



**State of New Jersey**  
Property Tax Convention Task Force

**The Report of the  
Property Tax Convention Task Force  
to the  
Governor and Legislature**

A Plan to Hold a Property Tax Convention

“Finding A Fairer System”

**December 31, 2004**



State of New Jersey  
NEW JERSEY PROPERTY TAX CONVENTION TASK FORCE

CHAIR  
*Carl E. Van Horn, Ph.D.*

VICE CHAIR  
*Michael R. Cole, Esq.*

December 31, 2004

Honorable Richard J. Codey  
Acting Governor and Senate President

Honorable Albio Sires  
Speaker of the General Assembly

Dear Gentlemen:

We hereby transmit the Report of the Property Tax Convention Task Force (Task Force) as required by its enabling act, P.L. 2004, c. 85. As directed by that law, the Task Force has developed recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system.

In considering these recommendations, we analyzed comments offered at our public hearings from a wide array of individuals from across the State and across the country. We found scholars' constitutional law suggestions as compelling as citizen descriptions of the problem of high property taxes.

We conclude the mission you have given us with the strong belief that reform of New Jersey's property tax system is needed and that, should the Legislature decide that it is appropriate to authorize a Property Tax Convention to achieve reform, then such a Convention should be conducted in accordance with these recommendations.

Respectfully submitted,

Handwritten signature of Carl E. Van Horn in black ink.

Carl E. Van Horn, Ph.D.  
Chair

Handwritten signature of Michael R. Cole in black ink.

Michael R. Cole, Esq.  
Vice Chair

### **Members of the Property Tax Convention Task Force**

Carl E. Van Horn, Ph.D., Chair	Professor, Bloustein School, Rutgers University
Michael R. Cole, Esq., Vice Chair	Partner, DeCotiis, Fitzpatrick, Cole & Wisler
Hon. John H. Adler	New Jersey State Senator and Judiciary Chair
Ida Castro, Professor	Chair in Civil Rights, CUNY School of Law
Susan A. Cole, Ph.D.	President, Montclair State University
Sherryl A. Gordon	Executive Director, AFSCME Council No. 1
Hon. Leonard Lance	New Jersey State Senate Minority Leader
Terrence Malloy	Business Administrator, City of Bayonne
Hon. Kevin J. O'Toole	New Jersey State Assembly Deputy Minority Leader
Hon. Gary Passanante	Mayor, Somerdale
Ernest C. Reock, Jr., Ph.D.	Professor Emeritus, Rutgers University
Hon. Joseph J. Roberts, Jr.	New Jersey State Assembly Majority Leader
Hon. Jo-Anne B. Schubert	Mayor, South Bound Brook
Cy Thannikary	Chairman, Citizens for Property Tax Reform
Richard Van Wagner, Sr.	Former New Jersey Senator and Assemblyman

## Table of Contents

	<u>Page</u>
Executive Summary	1
Introduction	5
Selection of Delegates	6
Scope	12
The Convention	16
Costs	19
Signature page	21
Appendix #1 – List of meeting/hearing dates	22
Appendix #2 – List of commenters	23
Appendix #3 – Summary of correspondence received	27
Appendix #4 – Timeline for property tax reform	28
Appendix #5 – Documents cited in Report	29
Appendix #6 – Additional comments by Task Force members	51

A Plan to Hold a Property Tax Convention

“Finding A Fairer System”

**Report of the Property Tax Convention Task Force**

This report, dated December 31, 2004, contains the recommendations of the Property Tax Convention Task Force and is respectfully submitted to the Governor and Legislature as required by law.

**Executive Summary**

P.L. 2004, c. 85 (the Act) was signed into law on July 7, 2004, creating the Property Tax Convention Task Force (Task Force). The Act passed the New Jersey State Legislature with bipartisan support, with the State General Assembly voting 63-16-1 and the State Senate 31-9.

The Task Force consists of 15 members: nine appointed by the Governor; two appointed by the Senate President, one of whom is a member of the Senate and one a member of the public; two members appointed by the Speaker of the General Assembly, one of whom is a member of the General Assembly and one a member of the public; one member appointed by the Minority Leader of the Senate who is a member of the Senate; and one member appointed by the Minority Leader of the General Assembly who is a member of the General Assembly. In accordance with the Act, all members have substantial expertise and experience in State and local government matters, constitutional law, public finance or other related areas. The Task Force was chaired by Professor Carl E. Van Horn, who was appointed to that post by the Governor, consistent with the Act, and Michael R. Cole, Esq., served as Vice Chair.

Section 3 of the Act charges the Task Force with:

Considering and developing recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system. Such recommendations shall include, but not be limited to, the recommended method for the **selection of delegates** to the convention, the appropriate **scope** of the convention’s inquiry and the method for consideration of the convention’s recommendations, and shall identify the specific issues or questions that the **convention** should consider as well as the estimated **costs** of the convention.

Consensus was formed on nearly all issues, but where that was not possible despite the very best efforts and intentions of all, it is faithfully noted in this report.

As detailed in this report, the Task Force recommends:

### **Selection of Delegates**

- Delegates should be elected by voters simultaneously with the vote on the holding of the Convention at the general election in November 2005.
- Delegates should be elected by district using the 40 current legislative districts.
- To help ensure a diverse and representative group of Delegates, there should be either (a) 80 elected Delegates, two from each district, plus 10 additional Delegates to be appointed in the following manner: two each by the Governor, Senate President, Senate Minority Leader, General Assembly Speaker, and Assembly Minority Leader, or (b) 120 elected Delegates, three from each district, with no appointed Delegates.
- Legislators and all other elected officials should be permitted to seek election as a Delegate.
- All of the current qualifications for Assembly candidates should be used for Delegate candidates, including the requirement of 100 nominating petition signatures.
- Positioning on the ballot should be rotated so that the “luck of the draw” does not influence the election results.
- Delegate elections should be nonpartisan, and neither party affiliation nor any slogan should appear next to a candidate’s name on the ballot, and bracketing by two or more candidates should be prohibited.
- There should be no public financing of Delegate campaigns because public financing of elections in New Jersey is untested (except at the gubernatorial level) and the results of the pilot “clean elections” program for legislative elections will not be known until after the 2005 general election, and also because of the concern about costs.
- There should be a \$500 limit on contributions to Delegate election campaigns from any source.

