
The State of Wisconsin

CONSTITUTIONAL AMENDMENTS GIVEN "FIRST
CONSIDERATION"
APPROVAL BY THE 1967 LEGISLATURE

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THE AMENDMENT PROCESS

Article XII, Section 1 of the Wisconsin Constitution sets forth the procedure which must be followed to amend the Constitution. It states:

(Article XII) Section 1. "Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election; and if, in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution; provided, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately."

The 1967 Wisconsin Legislature, prior to its recess on December 16, 1967, gave "first consideration" approval to 3 proposed constitutional amendments. In accordance with the constitutional directive, these pending amendments will be published for 3 months, once each week, in the official state newspaper, the Wisconsin State Journal, prior to the November 1968 election. Early in the 1969 legislative session, the Secretary of State will officially notify the Legislature of the existence of these 3 proposed constitutional amendments. (In the 1967 session, the Secretary of State's message was received by the Senate on January 17, 1967, the fourth day of the session, and by the Assembly on the same day.)

Before these 3 proposed amendments can be submitted to the people for ratification, they must be approved again, in identical fashion, by the 1969 Legislature. Whether or not the proposals are approved or even considered by the 1969 Legislature depends entirely on whether or not someone will introduce them in the 1969 session. No legislator or legislative committee is required to sponsor or introduce an amendment adopted by the previous Legislature, and no one has precedence to do so.

Any legislator who is interested in seeing a particular constitutional amendment proposal introduced for second consideration may instruct the Legislative Reference Bureau to ready a draft for introduction. Regardless of the original sponsor's current attitude toward introduction for second consideration, the proposal may be reintroduced.

Similarly, a citizen may contact the Senator or Assemblyman representing his district and ask him to make certain that the proposal is reintroduced. Remember that no matter how meritorious a proposed constitutional amendment may be, the Legislature cannot act on it unless it is officially placed before it, and the only way to do this is by having it introduced in the Legislature in the proper form.

The history of the 12 joint resolutions proposing constitutional amendments which were adopted on first consideration by the 1965 Legislature and referred to the 1967 Legislature may offer some insight into what awaits the proposed amendments discussed in this bulletin. Of these 12 joint resolutions, 10 were introduced in the 1967 session. (Of the 2 not introduced, one -- a proposal to exempt appropriations for the "abatement and prevention of pollution of the air and water" from the prohibition against internal improvements -- was made unnecessary by a Wisconsin Supreme Court decision and one -- a proposal providing 4-year terms for constitutional officers and for the "single ticket" election of the governor and lieutenant governor -- was duplicated by 2 other joint resolutions which were introduced.) Of the 10 introduced joint resolutions, 8 were adopted, one was altered so that the amendment procedure had to start over again (see the discussion herein of Enrolled Joint Resolution No. 58) and one -- providing a simplified constitutional amendment procedure -- did not receive final disposition by the Legislature. The 8 joint resolutions which were adopted on second consideration involved 12 severable issues and, therefore, 12 questions to be voted on by the electorate. Five joint resolutions involving 8 questions were considered in April 1967 and 3 joint resolutions involving 4 questions were considered in April 1968. All were approved by the voters.

The recent history of proposed constitutional amendments in Wisconsin indicates a dramatic reversal from previous years. Historically, the Wisconsin Constitution has not been easily amended. As late as 1961, of the 10 constitutional amendments adopted on first consideration by the Legislature in that session, only one was ultimately approved by the voters. The 1963 and 1965 Legislatures, however, adopted 20 "first consideration" joint resolutions. Court decisions, duplication and a publication error reduced this number to 17 joint resolutions. Thirteen of these were adopted on second consideration; they presented 17 severable questions, all of which were approved by the people.

AMENDMENTS WHICH MAY RECEIVE SECOND CONSIDERATION BY THE 1969 LEGISLATURE

The 1967 Legislature gave first consideration approval to the following joint resolutions proposing constitutional amendments: Senate Joint Resolution 41; and Assembly Joint Resolutions 1 and 18. The proposed amendments will be discussed below in the order of their enrolling numbers. The following list

shows the enrolling number and introduction number for each joint resolution, and that part of the Constitution affected by each proposal:

Enrolled Jt. Res. 49	AJR 18	Art. IV, Sec. 23 Art. IV, Sec. 23a
Enrolled Jt. Res. 57	SJR 41	Art. IV, Sec. 26
Enrolled Jt. Res. 58	AJR 1	Art. VIII, Sec. 7

Enrolled Joint Resolution No. 49 (Assembly Joint Resolution 18)

Article IV, Section 23 of the Wisconsin Constitution stipulates that "the legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable ..." In November 1962 the voters approved an exception to that requirement which permitted the legislature to establish by law the elective office of county executive in Milwaukee county with administrative powers to be prescribed by law.

As part of that amendment, Section 23a was created to give a veto power to the county executive over resolutions and ordinances passed by the Milwaukee county board. The veto power was patterned after that granted the governor by the constitution and gave the county executive the power of full veto and of partial veto of appropriations, included a "pocket veto" provision, and provided that a veto could be overridden by vote of 2/3 of the members-elect of the county board.

On February 1, 1967, Assemblymen Kordus (Dem.) and Froehlich (Rep.) introduced Assembly Joint Resolution 18. As introduced, the proposal deleted "and county" from the language quoted above which requires "one system ... of government, which shall be as nearly uniform as practicable." In addition the proposed amendment contained language stipulating that "counties organized pursuant to state law are hereby empowered to determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of state-wide concern as shall affect every county." This language is identical to the constitutional language giving "home rule" powers to cities and villages.

Assembly Substitute Amendment 1 was offered on April 7, 1967, by Assemblymen Atkinson (Dem.) and Lewison (Rep.). It proposed the following amendments:

(Article IV) Section 22. The legislature may confer upon the boards of supervisors of the several counties of the state such powers of a ~~local~~ legislative and administrative character as they shall from time to time prescribe.

Section 23. The legislature shall establish but one system of town and ~~county~~ government, which shall be as nearly uniform as practicable, and a system of county government wherein uniformity shall apply only to the method of electing the county supervisors from supervisory districts; but the legislature may provide for the election

at large once in every 4 years of a chief executive officer in ~~any county having a population of 500,000 or more~~ with such powers of an administrative character as they may from time to time prescribe in accordance with this section.

This proposal, while deleting the Milwaukee county limitation in the provision relating to providing for a county executive, did not make a similar change in Section 23a which sets forth the veto power.

