACED TYPE**.)

PROPOSED AMENDMENT TO ARTICLE XX

SEC. 22. The State of California, subject to the internal revenue laws of the United States, shall have the exclusive right and power license and regulate the manufacture, sale, purchase, possession and transportation of alco-

beverages within the State, and subject to laws of the United States regulating commerce between foreign nations and among the states shall have the exclusive right and power to regulate the importation into and exportation from the State, of alcoholic beverages. In the exercise of these rights and powers, the Legislature shall not constitute the State or any agency thereof a manufacturer or seller of alcoholic beverages.

All alcoholic beverages may be bought, sold, served, consumed and otherwise disposed of in premises which shall be licensed as provided by the Legislature. In providing for the licensing of premises, the Legislature may provide for the issuance of, among other licenses, licenses for the following types of premises where the alcoholic beverages specified in the licenses may be sold and served for consumption upon the premises:

(a) For bona fide public eating places, as defined by the Legislature.

(b) For public premises in which food shall not be sold or served as in a bona fide public eating place, but upon which premises the Legislature may permit the sale or service of food products incidental to the sale and service of alcoholic beverages. No person under the age of 21 years shall be permitted to enter and remain in any such premises without lawful business therein.

(c) For public premises for the sale and service of beer alone.

(d) Under such conditions as the Legislature may impose, for railroad dining or club cars, passenger ships, common carriers by air, and bona fide clubs after such clubs have been lawfully operated for not less than one year.

The sale, furnishing, giving, or causing to be sold, furnished, or giving away of any alcoholic beverage to any person under the age of 21 years is hereby prohibited, and no person shall sell, furnish, give, or cause to be sold, furnished, or given away any alcoholic beverage to any person under the age of 21 years, and no person under the age of 21 years shall purchase any alcoholic beverage.

The Director of Alcoholic Beverage Control shall be the head of the Department of Alcoholic Beverage Control, shall be appointed by the Governor subject to confirmation by a majority vote of all of the members elected to the Senate, and shall serve at the pleasure of the Governor. The director may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove the director from office for dereliction of duty or corruption or incompetency. The director may appoint three persons who shall be exempt from civil service, in addition to the person he is authorized to appoint by Section 4 of Article XXIV.

The Department of Alcoholic Beverage Control shall have the exclusive power, except as herein provided and in accordance with laws enacted by the Legislature, to license the manufacture, importation and sale of alcoholic bev-

erages in this State, and to collect license fees or occupation taxes on account thereof. The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverage license if it shall determine for good cause that the granting or continuance of such license would be contrary to public welfare or morals, or that a person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude. It shall be unlawful for any person other than a licensee of said department to manufacture, import or sell alcoholic beverages in this State.

The Alcoholic Beverage Control Appeals Board shall consist of three members appointed by the Governor, subject to confirmation by a majority vote of all of the members elected to the Senate. Each member, at the time of his initial appointment, shall be a resident of a different county from the one in which either of the other members resides. The members of the board may be removed from office by the Governor, and the Legislature shall have the power, by a majority vote of all members elected to each house, to remove any member from office for dereliction of duty or corruption or incompetency. On January 1, 1963, the terms of the members then in office shall terminate, but such members shall continue to hold office until the appointment and qualification of their successors. Thereafter, the term of office of each member shall be four years, except the members first appointed on or after January 1, 1963, one of whom shall be appointed to hold office until January 15, 1964, one until January 15, 1965, and one until January 15, 1966. Each member shall hold office until the appointment and qualification of his successor. Whenever a vacancy in the office of member shall occur, the Governor shall forthwith appoint a qualified person to fill the same for the unexpired term. The members of the board may be removed from office by the Governor, or the Legislature, by a majority vote of all members elected to each house, for dereliction of duty or corruption or incompetency.