- **Candidates or advocacy groups who spend in excess of a voluntary \$25,000 spending limit should be required to include in all of their Convention-related political communications a statement that they have exceeded that voluntary limit.**
- **Candidates whose spending does not exceed the \$25,000 voluntary limit should be authorized to include in their political communications a statement that they are staying within that voluntary limit.**
- **Delegates should not be compensated for their service but should be reimbursed for necessary out-of-pocket expenses.**

### Scope

- **The enabling act should clearly state that the Convention will be strictly limited to considering and making recommendations to reform the current system of property taxation and that these recommendations must further one or more of the following goals: eliminating inequities in the current system of property taxation, especially as they affect low and moderate income residents; ensuring greater uniformity in the application of property taxes; reducing property taxes as a share of overall public revenue; providing alternatives that reduce the dependence of local governments on property taxes; and providing alternative means, including possible increases in other taxes, of funding local government services.**
- **The enabling act should include language substantially identical to that found in A-1786 of 2004 (Roberts) and S-263 of 2004 (Adler) regarding the “thorough and efficient” clause and affordable housing obligations.**
- **There should be a requirement that proposals be revenue neutral, which should be clearly defined and verifiable.**
- **A Convention authorized to propose both statutory changes and Constitutional amendments is preferred; but if the legislation necessary to grant the authority to propose statutory changes is not approved by the necessary three-fifths majority in the Legislature next year, then a Convention that can propose only constitutional amendments still should be allowed to proceed.**

- A panel of three retired jurists, to be appointed by the Chief Justice of the Supreme Court of New Jersey, should review proposals during the course of the Convention and before final adoption by the Convention to make sure the proposals do not exceed the Convention's scope and are consistent with the mandate for the Convention and any limitations in place, and there should be a presumption of validity for proposals that the panel has determined to be consistent with the mandate and any limitations.
- The Convention enabling act should require that any legal challenge to the Convention's proposals must be filed under a very short time frame and should provide for expedited court review of any challenges.

### The Convention

- The Convention should be held at Rutgers University in New Brunswick.
- The Convention should convene soon after the Delegate election in order to organize itself and give direction to staff for research projects. The Convention should complete its work by July 31, 2006.
- Research for the Delegates before the Convention, including the compilation of draft rules for operation of the Convention, should be prepared by the Legislative Services Commission.
- Delegates should set the rules for Convention operations, except that the Legislature should specify in the enabling act that approval of proposals for submission to the voters requires a majority vote of all those serving as Delegates.
- The Convention should not be permitted to present to the voters separate questions on each of its specific proposals but should be required to present a comprehensive proposal as a single question.
- Convention proposals should be placed on the 2006 general election ballot immediately following the Convention.
- The Convention should be authorized to conduct a public education campaign about its proposals, but the campaign should be neutral in content.

### Costs

- \$3.845 million should be appropriated for pre-Convention, Convention, and post-Convention activities.



## I – INTRODUCTION

The Property Tax Convention Task Force (“Task Force”) developed its recommendations on how to hold a Property Tax Convention through a remarkable, and perhaps unprecedented, public process that ultimately involved nine public hearings and six working sessions that were open to the public. In fact, the use of a Task Force to advise the Legislature on the details of calling a Convention is itself unprecedented, a new approach, nationally, to state constitutional change.

However, the idea of conducting a *limited* Convention is not unprecedented and is entirely within the power of the Legislature and the people. New Jersey’s Constitution is one of just nine state constitutions that have no provision for conventions, and this leaves maximum discretion to the Legislature and the people to limit their conventions, according to a report from the Center for State Constitutional Studies at Rutgers University. This is in part based upon State history; the 1947 convention was limited *from* considering the method of apportionment, while the 1966 convention was limited *to* considering questions of apportionment.

All of the public hearings and working sessions of the Task Force were recorded and transcribed. (A complete list of the hearings and working sessions is included as Appendix #1 to this report.) The public hearings were conducted in four phases: members of the public; former Governors, State Treasurers, Supreme Court Justices and other officials; advocacy groups (education, business, labor, seniors, environment, civil rights, urban, etc.); and constitutional scholars and other experts. (Those who presented comments to the Task Force are listed in Appendix #2 to this report.)

To further facilitate public involvement, the Task Force established a website (<http://www.state.nj.us/convention/>) that contains links to all hearing transcripts and audio recordings of each hearing and meeting. The public comment period ran until the date of the completion of this report through a variety of means, including e-mail to the Task Force website. Other sources of input compiled by the Task Force came from examination of advocacy group and other websites, e-mail to former Governor James E. McGreevey and to Acting Governor Richard J. Codey, letters, agency reports and studies, citizen telephone calls, and faxes.

In total, more than 150 people testified at the hearings, more than 600 people attended the hearings, and still hundreds more corresponded or communicated via e-mail on the Task Force website or through other means. (Appendix #3 contains a summary of this written correspondence.) All of this input was invaluable to the Task Force.<sup>1</sup>

---

1. In addition, the Task Force benefited from the advice of its two consultants, G. Alan Tarr, Distinguished Professor of Political Science at Rutgers University, Camden, and Director of the Rutgers Center for State Constitutional Studies (CSCS); and Robert F. Williams, Distinguished Professor of Law at Rutgers University School of Law-Camden and Associate Director of CSCS. (The CSCS Background Papers are available at the Center’s website: <http://www.camlaw.rutgers.edu/statecon/tax.html>.) The Task

The majority of those who testified before the Task Force took the opportunity to let it be known, in no uncertain terms, their strong belief that reform of New Jersey's property tax system is needed and that a Property Tax Convention is the best (and perhaps only) way to achieve meaningful reform. This report reflects the Task Force's recommendations about how such a Convention should be conducted should the Legislature and the Governor decide that it is appropriate to put before the voters the question of whether to hold such a Convention.