Assemblymen Lewison (Rep.), Froehlich (Rep.) and Kordus (Dem.) offered Assembly Substitute Amendment 2 on May 31, 1967. The substitute amendment proposed to amend Article IV, Section 23, as follows:

(Article IV) Section 23. The legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable, except that the requirement of uniformity shall not apply to the administrative means of exercising powers of a local legislative character conferred by section 22 upon the boards of supervisors of the several counties; but the legislature may provide for the election at large once in every 4 years of a chief executive officer in any county ~~having a population of five hundred thousand or more~~ with such powers of an administrative character as they may from time to time prescribe in accordance with this section.

In addition, it amended Section 23a to give all county executives the veto power granted by that section.

On October 18, 1967, the Assembly adopted Assembly Substitute Amendment 2, and adopted the joint resolution, as so amended, by a 99 to 0 vote (Assembly Journal, page 1762). The Senate concurred 29 to 2 on October 25, 1967 (Senate Journal, page 1539).

As adopted, the joint resolution:

1. Waives the application of the uniformity requirement to the "administrative means of exercising powers of a local legislative character" conferred by the constitution upon county boards.
2. Permits the establishment by law in all counties of the elective office of county executive.
3. Grants the veto power over county board resolutions and ordinances to the county executive.

Enrolled Joint Resolution No. 57 (Senate Joint Resolution 41)

In its original form, the Wisconsin Constitution stated in Article IV, Section 26 that "the legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract entered into; nor shall the compensation of any public officer be increased or diminished during his term of office."

Two constitutional amendments have created exceptions to this rule. In 1955 the voters approved an amendment which added a second sentence: "This section shall not apply to increased benefits for teachers under a teachers' retirement system when such increased benefits are provided by a legislative act passed on a call of ayes and nays by a three-fourths vote of all the members elected to both houses of the legislature." At the 1967 spring election, the voters approved the addition of the following words at the end of the first sentence "except that when any increase or decrease provided by the legislature in the compensation of the justices of the supreme court, or judges of the circuit court shall become effective as to any such justice or judge, it shall become effective from such date as to each of such justices or judges."

On March 10, 1967, Senate Joint Resolution 41 was introduced by Senator LaFave (Rep.) and co-sponsored by Assemblyman McDougal (Rep.), chairman and vice chairman, respectively, of the legislative Joint Survey Committee on Retirement Systems. The joint resolution proposed to amend the sentence added in 1955 so that the prohibition in the first sentence of the section would not apply to "persons who have been or shall be granted retirement benefits" under any public retirement system when increased benefits are provided by an act passed by a three-fourths majority vote.

The proposal was referred to the Joint Survey Committee on Retirement Systems whose report to the legislature on the measure included the following:

The present law allows the adjustment of a retirement pension received by a retired teacher under a teachers' retirement system within the state. However, it precludes such an adjustment being made for retired members of all other public retirement systems, excepting federal, located within the State.

Many retirement systems throughout the United States have adopted provisions allowing the pensions of their retired members to be periodically adjusted. They are properly funded and in many cases tied to the Cost of Living Index. In other cases, such as the Wisconsin Retirement Fund, funds are available in the form of excess interest earnings which could be utilized in implementing Cost of Living adjustments for retired members providing the Constitution were amended. The Governor has indicated an interest in this matter and included it in his policy statement in his Executive Budget of 1967-69.

It hardly seems equitable that retired members of all teacher retirement systems within the State are granted this benefit while at the same time the retired members of all other public retirement systems, excluding federal, are denied them.

The Retirement Research Committee has been directed to study and recommend a plan for the implementation of a Cost of Living adjustment program for the retired members of all retirement systems within the State. It is quite apparent that such a study will be meaningless for a majority of the retired public employees of Wisconsin unless this resolution is adopted. In any event the final decision as to whether or not a retirement system within the State may increase retirement allowances of their retired members will rest with the legislature.

It is the opinion of this committee that the adoption of this resolution would be in the best public interest.

The legislature received this report on April 21, 1967. On May 31, 1967, Senator LaFave offered Senate Amendment 1, which changed the description from "persons ... granted retirement benefits under a retirement system" to "persons ... granted benefits of any kind under a retirement system." On October 18, 1967, the Senate adopted the amendment and, by a 31 to 0 vote, adopted the joint resolution, as amended (Senate Journal, page 1446). The Assembly concurred in the joint resolution on December 16, 1967, by an 83 to 14 margin (Assembly Journal, page 2792).

As adopted by both houses, the joint resolution proposes the following amendment:

(Article IV) Section 26. The legislature shall never grant any extra compensation to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract entered into; nor shall the compensation of any public officer be increased or diminished during his term of office except that when any increase or decrease provided by the legislature in the compensation of the justices of the supreme court, or judges of the circuit court shall become effective as to any such justice or judge, it shall become effective from such date as to each of such justices or judges. This section shall not apply to increased benefits for teachers persons who have been or shall be granted benefits of any kind under a teachers' retirement system when such increased benefits are provided by a legislative act passed on a call of yeas-and-noes ayes and noes by a three-fourths vote of all the members elected to both houses of the legislature.

Enrolled Joint Resolution No. 58 (Assembly Joint Resolution 1)

The Wisconsin Constitution provides in Article VIII, Section 4 that "the state shall never contract any public debt except in the cases and manner herein provided." The exceptions, contained in Article VIII, Sections 6 and 7, respectively, are a debt not exceeding \$100,000 for "defraying extraordinary expenditures" and the power to "borrow money to repel invasion, suppress insurrection, or defend the state in time of war." Article VIII, Section 9 reaffirms the general prohibition by stating, "No scrip, certificate, or other evidence of state debt, whatsoever, shall be issued, except for such debts as are authorized by the sixth and seventh sections of this article."

This prohibition has not been changed since 1848. As of 1964, Wisconsin was one of only 8 states which did not incur debt backed by the full faith and credit of the state. As public demands on state government and costs have increased over the years at a faster rate than state revenue, the state has been forced to seek some funding device for long-term building projects. The device Wisconsin has used is the nonprofit public building corporation, which is established as a private entity for legal purposes, issues bonds, constructs buildings with the proceeds from the bond issue, and then rents the buildings to the state with the rental charges going to retire the bonds. (The newspapers often refer to these entities as "dummy" corporations.) On December 31, 1967, the outstanding debts of such corporations were \$382,511,869. That debt was 1.41% of the total equalized value of the taxable property in the state (\$27,104,150,765) as determined for 1967 by the department of revenue.