When any person aggrieved thereby appeals from a decision of the department ordering any penalty assessment, issuing, denying, transferring, suspending or revoking any license for the manufacture, importation, or sale of alcoholic beverages, the board shall review the decision subject to such limitations as may be imposed by the Legislature. In such cases, the board shall not receive evidence in addition to that considered by the department. Review by the board of a decision of the department shall be limited to the questions whether the department has proceeded without or in excess of its jurisdiction, whether the department has proceeded in the manner required by law, whether the decision is supported by the findings, and whether the findings are supported by substantial evidence in the light of the whole record viewed in its entirety, including the body of evidence opposed to the department's findings. In appeals where the board finds that there is relevant evidence which, in the exer-

cise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department it may enter an order remanding the matter to the department for reconsideration in the light of such evidence. In all other appeals the board shall enter an order either affirming or reversing the decision of the department. When the order reverses the decision of the department, the board may direct the reconsideration of the matter in the light of its order and may direct the department to take such further action as is specially enjoined upon it by law, but the order shall not limit or control in any way the discretion vested by law in the department. Orders of the board shall be subject to judicial review upon petition of the director or any party aggrieved by such order.

A concurrent resolution for the removal of either the director or any member of the board may be introduced in the Legislature only if five Members of the Senate, or 10 Members of the Assembly, join as authors.

Until the Legislature shall otherwise provide, the privilege of keeping, buying, selling, serving, and otherwise disposing of alcoholic beverages in bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places, and in bona fide clubs after such clubs have been lawfully operated for not less than one year, and the privilege of keeping, buying, selling, serving, and otherwise disposing of beers on any premises open to the general public shall be licensed and regulated under the applicable provisions of the Alcoholic Beverage Control Act, insofar as the same are not inconsistent with the provisions hereof, and excepting that the license fee to be charged bona fide hotels, restaurants, cafes, cafeterias, railroad dining or club cars, passenger ships, and other public eating places, and any bona fide clubs after such clubs have been lawfully operated for not

less than one year, for the privilege of keeping, buying, selling, or otherwise disposing of alcoholic beverages, shall be the amounts prescribed as of the operative date hereof, subject to the power of the Legislature to change such fees.

The State Board of Equalization shall assess and collect such excise taxes as are or may be imposed by the Legislature on account of the manufacture, importation and sale of alcoholic beverages in this State.

The Legislature may authorize, subject to reasonable restrictions, the sale in retail stores of alcoholic beverages contained in the original packages, where such alcoholic beverages are not to be consumed on the premises where sold; and may provide for the issuance of all types of licenses necessary to carry on the activities referred to in the first paragraph of this section, including, but not limited to, licenses necessary for the manufacture, production, processing, importation, exportation, transportation, wholesaling, distribution, and sale of any and all kinds of alcoholic beverages.

The Legislature shall provide for apportioning the amounts collected for license fees or occupation taxes under the provisions hereof between the State and the cities, counties and cities and counties of the State, in such manner as the Legislature may deem proper.

All constitutional provisions and laws inconsistent with the provisions hereof are hereby repealed.

The provisions of this section shall be executing, but nothing herein shall prohibit the Legislature from enacting laws implementing and not inconsistent with such provisions.

~~This amendment shall become operative on January 1, 1957.~~

The amendments to this section proposed by the Legislature at the 1961 Regular Session of the Legislature shall become operative on January 1, 1963.

19 **COMPENSATION OF LOCAL OFFICERS.** Assembly Constitutional Amendment No. 52. Provides that prohibition against increase of compensation of local officers after election or during term of office shall not prevent increase for members of board, commission or council serving staggered terms whenever one member becomes eligible for salary increase by beginning a new term of office.

YES

NO

(This proposed amendment expressly amends an existing section of the Constitution; therefore, **NEW PROVISIONS** proposed to be **INSERTED** are printed in **BLACK-FACED TYPE**.)

PROPOSED AMENDMENT TO ARTICLE XI

That the Constitution of the State be amended by amending the third paragraph of Section 5 of Article XI thereof to read:

The compensation of any county, township or municipal officer shall not be increased after

his election or during his term of office, nor shall the term of any such officer be extended beyond the period for which he was elected or appointed; however, the prohibition herein expressed shall not operate to prevent the adjustment of the compensation of all members of a board, commission, or council serving staggered terms whenever one or more members of such board, commission or council becomes eligible for a salary increase by virtue of beginning a new term of office.