## II – SELECTION OF DELEGATES

This section concerns the process by which Convention Delegates would be selected.

### Simultaneous Election

**Delegates should be elected by voters simultaneously with the vote on the holding of the Convention at the general election in November 2005.**

By way of historical background, the enabling act for the 1947 convention provided for a simultaneous vote. The 1966 enabling act did not provide for voter approval of the convention, but only for voter election of delegates, since it was in response to a New Jersey Supreme Court mandate to address legislative apportionment.

The Task Force considered the comments of some witnesses that a Delegate election as part of the general election could be lost in the numerous issues that are traditionally on the ballot in a gubernatorial election year such as 2005, and the Task Force determined that would not be the case. Rather, the Task Force sees a benefit of a general election vote for Delegates in that the large number of voters adds credibility to the vote as an expression of the will of the people. The Task Force also recognizes that a simultaneous election is much less expensive than selecting Delegates at a special election, but it does not believe that those committed to addressing the problem of burdensome property taxes will be deterred from seeking election as a Delegate simply because the outcome of the election, as to whether to hold a Convention, will not be known prior to seeking election as a Delegate.

For 2005, the procedure would be separate votes on the ballot for the Convention and for electing Delegates. A voter who votes "no" on the Convention question still would be able to vote for Delegates, as was the case in 1947. The rationale is that a voter

---

Force also received assistance from staff at the following agencies: Department of Transportation, Division of Elections, Division of Law, Election Law Enforcement Commission, Governor's Office, and Office of Legislative Services. Finally, the Task Force acknowledges the assistance and hospitality of staff at Rutgers University in New Brunswick (where all of the working sessions were held) and of Bergen Community College, Mercer County Community College, and Camden County College, Blackwood, which each hosted a public hearing.

who disapproves of a Convention still should have a voice in the Delegate selection process in the event a Convention is held. Votes cast in the Delegate candidate election would be counted whether or not the voter had voted on the question of holding a Convention.

### Districts

**Delegates should be elected by district using the 40 current legislative districts.**

This is the approach in all of the recent Convention bills<sup>2</sup> and even reflects the manner of the 1947 enabling act (although legislative apportionment at the time was based upon county boundaries). Also, such an apportionment system would satisfy any one-person, one-vote concerns that may apply to the selection of Delegates.

### Number of Delegates

**To help ensure a diverse and representative group of Delegates, there should be either (a) 80 elected Delegates, two from each district, plus 10 additional Delegates to be appointed in the following manner: two each by the Governor, Senate President, Senate Minority Leader, General Assembly Speaker, and Assembly Minority Leader, or (b) 120 elected Delegates, three from each district, with no appointed Delegates.**

The Task Force unanimously agrees that in determining the number of Delegates the Legislature should be guided by the goal of trying to ensure that the Delegates to the Convention reflect the diversity of the State and the full range of interests that are concerned with property tax reform. However, the Task Force could not agree on the best method for achieving this goal. Nonetheless, two specific proposals emerged from the Task Force's deliberations, and each received the support of roughly half of the members.

#### 80 elected plus 10 appointed Delegates

Under this proposal, there would be 80 elected Delegates (two from each district) plus 10 additional Delegates to be appointed by the legislative leadership of both parties (with each of the four leaders appointing two Delegates) and the Governor (two appointments). Under this proposal, the enabling act would specify that the criteria for the 10 additional Delegates is to provide demographic diversity. Further, the enabling act would specify that the appointments would be made within 10 days of the meeting of the

---

2. Reference to "the recent Convention bills" means A-1786 of 2004 (Roberts), S-263 of 2004 (Adler), S-1392 of 2004 (Lance), A-540 of 2002 (Roberts), S-478 of 2002 (Adler), A-2955 of 2000 (Lance/Roberts), and S-1800 of 2000 (Schluter/Adler).

Board of Canvassers to certify the election of the Delegates, at which time the demographic diversity needs will be known. The Legislature may want to consider having the 10 additional Delegates appointed collectively by the legislative leadership and the Governor as a slate.

Although the 1947 and 1966 conventions did not have any appointed delegates, the Legislature has the authority to permit appointed Delegates. The Task Force's consultants (Professors Tarr and Williams) and Professor Gerry Benjamin of SUNY-New Paltz all noted that silence by a state constitution on Delegate selection provides an opportunity for the use of appointed Delegates. The New Jersey Constitution is silent on conventions and therefore provides such an opportunity. Also, any one-person, one-vote issues that might apply to Delegate selection could be addressed by asking the voters to approve this in the ballot question.

The proponents of this proposal believe that the regular election process may not guarantee a truly diverse group of Delegates and that the appointment of additional Delegates would help to achieve the appropriate balance. Also, these Task Force members are concerned that a Convention with significantly more than about 90 Delegates could prove to be unwieldy, thereby making it more difficult to carry out the work of the Convention and achieve consensus on reform proposals.

#### 120 elected Delegates and no appointed Delegates

Under this proposal, there would be 120 elected Delegates (three from each district) and there would be no provision for appointed Delegates. The proponents of this proposal believe that it is unwise to create two types of Delegates (elected and appointed) and that the chances for creating a more diverse Delegate pool are greater if there simply were more elected Delegates. The proponents of this proposal also note that there were no appointed delegates to the 1947 or 1966 conventions.<sup>3</sup>

#### Legislators/Elected Officials as Delegates

##### **Legislators and all other elected officials should be permitted to seek election as a Delegate.**

Some at the Task Force public hearings recommended that Legislators should qualify to participate, while others suggested the opposite, and still others suggested not allowing local elected officials to be Delegates. According to the Office of Legislative Services (OLS), only Montana and Tennessee have constitutional provisions barring

---

3. Task Force member Assemblyman Kevin J. O'Toole does not support either of these proposals and instead believes that there should be 120 elected delegates, three from each district, and that in each district the Republican, Democrat, and independent/unaffiliated candidate receiving the highest number of votes should be seated as delegates.