The 1965 Legislature, on first consideration, adopted a proposed amendment which would have renumbered existing Article VIII, Section 7 to be Section 7 (1) and created Subsections (2) to (5) in that section to set forth a procedure under which the state could incur debt "for the purchase and improvement of real property, for the construction and improvement of buildings, structures, improvements, facilities and highways, for the acquisition, development and preservation of recreation and forest areas in the state and for the purchase of equipment and other capital items related thereto."

Assemblymen Froehlich (Rep.), Schaeffer (Dem.), Gee (Rep.), Obey (Dem.), Hutnik (Rep.), Lipscomb (Dem.) and Barbee (Dem.) introduced the proposal as Assembly Joint Resolution 1 for second consideration in the 1967 Legislature, and the Assembly adopted the measure. In the Senate, Senator Leonard (Rep.) offered 2 substitute amendments to the proposal, both of which proposed to revise the language of the amendment. Because this necessitated starting the constitutional amendment procedure over again, both substitute amendments proposed "first consideration" amendments to the constitution.

At the time of introducing these substitute amendments, Senator Leonard introduced Senate Resolution 29, immediately adopted by the Senate, which asked for an opinion of the Attorney General on approximately 20 questions concerning the version passed by the Assembly and the versions presented by Senate Substitute Amendments 1 and 2.

The day after the Senate received the Attorney General's response to these questions, Senator Leonard offered Senate Substitute Amendment 3. This substitute amendment was adopted by the Senate, which then adopted the joint resolution 28 to 3, as amended, on December 15, 1967 (Senate Journal, page 2009). The Assembly concurred in Senate Substitute Amendment 3 on December 16, 1967, by a 91 to 6 vote (Assembly Journal, page 2774).

Senate Substitute Amendment 3 started the amending process over because of its changes from the version adopted by the previous legislature. For a copy of the complete text of the new language added by this substitute amendment, see the following table which, by showing their variations from the adopted version, also shows the text of Senate Substitute Amendments 1 and 2.

For the text of the Attorney General's opinion mentioned above, see the appendix.

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Senate Sub. Amdt. 1

(2) (intro.) - Same as 3

(a) - Same as 3, except "shall pledge" substituted for "pledges".

(b) - Same as 3, except in Subd. 2, "pursuant to paragraphs (a) and (c)" substituted for "pursuant to this section".

1967 AJR 1

Senate Sub. Amdt. 2

(2) (intro.) - Same as 3

(a) - Same as 3, but does not include "and pledges to the payment thereof its full faith, credit and taxing power".

(b) - Same, except in Subd. 2:

1. "Pursuant to paragraphs (a) and (c)" substituted for "pursuant to this section".

2. "Liquid assets" substituted for "sinking funds".

1967 AJR 1

Senate Sub. Amdt. 3

(2) Any other provision of this constitution to the contrary notwithstanding:

(a) The state may contract public debt and pledges to the payment thereof its full faith, credit and taxing power to acquire, construct, develop, extend, enlarge or improve land, waters, property, highways, buildings, equipment or facilities for public purposes.

(b) The aggregate public debt contracted by the state in any calendar year pursuant to paragraph (a) shall not exceed an amount equal to the lesser of:

1. Three-fourths of one per centum of the aggregate value of all taxable property in the state; or

2. Five per centum of the aggregate value of all taxable property in the state less the sum of: a. the aggregate public debt of the state contracted pursuant to this section outstanding as of January 1 of such calendar year after subtracting therefrom the amount of sinking funds on hand on January 1 of such calendar year which are applicable exclusively to repayment of such outstanding public debt and, b. the outstanding indebtedness as of January 1 of such calendar year of any entity of the type described in paragraph (d) to the extent that such indebtedness is supported by or payable from payments out of the treasury of the state.

Sen. Sub. 1 - cont'd

(c) - Same as 3

(d) No money shall be paid out of the treasury, with respect to any lease, sublease or other agreement entered into after January 1, 1970, to any nonprofit corporation or any entity organized for public purposes pursuant to which such nonprofit corporation or such other entity undertakes to finance or provide a facility for use or occupancy by the state or an agency, department or instrumentality thereof.

(e) - Same as 3

Sen. Sub. 2 - cont'd

(c) - Same as 3

(d) No money shall be paid out of the treasury, with respect to any lease, sublease or other agreement entered into after January 1, 1970, to any nonprofit private corporation organized for public purposes or any similar entity, to finance any project which the state may carry on and for which paragraph (a) authorizes the state to contract public debt.

(e) - Same as 3, except "by a vote of the majority" substituted for "by vote of a majority".

Sen. Sub. 3 - cont'd

(c) The state may contract public debt, without limit, to fund or refund the whole or any part of any public debt contracted pursuant to paragraph (a), including any premium payable with respect thereto and any interest to accrue thereon, or to fund or refund the whole or any part of any indebtedness incurred prior to January 1, 1972, by any entity of the type described in paragraph (d), including any premium payable with respect thereto and any interest to accrue thereon.

(d) No money shall be paid out of the treasury, with respect to any lease, sublease or other agreement entered into after January 1, 1971, to the Wisconsin State Agencies Building Corporation, Wisconsin State Colleges Building Corporation, Wisconsin State Public Building Corporation, Wisconsin University Building Corporation or any similar entity existing or operating for similar purposes pursuant to which such nonprofit corporation or such other entity undertakes to finance or provide a facility for use or occupancy by the state or an agency, department or instrumentality thereof.

(e) The legislature shall prescribe all matters relating to the contracting of public debt pursuant to paragraph (a), including: the public purposes for which public debt may be contracted; by vote of a majority of the members elected to each of the 2 houses of the legislature, the amount of public debt which may be contracted for any class of such purposes; the public debt or other indebtedness which may be funded or refunded; the kinds of notes, bonds or other evidence of public debt which may be issued by the state; and the manner in which the aggregate value of all taxable property in the state shall be determined.

Sen. Sub. 1 - cont'd

(f) The state shall pledge its full faith, credit and taxing power to the payment of all public debt created on behalf of the state pursuant to paragraphs (a) and (c) and the legislature shall provide by appropriation for the payment of the interest upon and instalments of principal of all such public debt as the same falls due. If at any time the legislature fails to make any such appropriation, the state treasurer shall set apart from the first revenues thereafter received, applicable to the general fund of the state, a sum sufficient to pay such interest and instalments of principal and shall so apply the moneys thus set apart. The state treasurer may be required to set aside and apply such revenues as aforesaid at the suit of any holder of evidences of such public debt.

(g) - Same as 3

(h) - Not in 3: "(h) Notwithstanding the foregoing provisions other than paragraph (d), or any other provisions of this constitution, the legislature may authorize and provide for the issuance of revenue obligations of a public facility or enterprise of the state, or by a public corporation created by the legislature, when the only security for the payment of such revenue obligations is the revenues of such facility, enterprise or public

Sen. Sub. 2 - cont'd

(f) The full faith, credit and taxing power of the state is pledged to public debt contracted pursuant to this section. The legislature shall provide by appropriation for the payment as it comes due of principal and interest on all such public debt, but, in any event, suit may be brought against the state to compel such payment.

(g) - Same as 3

Sen. Sub. 3 - cont'd

(f) The full faith, credit and taxing power of the state are pledged to the payment of all public debt created on behalf of the state pursuant to this section and the legislature shall provide by appropriation for the payment of the interest upon and instalments of principal of all, such public debt as the same falls due, but, in any event, suit may be brought against the state to compel such payment.

(g) At any time after January 1, 1972, by vote of a majority of the members elected to each of the 2 houses of the legislature, the legislature may declare that an emergency exists and submit to the people a proposal to authorize the state to contract a specific amount of public debt for a purpose specified in such proposal, without regard to the limit provided in paragraph (b). Any such authorization shall be effective if approved by a majority of the electors voting thereon. Public debt contracted pursuant to such authorization shall thereafter be deemed to have been contracted pursuant to paragraph (a), but neither such public debt nor any public debt contracted to fund or refund such public debt shall be considered in computing the debt limit provided in paragraph (b). Not more than one such authorization shall be thus made in any 2-year period.

APPENDIX

CAPTION: Discussion of several questions relating to proposed constitutional amendments which would permit the state to borrow money and issue bonds for certain purposes and setting annual and aggregate debt limitations.

December 8, 1967

The Honorable, The Senate:

By Senate Resolution 29 (1967), you have asked my opinion on approximately twenty questions concerning Assembly Joint Resolution 1, which would amend the constitutional restrictions against state debt. I am informed that the joint resolution was passed by the 1965 session of the legislature and would be submitted to the people following passage by the current legislature. I am sure you will appreciate the fact that this is a matter of no small consequence, deserving of much more study and analysis than the remaining few weeks of the 1967 session will permit. As a result, a hurried attempt to furnish precise answers to all of your questions would be unwise, and the opinions which follow must, of necessity, be general in nature and, in some instances, qualified.

Two substitute amendments to Assembly Joint Resolution 1 have been introduced, and will be considered where appropriate.

I. THE BASIC RESOLUTION

Assuming that Assembly Joint Resolution 1 is adopted by the legislature and ratified by the people. You ask the following questions:

(a) May either existing public building corporations or the state issue bonds after the effective date of the amendment to retire existing short-term unbonded debt of such public building corporations? If the answer is in the affirmative, is there still sufficient doubt as to be likely to affect the marketability of such bonds?

The amendment to Art. VIII, sec. 7 of the Constitution proposed by the Joint Resolution includes the following language in subsection (3):

"The outstanding bonds issued by any public building corporation of this state prior to the effective date of this amendment shall be included in determining such five per centum limit. After the adoption of this amendment, no new state building corporation shall be created and no existing state building corporation shall incur any debt."

This language, on its face, appears to exempt the non-bonded indebtedness of the corporations from the debt limitation. However, proposed section 7 (3), quoted above, would prohibit the corporations from incurring "debt." as a general rule, refunding a validly existing obligation does not result in the creation of a new "debt" in the constitutional sense. 49 Am.Jur., States, Territories and Dependencies, p. 280, sec. 68; 97 A.L.R. 452. However, it also has been said --and rightly so--that the single relevant Wisconsin case is ambiguous on this point. See Kiernan, "Wisconsin Municipal Indebtedness -- Part I," 1964 Wis. L. Rev. 173, 217-18, citing Montpelier Sav. Bank & Trust Co. v. School Dist. (1902), 115 Wis. 622, 92 N.W. 439.

As a result, the matter is not free from doubt, for although the general rule is as indicated above, the Wisconsin court might well hold that the issuance of refunding bonds does create a new debt. It is quite conceivable, for example, that the refunding bonds would mature at different times and carry different interest rates, and facts such as these could well cause the court to hold that a new debt is in fact incurred at the time such bonds are issued.

Insofar as the ability of the state to "refund" existing obligations of the corporations, it is well established that the debts of the building corporations are not "debts of the state." Indeed, this is the foundation of the so-called "dummy corporation" financing idea, based on the principle that such corporations are private, and thus separate and distinct from "the state." See State ex rel. La Follette v. Reuter (1967), 33 Wis. (2d) 384, 147 N.W. (2d) 304. As a result, it would be impossible for the state to "refund" obligations of the corporations, since these obligations were never state obligations in the first place. The state could, of course, issue bonds to assume the obligations of the corporations, provided that proper purposes (as defined in proposed sec. 7 (2)) are involved. Such bonds would be included in the debt limitation.

I am of the opinion, therefore, that the building corporations may refund existing short-term debt by issuing bonds therefor, without "incurring a debt" within the purview of proposed sec. 7 (3). There is some doubt, however, as to whether the Wisconsin court would so hold.

It is my further opinion that the state could not "refund" existing obligations of the corporations, since the corporate debts were never debts of the state.

(b) Would long-term bonds be the only kind of obligation or evidence of indebtedness authorized for issuance by the state?

The general issuing authority is found in subsection (2) of the proposed Art. VIII, sec. 7, and provides as follows:

"(2) The legislature may also borrow money [and] issue bonds therefor for the purchase and improvement of real property, for the construction and improvement of buildings, structures, improvements, facilities and highways, for the acquisition, development and preservation of recreation and forest areas in the state and for the purchase of equipment and other capital items related thereto, provided that the aggregate amount of all state bonds outstanding at any time shall not exceed five per centum of the value of the taxable property in the state as determined by the last preceding state assessment."

Although it might be argued that the phrase "borrow money and issue bonds" permits borrowing in addition to, and through means other than, the issuance of bonds, such an interpretation would, in my opinion, contravene the intent of the proposed amendment as clearly expressed in succeeding subsections.