Legislators as Delegates. (12/1/04 OLS memo to Senator Lance, included in Appendix #5.) Legislators were permitted to be delegates at both the 1947 and 1966 conventions, as they are in all of the recent Convention bills. A compelling benefit of this recommendation cited by the Task Force is the right of the voters to choose who should be Delegates.<sup>4</sup>

### **Petitions/Qualifications**

**All of the current qualifications for Assembly candidates should be used for Delegate candidates, including the requirement of 100 nominating petition signatures.**

Various options were considered which lead to this recommendation. Hearing speakers noted the dedication and significant time needed to acquire 100 signatures, and the Task Force recommends that as sufficient. The goal is to encourage ordinary citizens to run and not to make the hurdle too high. One hundred petition signatures is deemed appropriate to be accessible yet still substantial. Regarding the Assembly qualifications of Article IV of the Constitution that Delegate candidates must meet, such candidates must be 21 years old, a resident of the State for at least two years, a resident of their district for at least one year, and entitled to the right to vote.

### **Ballot Position**

**Positioning on the ballot should be rotated so that the “luck of the draw” does not influence the election results.**

All of the recent Convention bills call for this procedure, in which the county clerk would change the order of the names from one election district to the next. The Legislature should consider providing for the placement on the ballot of the listing of Delegate candidates separate from the listing of candidates for other offices.

### **Partisan Identification/Bracketing/Slogans**

**The Delegate elections should be nonpartisan, neither party affiliation nor any slogan should appear next to a candidate’s name on the ballot, and bracketing by two or more candidates should be prohibited.**

Nonpartisan means that partisan party affiliation is not allowed on the ballot. Expert testimony to the Task Force supported nonpartisan Delegate elections. It is believed to focus the electorate and the candidates on the issues. Once elected, the Delegates continue that focus, which in turn can be expected to lead to meaningful

---

4. Task Force member Assemblyman Kevin J. O’Toole dissents from this recommendation and believes that Legislators should not be permitted to serve as Delegates.

proposals. Professor Dawn Clark Natch of Northwestern University Law School, a former Illinois state legislator, gubernatorial candidate and delegate to the very successful 1970 Illinois constitutional convention, provided written testimony that a nonpartisan Delegate election makes it possible for convention discussion and coalition-building across party lines. For similar reasons, the Task Force also opposes slogans on the ballot.

Bracketing is defined in prominent court cases as the identification of a group of candidates in a column under the same slogan (*Harrison v. Jones*, 44 N.J. Super. 456 (App. Div. 1957)). None of the recent Convention bills allow bracketing for the Delegate election. It is supported in partisan elections, which desire to have this fact brought to the attention of the voter, and it was used in 1947 and 1966 for conventions whose scopes involved an issue of partisan interest, legislative apportionment. The Task Force recommends prohibiting bracketing, as it is a partisan election mechanism that does not serve the interests of the Convention Delegates seeking to amend their Constitution.<sup>5</sup>

### **Public Financing**

**There should be no public financing of Delegate campaigns because public financing of elections in New Jersey is untested (except at the gubernatorial level) and the results of the pilot “clean elections” program for legislative elections will not be known until after the 2005 general election, and also because of the concern about costs.**

While there is significant interest among the Task Force members in having some form of public financing for the Delegate election, there also is a recognition that there is no base of experience from which to draw. The only publicly financed elections are those for Governor, which clearly would not be a model that could be used. Also, while New Jersey may be moving in the direction of increasing the scope of public financing of elections, the results of the first experiment in this regard, the “clean elections” pilot program for legislative elections, will not be known until after the 2005 election. The Task Force also is concerned about the potential cost of a publicly financed Delegate election. For example, even a minimal program of providing a mailing for those candidates who were the subject of a negative campaign could cost several million dollars. If just one candidate in each district qualified for the mailing, that would mean a mailing to each of the over 5 million registered voters in the state. Despite the lack of public financing, the Task Force suggests that a Convention website be maintained that includes candidate information, and that debates organized by an independent civic organization be encouraged.

---

5. Task Force member Assemblyman Kevin J. O’Toole believes that partisan identification should be permitted consistent with his proposal described in footnote 3.

### Campaign Contributions

**There should be a \$500 limit on contributions to Delegate election campaigns from any source.**

Five hundred dollars for Delegates is a limit that is lower than Legislators' limits of \$2,600 from individuals and certain entities and \$8,200 from other entities. This \$500 recommendation is similar in implementation to the current gubernatorial election system administered by the Election Law Enforcement Commission (ELEC), making it less costly and more efficient to administer, and this lower limit is needed to reduce the effect of money in the process. ELEC would promulgate rules for the Delegate election, investigate potential campaign finance violations, and make campaign finance reports publicly available.

### Campaign Spending

**Candidates or advocacy groups who spend in excess of a voluntary \$25,000 spending limit should be required to include in all of their Convention-related political communications a statement that they have exceeded that voluntary limit.**

**Candidates whose spending does not exceed the \$25,000 voluntary limit should be authorized to include in their political communications a statement that they are staying within that voluntary limit.**

\$25,000 is the limit on expenditures in exchange for public financing that is set forth in some of the recent Convention bills (A-540 of 2002 (Roberts) (before its amendment), S-478 of 2002 (Adler) (before its amendment), A-2955 of 2000 (Lance/Roberts), and S-1800 of 2000 (Schluter/Adler)). Even in the absence of public financing, as noted below, the Task Force decided that there should be a method for encouraging restraint on campaign spending. Thus, the Task Force recommends a voluntary limit of \$25,000 along with a requirement that candidates and issue advocacy groups place a political identification statement on campaign materials they distribute and disclose within that statement if they have spent in excess of the \$25,000 figure.

### Delegate Expenses/Compensation

**Delegates should not be compensated for their service but should be reimbursed for necessary out-of-pocket expenses.**

An analysis prepared for the Task Force indicates that compensation levels did not appear to affect convention delegate demographics in the past in other states. (CSCS memo presented at 12/3/04 Task Force meeting, in Appendix #5.) Thus, and given the concerns about cost, the Task Force recommends that Delegates not be compensated.