The proper construction appears to be that the legislature may borrow money for the stated purposes only through the issuance of bonds. This follows from the provisions of other portions of the proposed amendment which regulate and limit the issuance of "bonds"; for if the legislature could incur debt through other means, these regulations and limitations would not be applicable. The result would be unlimited borrowing power, which is inconsistent with the intent and purpose of Art. VIII of the Constitution. In addition, the term "bond" is not commonly regarded as including or contemplating any other form of indebtedness. Koshkonong v. Burton (1881), 104 U.S. 688, 26 L.Ed. 886. See also 22 OAG 138 (1933).

I have been informed, however, that it is often desirable, in order to adequately finance state governmental operations at the lowest possible cost, to secure interim financing through notes issued in anticipation of permanent or bond financing at a future time when interest rates may be more favorable. Since Art. I, sec. 12, of the Wisconsin Constitution, protects contracts from impairment, we must strive for a construction which would accommodate both provisions. Bond anticipation notes are, after all, tied directly to the issuance of bonds, and constitute an integral part of a realistic state bonding program. As such, these procedures are, in my opinion compatible with the intent and spirit of the proposed amendment. Consequently, while bonding is the only means by which the state may incur debt under the amendment, the use of anticipation notes for interim financing purposes would not be prohibited thereby.

It should be noted, however, that my opinion on the propriety of anticipation notes under the amendment is, like several other opinions expressed herein, subject to strong arguments on the other side which might well cause a court to hold otherwise.

There is no restriction in the proposed amendment pertaining to the term of any debt incurred thereunder. Thus, if your question asks whether short-term bonds may be issued (as opposed to long-term bonds) the answer is in the affirmative.

(c) Under proposed article VIII, section 7 (2):

(1) Could bonds be issued in the name of the state or would they have to be issued in the name of the legislature? If bonds had to be issued in the name of the legislature, who would issue, execute and deliver the bonds?

In this situation, as in most others described in the various questions you have asked, the implementation of the plan is left to the legislature, who will, consistent with constitutional language and policy, be responsible for designing the ministerial machinery through which the state bonding program will be operated. This machinery must, of course, avoid constitutional pitfalls -- under the amended Art. VIII, sec. 7, as well as other relevant sections of the Constitution.

The language in section 7 (2) of proposed Art. VIII (quoted above) providing that "the legislature may borrow money and issue bonds therefor" does not, in my opinion, require that all bonds be issued in the name of the legislature. It is rather, as indicated above, an investiture of borrowing and bond-issuing authority, which may, consistent with existing law, be further defined and delegated by the legislature. Through implementing legislation, the legislature clearly could provide for the issuance of bonds in the name of the State of Wisconsin.

(2) Would the legislature be required to authorize, by passage of a separate law, the issuance of each individual bond issue?

Subsection (4) of proposed Art. VIII, sec. 7, provides in part as follows:

"Each state bond issue shall be authorized by law for purposes which shall be stated clearly in such law; and a vote of the majority of all the members elected to each house....shall be necessary to the passage of such law."

The language is clear in its requirement that "each issue" must be "authorized by law." Provision is also made for the number of votes necessary to passage in both houses of the legislature. There being no contrary indication anywhere else in the proposed amendment, the answer to this question is in the affirmative.

(3) Would each bond issue require passage of two laws, one to authorize the advertising of the proposed sale of bonds and one to authorize the award of bonds?

Since the proposed amendment requires legislative authorization of each "issue," the question arises whether an "issue" means the actual delivery of the bonds, or the advertising, or the entire process. As might be surmised, courts have supported each of these views -- some holding that the term "issue" means delivery; others holding that it pertains only to the initial authorization; and still others holding that the term encompasses the entire procedure. See Corning v. Board of County Commissioners (1900), 102 Fed. 57; Perkins County v. Graff (1902), 114 Fed. 441; Schumacher v. Flint (1930), 252 Mich. 1, 232 N.W. 406; Wright v. East Riverside Irrigation Dist. (1905), 138 Fed. 313. See also Jones, Bonds and Bond Securities (4th Ed.) 7.

The Wisconsin Supreme Court has not passed on the question, and there is no indication at this time as to what its position might be. The initial answer to your question, therefore, must come from implementing legislation, which would have to be tested against the constitutional provisions at such time as it is enacted.

It may well be that one law would have to be passed stating the purpose and setting the dollar amount of the bonds, and perhaps authorizing their sale to the prevailing bidder; and a second law enacted after the bids are all received fixing the maturity and interest schedules to accord with the winning bid. I am informed, for example, that this two-step procedure is followed in the issuance of municipal bonds. It may also be that the legislature could delegate to some state agency circumscribed powers to consummate the sale and execution of the bonds, and thus accomplish its purpose through the passage of a single law. As indicated above, delegation of administrative functions to an agency would, under certain conditions, be entirely proper.

Since a definite answer to this question would have to take into account many non-legal considerations -- such as advertising and bidding procedures, the chances of an authorized issue not selling at anticipated rates, etc. -- I do not feel that I can advise you further on this point without being furnished the necessary data.

(4) Could the legislature, by passage of a single law, authorize the issuance of various bond issues for the financing of a class of state facilities or purposes?

(5) Could the legislature, by passage of a single law, authorize the issuance of various bond issues for the financing of several classes of state facilities or purposes?

Under Art. VIII, sec. 4, the state is prohibited from contracting public debts "except in the cases and manner herein provided." Proposed subsection (4) of Art. VIII, sec. 7, requires that each state bond issue be "authorized by law for purposes which shall be stated clearly . . ."

The obvious purpose of prohibitions against the incurring of indebtedness except in pursuance of an appropriation by law is to confine the creation of indebtedness to such subjects and to such amounts as are expressly approved by the legislature. See 49 Am. Jur., States, Territories and Dependencies, p. 280, sec. 66.

Although a strict reading of this language would seem to permit a law authorizing a single issue for several "purposes," such a construction would not be in accord with the type of legislative control apparently contemplated by the requirements of sec. 7 (4) -- e.g., authorization of each issue by the affirmative vote of a majority of the members of the legislature.

Borrowing for general purposes, or for generally anticipated but uncertain requirements in those areas in which borrowing is permissible, would be prohibited. The degree of specificity required is a question for the legislature in the first instance, subject, of course, to the provisions of proposed Art. VIII, sec. 7 (4). While each building, structure or facility for which borrowing would be permitted need not be precisely identified in the law authorizing the issue, it is doubtful that an all-inclusive law, using only the broad language of sec. 7 (2), would be sufficient.