However, reimbursement for necessary out-of-pocket expenses should be provided. Out-of-pocket expenses should be interpreted with a view towards special needs, such as occasional child-care expenses of the Delegates, which could likely be accommodated in the budget presented below. According to a legal analysis made available to the Task Force, reimbursement of Delegates for expenses would not preclude members of the Legislature from serving as Delegates, while a salary or other compensation would do so under provisions of the Constitution. (12/1/04 OLS letter to Senator Adler *et al.*, in Appendix #5.)

### III – SCOPE

This section describes subjects to be considered by the Convention in recommending fundamental change to the property tax system and providing relief to property taxpayers, as well as the limitations on the scope of the Convention, revenue neutrality, the nature of Convention proposals (constitutional only or statutory as well), and the review of Convention proposals.

#### Subjects for Consideration

**The enabling act should clearly state that the Convention will be strictly limited to considering and making recommendations to reform the current system of property taxation and that these recommendations must further one or more of the following goals: eliminating inequities in the current system of property taxation, especially as they affect low and moderate income residents; ensuring greater uniformity in the application of property taxes; reducing property taxes as a share of overall public revenue; providing alternatives that reduce the dependence of local governments on property taxes; and providing alternative means, including possible increases in other taxes, of funding local government services.**

If there is to be a Property Tax Convention, the sole purpose of such a Convention should be to reform New Jersey's property tax system. This is clearly the purpose of such a convention as envisioned in the statute that created the Task Force. The goal of reforming the property tax system so that the level of property taxes is reduced and the burden of property taxes is more fairly allocated will be a difficult one. Should the Legislature and the people decide to convene a Property Tax Convention, the goal of property tax reform can best be achieved through a limited Convention whose sole mission is property tax reform.

While some who testified before the Task Force said that a Convention also should pursue the goal of reducing government spending, there currently are opportunities each year to pursue that goal through the annual budget process at the State and local levels. A Property Tax Convention would not be an appropriate substitute for this process. Moreover, the Task Force is mindful of the scholarly advice it received



suggesting that, if a Convention were empowered to also address the level and purposes of spending, there would be no way to effectively confine the scope of the Convention to totally ensure against it becoming a forum for debate about divisive social issues. This in turn would make achievement of the central goal of property tax reform even more difficult.<sup>6</sup>

### **Limitations**

**The enabling act should include language substantially identical to that found in A-1786 of 2004 (Roberts) and S-263 of 2004 (Adler) regarding the “thorough and efficient” clause and affordable housing obligations.**

If the Legislature clearly states that the exclusive purpose of the Convention is property tax reform, then this affirmative statement of the mandate of the Convention would also operate as a prohibition against consideration of subjects not encompassed by that mandate, such as the basic rights set forth in Article I of the Constitution. The Constitution’s guarantee of a thorough and efficient education and the obligations of municipalities to provide affordable housing, like the rights in Article I, would not be subjects within the mandate of a Property Tax Convention. But because of the nature of those issues, it still would be prudent for the Legislature to specify in the enabling act the restrictions regarding the “thorough and efficient” clause and municipal affordable housing obligations.

### **Revenue Neutrality**

**There should be a requirement that proposals be revenue neutral, which should be clearly defined and verifiable.**

All of the recent Convention bills have required revenue neutrality and define it as “the aggregate amount of all revenues enacted under the powers of the State, as accurately as can be estimated and measured, shall be the same after changes recommended by the Convention as they were before such changes.” The Task Force recommends that this requirement and definition be used with the understanding that this outcome may be modified by economic developments in subsequent fiscal years. Also, the Task Force recommends that the Convention have available to it professional fiscal analysts to advise the Convention on this issue.

---

6. Task Force member Michael R. Cole would authorize the Convention to examine spending at all levels of government and propose limits and efficiencies concerning same. The dissents of Task Force members Senator Leonard Lance and Assemblyman Kevin J. O’Toole on scope and limitation issues are included in Appendix # 6 to this Report.

## Constitutional Amendments/Statutes

**A Convention authorized to propose both statutory changes and Constitutional amendments is preferred; but if the legislation necessary to grant the authority to propose statutory changes is not approved by the necessary three-fifths majority in the Legislature in 2005, then a Convention that can propose only constitutional amendments still should be allowed to proceed.**

In order for a Convention to be authorized to propose both constitutional and statutory changes, the Legislature would have to approve and submit for voter approval two separate pieces of legislation. One would be a bill to authorize a Convention, which would require only a simple majority vote of the Legislature in order to appear on the ballot. The other would be a concurrent resolution to temporarily amend the Constitution to permit the Convention to propose statutory changes. In order for this proposal to appear on the ballot in 2005, the Legislature would have to approve the concurrent resolution by a three-fifths majority.

Ideally, a Property Tax Convention should have the capability to consider both statutory and constitutional changes since many of the current policies that affect the property tax system are embodied in statutes while some others are found in the Constitution. But a Convention that would be able to propose only constitutional changes still could be successful in achieving property tax reform because such a Convention could, for example, propose binding, guiding principles that the Legislature would be required to implement. For these reasons, the Task Force recommends flexibility regarding this issue. The bill to authorize a Convention should be permitted to take effect regardless of whether the resolution regarding the temporary constitutional amendment is adopted. If both the bill and the concurrent resolution were adopted, then the Convention would be able to address both constitutional and statutory changes. If only the bill were adopted, then the Convention still would take place but would be permitted to address only constitutional changes.<sup>7</sup>

---

7. Task Force members Susan A. Cole and Michael R. Cole dissent from the recommendation that the Convention be enabled to propose statutory changes as well as constitutional amendments. They believe the creation of laws rests within the authority of the Legislature and the Governor, with all of the checks and balances, rules and procedures, and ultimate accountability to the voters that the legislative process entails. In their judgment, a constitutional Convention should be limited to constitutional amendments. Task Force member Ernest C. Reock, Jr., suggests in general that the Convention be authorized to propose statutory changes only, rather than amendments to the State Constitution. In particular, in order to avoid rigid controls in a changing world, he urges that any tax or budget limitations be presented to the voters as statutory, rather than constitutional, measures.

## Proposal Review

**A panel of three retired jurists, to be appointed by the Chief Justice of the Supreme Court of New Jersey, should review proposals during the course of the Convention and before final adoption by the Convention to make sure the proposals do not exceed the Convention's scope and are consistent with the mandate for the Convention and any limitations in place, and there should be a presumption of validity for proposals that the panel has determined to be consistent with the mandate and any limitations.**

The Task Force consensus favors the legitimacy provided by a review of three retired jurists. An opinion of the Office of Legislative Services provides a basis for such a retired jurist review (5/29/02 letter to Senator Adler, in Appendix #5). Also, several of the recent Convention bills provide for this type of review.<sup>8</sup>

In the 1947 enabling act, the Secretary of State provided the review. However, the only limitations on that convention were simple and obvious – no change in the boundaries of counties and no change in the system of legislative apportionment. So, a more substantive review by a neutral panel was not necessary.

In 1966, the State Attorney General would have been authorized to review proposals since he was designated as the convention's legal officer prior to the convention by the State House Commission.

## Legal Challenges

**The Convention enabling act should require that any legal challenge to the Convention's proposals must be filed under a very short time frame and should provide for expedited court review of any challenges.**

There is a need to require a short time frame in which suits may be filed and expedited court review of objections to Convention proposals. This would prevent a situation where an opponent of the proposals could delay a public vote by filing suit on the eve of the election.

---

8. See A-1786 of 2004 (Roberts), S-263 of 2004 (Adler), and S-1392 of 2004 (Lance).

## IV – THE CONVENTION

This section of the report concerns Convention operations and proposals.

### Location

**The Convention should be held at Rutgers University in New Brunswick.**

Literature regarding the 1947 convention and the 1966 convention shows that Rutgers University was selected for a number of reasons, including: distance makes it independent of the concerns of Trenton; desire to host the Convention; collegial atmosphere that would encourage nonpartisanship; central location in the State; and ability to set up a special reference library and other work areas. All of these reasons also justify conducting the Property Tax Convention at Rutgers.

### Dates

**The Convention should convene soon after the Delegate election in order to organize itself and give direction to staff for research projects. The Convention should complete its work by July 31, 2006.**

The Task Force considered the several configurations of past conventions and current legislative proposals. In addition, they considered that a general election for electing Delegates would permit an earlier start than the late winter or early spring commencement reflected in those configurations. On that basis, the Task Force recommends that the Convention convene shortly after the election in order to consider Convention rules, organizational issues, and such other relevant matters within the Convention's scope as they shall determine. If the Convention chose, there could then be a break during which there would be a refining of those rules and other organizational matters and receipt of research materials. The Convention could then reconvene in the spring and conclude its work by late July, which would provide sufficient time to notify the public of the Convention proposals. The Task Force makes this recommendation recognizing that Article II and Article IX regarding legislative notice requirements for public questions and proposed Constitutional amendments, respectively, do not apply to the Convention, since the Constitution is silent on Conventions, but also recognizing that compliance with the three-month advance publication requirement of Article IX would be prudent and appropriate. This time frame would also enable the public to be fully informed about the proposals adopted by the Delegates.

## Research

**Research for the Delegates before the Convention, including the compilation of draft rules for operation of the Convention, should be prepared by the Legislative Services Commission.**

All of the recent Convention bills state that all pre-Convention research is to be undertaken by the Legislative Services Commission (LSC), which shall also recruit Convention staff. Some recent bills would direct the State House Commission (SHC) to make physical arrangements with Rutgers University. Previous conventions utilized similar State agency assistance, including the Department of Treasury, Office of the Attorney General, and others.

The enabling act should reflect that LSC is to provide the pre-Convention research, including the draft rules. As noted above, the Convention should convene shortly after the Delegate election in order to consider various matters such as SHC's physical arrangements and LSC's research efforts.

## Rules

**Delegates should set the rules for Convention operations, except that the Legislature should specify in the enabling act that approval of proposals for submission to the voters requires a majority vote of all those serving as Delegates.**

The 1947 and 1966 enabling acts permitted convention delegates to set their own rules by majority vote. Current bills provide the same authorization. Given precedent, the enabling act should state that Convention rules will be set by the Delegates, but that votes on proposals for submission to the voters require a majority vote of all those serving as Delegates, in order to demonstrate a strong consensus for any proposals.

## Manner of Presentation of Proposal to Voters

**The Convention should not be permitted to present to the voters separate questions on each of its specific proposals but should be required to present a comprehensive proposal as a single question.**

The Office of Legislative Services provided an opinion stating that, if a Convention were to be authorized by a temporary constitutional amendment to propose statutory changes as well as constitutional amendments, then both the statutory changes and the constitutional amendments could be submitted for voter approval as a single ballot question. (12/8/04 OLS letter to Senator Lance, in Appendix #5.) Since Article IX of the Constitution envisions voting on each amendment proposed by the State Legislature separately and distinctly, the one-proposal approach should be specifically

addressed in the Convention enabling law for clarity and approved by the voters at the November 2005 general election. It is unlikely that the Convention would propose competing comprehensive proposals, but the Legislature may want to consider not precluding that possibility.

### **Timing of Presentation of Proposal to Voters**

**Convention proposals should be placed on the 2006 general election ballot immediately following the Convention.**

The New Jersey State Constitution does not address constitutional conventions, but Article II regarding submission of statewide public questions arguably requires submittal of Convention proposals at a general election (as opposed to any other election). Moreover, several constitutional scholars providing testimony to the Task Force cited the benefits of this approach and noted that it comports with the spirit of the Constitution. It is preferable based upon the likely familiarity of the public with the results of a recently concluded Convention, and it is a means to avoid an inordinate amount of time for the public to grow weary of an extended campaign. The 1947 and 1966 conventions by their enabling acts placed their proposals on the immediately following general election ballot, and all of the recent Convention bills follow this course. As with the public question as to the holding of a Convention, the Task Force sees a benefit of a general election vote for proposals in that the large number of voters adds credibility to the vote as an expression of the will of the people.