Again, this is a question that is incapable of definite answer at this point in time. The legislation authorizing the issue will have to be balanced against the language and policy of Art. VIII. The only positive statement that can be made at this stage is a warning that the authorizing legislation cannot be overbroad in describing the purposes of the individual bond issue and the amount of money involved.

In short, while proposed sec. 7 (4) would, on its face, appear to empower the legislature to authorize a single bond issue for a multiplicity of purposes, a court, if confronted with such a question might well conclude that such a law would violate the spirit and purpose of the constitutional state borrowing plan.

(d) Would existing debt incurred by the public building corporations for facilities which are self-liquidating be included in assessing "debt" in relation to the proposed "debt" limitation?

Proposed sec. 7 (3) provides in part that all "outstanding bonds issued by any public building corporation" prior to the effective date of the amendment shall be included in determining the five per centum debt limitation. The plain language of this section would apply to all outstanding building corporation bonds -- regardless of the method of payment. As a result, the face amount of all such bonds -- including those issued for self-liquidating facilities -- would be included in computation of the five per centum limitation.

(e) May bonds be issued for general anticipated requirements?

The answer must be "no." The discussion appearing under question I (c) (3), above, is relevant to this question as well. While absolute specificity is not necessary in the legislation authorizing a bond issue, I doubt that an all-inclusive, generally phrased authorization would suffice in existing Art. VIII, sec. 4.

(f) In view of the present existence of the term "state assessment" in article VIII, section 10 of the Wisconsin Constitution, is the meaning of that term in proposed article VIII, section 7 (2) sufficiently clear? What will be the effect if 5% of "the value of the taxable property in the state as determined by the last preceding state assessment" drops below the value of the aggregate amount of all outstanding state bonds?

The term "state assessment" has not been defined by the Wisconsin court, nor is it defined in the proposed amendment. Sec. 70.10, Wis. Stats., provides for an annual assessment of all real and personal property in furtherance of collection of the tax on all general property within the state. See also sec. 70.01, Wis. Stats. The assessment, while organized on county level, is governed by state law, and apparently is the "state assessment" contemplated by proposed sec. 7 (2). In addition, sec. 70.575, Wis. Stats., indicates that the "state assessment" is the total of all county assessments, and "shall be the full market value of all general property of the state liable to state, county and local taxes in the then present year."

The same term appears in Art. VIII, sec. 10, as an annual limitation on appropriations for certain public works, and has been used and discussed by the Wisconsin court without comment. See State ex rel. Ekern v. Zimmerman (1925), 137 Wis. 180, 193, 206, 204 N. W. 803.

It is my opinion, therefore, that the phrase is sufficiently clear.

You also inquire as to the effect of a decrease in assessed valuation on the debt limitation. If a particular "state assessment" reveals that the valuation of the taxable property in the state has dropped to such an extent that the figure is exceeded by the aggregate amount of all outstanding state bonds, there would appear to be a violation of the precise language of proposed sec. 7 (2).

The situation you describe, however, is not the situation where bonds are issued after the debt limit has been reached or exceeded. Here, the bonds would have been validly issued in the first instance and would be binding legal obligations of the state. It is highly unlikely that a court would invalidate such obligations in the event of a decrease in property valuation, and thus impair and destroy the contract rights of innocent purchasers.

II. SUBSTITUTE AMENDMENT 1

You also ask the following questions relating to Senate Substitute Amendment 1 to Assembly Joint Resolution 1:

(a) Does the description of nonprofit corporations proposed by article VIII, section 7 (2) (d) include any organizations other than the public building corporations?

Proposed sec. 7 (2) (d) provides that:

"No money shall be paid out of the treasury with respect to any....agreement entered into after January 1, 1970, to any nonprofit corporation or any other entity organized for public purposes pursuant to which such nonprofit corporation or such other entity undertakes to finance or provide a facility for use or occupancy by the state or an agency, department or instrumentality thereof."

Chapter 182, Wis. Stats., provides for many private (including those regarded as "private" in the several "dummy corporation" cases) non-profit corporations -- some of which are organized for public purposes and are authorized to carry on projects which could be financed by the state under proposed sec. 7 (2) (a). Such corporations include the Turnpike Corporation (secs. 182.30-182.48); the surplus federal property development corporations authorized by sec. 182.60; and may well include other types of corporations mentioned in the Chapter, as well as the thousands of "non-profit corporations" existing under Ch. 181, Wis. Stats.

Thus, the language of proposed sec. 7 (2) (d), is unclear in that it might encompass some or all of these corporations. Moreover, this section may well prohibit any agreement between any state agency and any nonprofit corporation, where the consideration to be furnished by the state is money, and the consideration to be furnished by the corporation is the financing or providing of any public facility. Further, the overbroad designation of "any other entity organized for public purpose" would appear to include all municipal corporations within the state and, in this manner, might be construed as prohibiting the state financial assistance program for water pollution abatement facilities under Chapter 144, Wis. Stats. See State ex rel. La Follette v. Reuter (1967), 33 Wis. (2d) 384, 147 N.W. (2d) 304.

(b) The main thrust of this proposal is to amend Art. VIII, Section 7 of the Constitution. Proposed Art. VIII, Section 7 (2) (f) contains language which may impliedly amend Art. VIII, Section 2 as well. Does the cited paragraph deal with a sufficiently different subject so as to require a separate question when the proposal is submitted to the people?

You are correct in pointing out the apparent conflict between proposed sec. 7 (2) (f), which requires the state treasurer to set aside general fund revenues to pay the principal and interest on bonds if at any time the legislature fails to make any such appropriation, and Art. VIII, sec. 2, which provides that "no money shall be paid out of the treasury except in pursuance of an appropriation by law." Whether or not this amounts to an "implied amendment" is another question, however.

Art. VIII, sec. 1, provides in part that if more than one constitutional amendment is submitted to the people, they must be submitted separately. The Wisconsin Supreme Court considered the meaning of this provision in State ex rel. Hudd v. Timme (1882), 54 Wis. 318, 11 N.W. 785. The court there determined that a proposed amendment changing the legislative sessions from an annual to a biennial basis, and also changing the salary of legislators was a single amendment under Art. XII, sec. 1. The court stated that the requirement of "separate submission" applies to amendments which have different objects and purposes in view, and that in order to constitute more than one amendment, the propositions submitted must relate to more than one subject and have at least two distinct and separate purposes not dependent upon or connected with each other (54 Wis., at p. 336).

The court took a narrower view in State ex rel. Thomson v. Zimmerman (1953), 264 Wis. 644, 60 N.W. (2d) 416, when it held that Art. XII, sec. 1 had been violated where a proposed constitutional amendment provided for: (1) the apportionment of state senate districts on an area basis, and of assembly districts by population; (2) removal of the prohibition against including Indian and military lands in the population base; and (3) changing the provision relating to boundaries of assembly districts.

On the basis of these cases, the attorney general advised the legislature in 1959 that questions dealing with four-year terms for the offices of attorney general, secretary of state and state treasurer had to be submitted separately, while the same questions relating to the offices of governor and lieutenant governor could be submitted as one proposal. 48 OAG 188 (1959). That opinion also advised separate submission of questions relating to terms of several county offices in order to be "absolutely safe." In 50 OAG 65 (1961), the attorney general advised the senate that questions pertaining to the creation of a county executive to exercise such administrative duties as may be delegated by the county board, and granting him a veto power over county ordinances, were so different as to require separate submission. See also 54 OAG 13 (1965).

Assuming, arguendo, that your statement as to an implied amendment is true -- and this in itself may well require judicial determination -- it is doubtful, under the rules just stated, that submission to the people on separate questions would be required, since the object of the joint resolution -- to permit limited state borrowing for certain purposes -- is singular.

It should be noted, however, that a very persuasive argument may be made that, because of the conflict, the proposed section 7 (2) (f) deals with a sufficiently separate subject so as to require separate submission. This argument arises from the fact that the existing method of legislative authorization of all payments from the treasury need not be altered or amended in order for the state to incur debt -- which is, after all, the fundamental purpose of the amendment.

While I feel that separate submission is unnecessary, the language of proposed section 7 (2) (f) is open to challenge on this point, and I cannot speculate on the outcome of such a challenge. Since this language is not necessary to implementation of the state bonding plan, the best and safest course would be to eliminate the problem by altering the wording of the section.

(c) Is the inclusion of proposed Article VIII, section 7 (2) (h) necessary to permit the issuance of revenue bonds which would not be chargeable to the debt limitation set forth in proposed article VIII, section 7 (2) (b)?

The Wisconsin court, while never passing on the precise question of whether revenue bonds are within the scope of the constitutional debt restrictions, has indicated that the state may acquire property, and pledge the revenues therefrom in payment of the purchase price, without creating a state debt. The court has long held this to be the rule in regard to cities. See Connor v. Marshfield (1906), 128 Wis. 280, 197 N.W. 639. It should be noted, however, that the provision of the constitution dealing with municipal debt (Art. XI, sec. 3) contains language specifically excluding from the debt limitation a pledge of the assets of an existing utility in connection with the financing of improvements thereto, where the loan is payable solely out of future revenues of the utility.

In Loomis v. Callahan (1928), 196 Wis. 518, 525, 220 N.W. 816, the Wisconsin court held that the Board of Regents could purchase property and, in payment therefor, pledge moneys arising from the operation of the property thus acquired without creating a "debt" in the constitutional sense. The court based its holding on the line of cases approving similar transactions by cities. Several years later, in State ex rel. Thomson v. Giessel (1954), 267 Wis. 331, 65 N.W. (2d) 529, the court reconsidered the Loomis case, and overruled it insofar as it authorized the incumbering of an interest in state property as security for a loan. The opinion in the Giessel case, however, does not appear to affect the Loomis decision insofar as that case held a pledge of revenues to be outside the scope of the constitutional debt restrictions.

As a general rule, a state does not create a "debt" in the constitutional sense by purchasing property to be paid for wholly out of the income or revenue to be derived from the property purchased. See 49 Am. Jur., States, Territories and Dependencies, p. 283, sec. 71. Indeed, courts in some states have held that the issuance of state revenue bonds to provide university buildings, where payment is to come solely from a fund derived from student fees, does not create a "state debt." See 46 OAG 65, 68 (1957).

Thus, it is my opinion that, if faced with the precise question, the Wisconsin Supreme Court would hold revenue bonds to be outside the definition of "debt" as that term appears in our constitution -- whether or not the bonds were issued in connection with the purchase or acquisition of the particular revenue-producing property. It follows that, while the inclusion of subsection (2) (h) of proposed sec. 7 may not be absolutely necessary to permit issuance of "non-debt" revenue bonds, it does secure the desired result without retaining the possibility -- however slight -- of a future question on this point.

(d) In view of the holding in State ex rel. La Follette v. Reuter (1966) 33 Wis. (2d) 284, would the financing of water pollution abatement facilities (or other facilities under a similar program) for localities through the issuance of state bonds constitute a violation of the constitutional prohibition against lending the credit of the state?

Art. VIII, sec. 3 provides:

"The credit of the state shall never be given or loaned, in aid of any individual, association or corporation."

In State ex rel. La Follette v. Reuter (1967), 33 Wis. (2d) 384, 397-398, 147 N.W. (2d) 304, the court reiterated its definition of the prohibited "lending of credit" as occurring only when the state incurs an enforceable legal obligation to pay the debt of another, and quoted as follows from State ex rel. W. D. A. v. Dammann (1938), 228 Wis. 147, 197, 277 N.W. 278, 280 N.W. 698:

"* * * There is no such giving or loaning of the state's credit.... When all that is done by the state is to incur liability directly or only to such other party as, for example, where the state lawfully employs someone to perform an authorized service for the state."

The Reuter case also held that matters pertaining to the abatement of water pollution are proper state governmental functions, and are matters of public, state-wide concern. (33 Wis. (2d) at pp. 397, 403). These matters would thus be proper

subjects for state bonding -- and indeed are made so under proposed sec. 7 (2) (a) of Senate Amendment 1.

As a result, it is my opinion that water pollution abatement facilities for localities may be financed through state bonding under the proposed amendment without violating the prohibitions against lending the credit of the state. The liabilities incurred by the state would be direct, and thus not within the definition quoted above. Whether this would be true in other situations or under other programs would, of course, depend upon the particular facts involved.

(e) Would existing debt incurred by the public building corporations for facilities which are self-liquidating be included in assessing "debt" in relation to the proposed "debt" limit?