### **Public Education**

**The Convention should be authorized to conduct a public education campaign about its proposals, but the campaign should be neutral in content.**

Constitutional scholars testifying before the Task Force stated that providing voter education on the Convention proposals serves to ensure that voters are engaged in the reform of their Constitution, as is envisioned in the Constitution. In fact, an “address to the people” regarding the proposals is specified in all of the recent Convention bills.

In 1947, public education was a priority of the Convention. Provision for distribution of an “address to the people” was provided for in the 1947 convention enabling act. As a result, public education was initiated by that convention’s delegates, who approved newspaper and radio ads, the mailing of three million summaries of the proposed Constitution to the public, and the printing of 600,000 full copies of the proposed Constitution, out of funds remaining from the convention appropriation that had been provided by the Legislature. (Connors, Richard J., *The Process of Constitutional Revision in New Jersey: 1940-1947*, page 189.)

In 1966, public education was also a priority of the Convention, which appointed a committee of eight delegates to publicize the general election ballot question on the new Legislative apportionment system. (Reock, Ernest C., Jr., *Unfinished Business*, page 221.)

Public education for Convention proposals is not intended to mean that the State is to pay to convince the public one way or the other. For this reason, the Task Force recommends that the public education effort be neutral in content. The same system that is in use for assuring the validity of explanatory statements for ballot questions could be used regarding the neutrality of the public education materials.

**V – COSTS**

**All stages of Convention planning and operation**

**\$3.845 million should be appropriated for pre-Convention, Convention, and post-Convention activities.**

Appropriations in recent legislation range from \$4 million to \$15 million. The staff presented and the Task Force accepted the following proposed budget:

<b><u>PRE-CONVENTION</u></b>	<b><u>Estimate</u></b>
Delegate and Convention Election	1,150,000
\$500,000 cost to review petitions, rotate candidates from district to district, train board workers	
\$500,000 candidate stmts. collected, camera ready, print, mail	
\$100,000 sample ballot qstns. written, camera ready, print, mail	
\$50,000 ELEC monitoring	
Research, facilities, staff for up to 1 month	
\$50,000 research	
\$5,000 facilities	
\$10,000 staff	65,000
<b>SUBTOTAL OF PRE-CONVENTION</b>	<b>\$1,215,000</b>

**CONVENTION**

Printing, transcripts, notices, audio	675,000
\$420,000 printing	
\$70,000 transcripts	
\$5,000 notices	
\$180,000 audio	
Meals, Rutgers charges, other agency help	340,000
\$180,000 meals	
\$60,000 Rutgers	
\$100,000 other agency help	
Experts and constitutional scholars	120,000
\$60,000 experts	
\$60,000 constitutional scholars	
Staff/Delegate expenses	
\$210,000 Delegate out of pocket	
\$90,000 staff out of pocket and unforeseen expenses	
\$145,000 Director, counsel, 2 press, 2 accountants, 4 aides	<u>445,000</u>
<i>SUBTOTAL OF CONVENTION</i>	<u>\$1,580,000</u>

**POST-CONVENTION**

General Election with proposal vote and proposals statement	1,000,000
\$420,000 for costs related to Convention proposals vote including ads and notice to municipal clerks, etc.	
\$380,000 proposal statement, camera ready, print, mail on expanded sample ballot that requires larger paper	
\$200,000 public education using same amount spent in 1947	
ELEC monitor of issue groups	<u>50,000</u>
<i>SUBTOTAL OF POST-CONVENTION</i>	<u>\$1,050,000</u>

**TOTAL**

**\$3,845,000<sup>9</sup>**

---

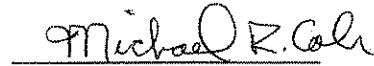
9. Task Force member Assemblyman Kevin J. O'Toole dissents from this recommended budget. He questions the pre-Convention amount because the election of delegates and the referendum on the convention call will be held at a general election under the recommendations, and the amount cited may include costs that are normally incurred in a general election. Task Force member Ernest C. Reock, Jr., proposes that the budget allocation for an independent Convention staff and consultants be substantially increased to reduce the necessity for Convention delegates to rely on lobbyists and special interest staff for expert advice.



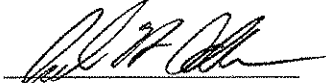
Signed and Submitted By:



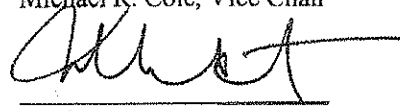
Carl E. Van Horn, Chair



Michael R. Cole, Vice Chair



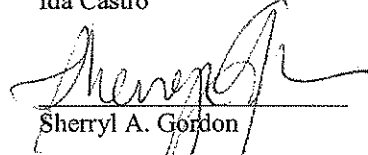
Hon. John H. Adler



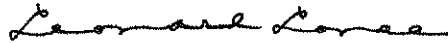
Ida Castro



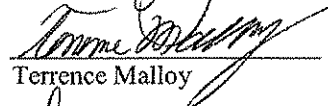
Susan A. Cole



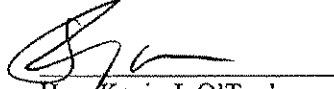
Sherryl A. Gordon



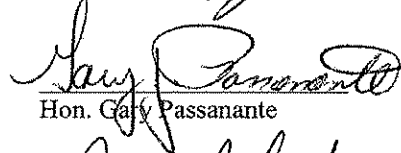
Hon. Leonard Lance



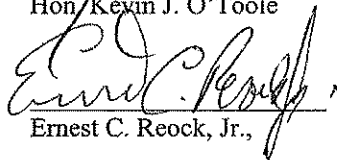
Terrence Malloy



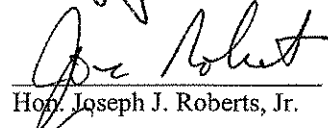
Hon. Kevin J. O'Toole



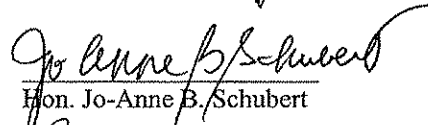
Hon. Gary Passanante



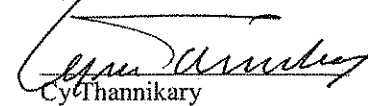
Ernest C. Reock, Jr.,



Hon. Joseph J. Roberts, Jr.