Senate Amendment 1 contains a provision not appearing in the Assembly Joint Resolution -- a provision empowering the legislature to authorize the issuance of revenue obligations by public corporations. However, the language of this section (proposed 7 (h)) would seem to lend itself to an interpretation that its terms are prospective only, and that it does not encompass revenue obligations previously incurred by the corporation(s).

Proposed sec. 7 (2) (b) sets the debt limitation in terms of "the aggregate public debt contracted by the state in any calendar year" for the purposes set forth in proposed sec. 7 (2) (a). Since the public building corporations are not "the state" under the long line of "dummy corporation" cases, their existing debts are not "public debts contracted by the state," and would not be included in arriving at the limitation.

It follows that existing, self-liquidating debts of the public building corporations -- to the extent that they are supported by, or payable from, the state treasury -- would not be included in the assessment of "debt" for purposes of the limitation.

(f) Does the prohibition in proposed Article VIII, section 7 (2) (d) against any future borrowing by the public building corporations deal with a sufficiently different subject so as to require a separate question on that part of the proposed amendment?

A reading of the entire proposal indicates that the elimination of the "dummy corporation" method of financing is part and parcel of the proposed state bonding program. In fact, if a separate question were used for proposed sec. 7 (2) (d), and if it were to be answered in the negative, the resulting situation would be absurd -- an increased but firm debt limitation, and a procedure which would allow contravention of the limitation through dummy corporation borrowing. In other words, we would be setting a realistic limit with one hand, and completely nullifying the limit with the other. It would seem incongruous and inconsistent to conclude that an opportunity should be afforded to the electors to approve the establishment of a debt limitation and, at the same time, authorize the total circumvention thereof by voting "no" on a separate question dealing with future dummy corporation borrowing. Cf. 54 OAG 13, 14-15 (1965).

This question, like question II (b), above, is incapable of definite answer at this time. The courts are in agreement that the difficulty here is not with the test, but with its application. Although the legislature deter-

mines compliance with constitutional provisions relating to amendments in the first instance, it is, in the final analysis, for the courts to determine whether an attempted constitutional amendment is proposed in the required manner. *State v. Marcus* (1915), 160 Wis. 354, 152 N.W. 419.

Although it is my opinion that separate submission is not required, it is, again, impossible to do more than speculate as to the outcome of a court test at this time. The safest method -- both here and in the similar situation discussed above in relation to the basic resolution -- would be to submit the question separately, and only after altering the language so as to escape the possibility of an absurd result such as that discussed above.

This question deserves further comment. The so-called "dummy" corporations are creatures of the legislature and exist only through legislative sufferance. Their powers may be limited -- or extinguished altogether -- by the legislature at any time. Specific reference to these corporations in the proposed amendment will stamp them with the seal of constitutional recognition and perhaps tacit identification as agencies of the state; yet the very reason for their existence is that they are regarded as private bodies in no way subject to financial and other limitations of the sovereign. The danger of destroying the usefulness of such corporations by constitutional identification with the state and its government should not be underestimated if it is intended to retain their existence for limited purposes. Due consideration should be given to other, less complex, methods of obtaining the desired results in this respect.

III. SENATE SUBSTITUTE AMENDMENT 2

You have asked the following questions in regard to Senate Substitute Amendment 2 to Assembly Joint Resolution 1:

- (a) Does the language of proposed article VIII, section 7 (2) (d) permit the "nonprofit private corporation organized for public purposes" to issue evidences of indebtedness for purposes specified in section 7 (2) (a) where the state has reached the limit specified in section 7 (2) (b)?

Proposed sec. 7 (2) (d) provides as follows:

"No money shall be paid out of the treasury, with respect to any lease, sublease or other agreement entered into after January 1, 1970, to any nonprofit private corporation organized for public purposes or any similar entity, to finance any project which the state may carry on and for which paragraph (a) authorizes the state to contract public debt."

Under the proposed amendment only "the state" is authorized to contract public debt for the purposes specified in proposed sec. 7 (2) (a). The building corporations are, of course, not "the state" under a long line of cases beginning with Loomis v. Callahan, *supra*. Also, the language of the rest of the proposed amendment -- particularly proposed sec. 7 (2) (d) -- indicates an intent to limit the amount of debt burdening the taxpayers -- whether incurred in the name of the state per se or in the name of a dummy corporation. See, for example, pro-

posed sec. 7 (2) (b). It is noteworthy in this regard that proposed sec. 7 (2) (g) provides a method for "emergency" financing without regard to the debt limitation.

It is my opinion, therefore, that under the language of the proposed amendment the corporations would not be able to issue evidences of indebtedness for the specified purposes, insofar as the indebtedness involves payments out of the treasury.

(b) Would existing debt incurred by the public building corporations for facilities which are self-liquidating be included in assessing "debt" in relation to the proposed "debt" limitation?

The limitation provisions of Senate Substitute Amendment 2 provide as follows:

"(b) The aggregate public debt contracted by the state in any calendar year pursuant to paragraph (a) shall not exceed an amount equal to the lesser of:

"1. Three-fourths of one per centum of the aggregate value of all taxable property in the state; or

"2. Five per centum of the aggregate value of all taxable property in the state less the sum of: a) the aggregate public debt of the state contracted pursuant to paragraphs (a) and (c) outstanding as of January 1 of such calendar year after subtracting therefrom the amount of liquid assets on hand on January 1 of such calendar year which are applicable exclusively to repayment of such outstanding public debt; and, b) the outstanding indebtedness as of January 1 of such calendar year of any entity of the type described in paragraph (d) to the extent that such indebtedness is supported by or payable from payments out of the treasury of the state."

As indicated above, it is probable that the court would hold self-liquidating obligations to be outside the notion of "debt." In addition, the above-quoted language would exclude from the limitation all building corporation indebtedness which is not supported by or payable from the State Treasury.

It follows that the answer to this question is in the negative.

(c) In view of the holding in State ex rel. La Follette v. Reuter (1966), 33 Wis. (2d) 384, would the financing of water pollution abatement facilities (or other facilities under a similar program) for localities through the issuance of state bonds constitute a violation of the constitutional prohibition against lending the credit of the state?

Under the authorities discussed in relation to question ** (d) above, there is no "loaning of the state's credit" in the constitutional sense when all that is done by the state is to incur liability directly.

As a result, the financing of local water pollution facilities through state bonds would not violate Art. VIII, sec. 3, of the constitution.

Sincerely yours,

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