Hon. Jo-Anne B. Schubert



Cy Thannikary



Richard Van Wagner, Sr.

**APPENDIX #1****Property Tax Convention Task Force Meetings/Hearings**

<u>Date</u>	<u>Time</u>	<u>Location</u>	<u>Who</u>
Tuesday 9/21/04	2pm-4pm	Rutgers' Winants Hall	Public
Monday 10/4/04	2pm-4pm	Bergen Community College	Public
Wednesday 10/6/04	7pm-9pm	Mercer Community College	Public
Tuesday 10/19/04	2pm-4pm	Camden Community College	Public
Wednesday 10/20/04	2pm-4pm	Rutgers' Winants Hall	Governors and Treasurers
Tuesday 10/26/04	2pm-4pm	Rutgers' Brower Commons	Advocates
Friday 10/29/04	10am-12pm	Rutgers' Winants Hall	Advocates
Tuesday 11/9/04	2pm-4pm	Rutgers' Winants Hall	Scholars and Experts
Friday 11/12/04	2pm-4pm	Rutgers' Winants Hall	Scholars and Experts
Tuesday 11/23/04	2pm-4pm	Rutgers' Winants Hall	Discussion of Delegates and Campaigns
Friday 12/3/04	9:30am-12pm	Douglass' Traves Hall	Discussion of Public Education, Operations, and Proposals
Friday 12/8/04	2pm-5pm	Douglass' Traves Hall	Discussion of Scope
Friday 12/10/04	9:30am-12pm	Rutgers' Winants Hall	Discussion of Cost
Friday 12/17/04	2pm-5pm	Douglass' Traves Hall	Discussion of Draft Report
Tuesday 12/21/04	9:30am-12pm	Rutgers' Winants Hall	Approval of Final Report

**Commenters to the Property Tax Convention Task Force**  
(in order of appearance)

**September 21, 2004, Rutgers University, New Brunswick**

Governor James E. McGreevey  
Robert F. Williams, Distinguished Professor of Law, Rutgers School of Law-Camden

**October 4, 2004, Bergen Community College, Paramus**

Pat Walsh, Budd Lake  
Belinda Wilson, South Orange  
J.P. Tristani, Ramsey  
George D. Fosdick, Mayor of Ridgefield Park  
John Bavazzano, West Caldwell  
Irene Sterling, Paterson (Paterson Education Fund)  
Joseph Inserra, New Providence (New Jersey Coalition for Property Tax Reform)  
Mary Nash, Harrington Park  
Helen Lindsay, Ridgewood  
John Gibbons, Harrington Park  
Dr. Jonathan Hodges, President, Paterson Board of Education  
Claudia Monteith, Member, Ramsey Board of Education  
Robert Rashkes, West Orange  
Carlo DeSantis, Leonia  
Clifford Beebe, Lake Hopatcong  
Marie Hakim, Clifton  
Michael Brinzey, Hillsdale  
Chris Allyn, Morristown  
Nina Levinson, Fort Lee  
Mabel Mendes, East Orange  
Sophie Heymann, Member, Closter Borough Council  
Sally Dudley, Mendham (Association of New Jersey Environmental Commissioners)  
Richard Pederson, Wayne  
Jose Martinez, Hackensack  
Ilan Plawker, President, Englewood Cliffs Borough Council  
Craig H. Rogers, Member, Little Ferry Board of Education  
Bernie Sobolewski, Little Ferry  
Steve Lonagan, Mayor of Bogota  
David Huemer, Deputy Mayor of Maplewood  
Robert Paterson, Allendale  
Robert Robinson, Teaneck  
Gary Paton, Member, Mahwah Township Council  
Henry K. Levari, Jr., Buena (Excellent Education for Everyone)

Lou Schwartz, Teaneck  
Bill Brown, Glen Rock (New Jersey Coalition for Property Tax Reform)  
John Tourian, Hillsdale  
Kathleen Caren, West Milford  
Norman Gorlin, Bergen County  
Vincent J. Frantantoni, Belleville  
Rev. Robert C. Morris, Jr., East Orange  
Charles Heath, Glen Rock

**October 6, 2004, Mercer County College, West Windsor**

Michael M. Horn, Mendham (former New Jersey State Treasurer)  
Hon. Linda R. Greenstein, Member, New Jersey State Assembly (District 14)  
Quincy Battis, Paterson  
Tommy Silva, Paterson  
Martin Marks, Mayor of Scotch Plains (New Jersey State League of Municipalities)  
William Opferman, Trenton  
Rose Clevenger, Southampton  
Ann N. Taliaferro, Paterson  
Mitchell Landis, West Windsor  
Bruce Coe, Lambertville (Coalition for the Public Good)  
August Scotto, Hamilton  
Jack Mozloom, Hamilton  
Walter Helfrecht, Upper Freehold  
Michele Siekerka, Washington Twp. (Greater Mercer County Chamber of Commerce)  
Denise Millington, Trenton  
Vince Calcagno, Mayor of Washington Township (Mercer)  
Sharon Ransavage, Flemington  
Junius Williams, Newark  
Michael James, Newark  
Richard S. Messner, Upper Freehold  
Marilyn Askin (President, AARP New Jersey)  
Gerald Nathanson, Upper Freehold  
Richard A. Harbourt, West Windsor  
Seth Stern, East Brunswick  
Steve McPhillips, Robbinsville  
Dorothea Koukotas, Robbinsville  
Sandy Jarvis, Allentown  
Mike Ferrell, Wall  
Robert Patten, Mayor of Hightstown  
Allen Cohen, Lawrence  
Gino Melone, Member, Trenton City Council  
Hon. Robert J. Martin, Member, New Jersey State Senate (District 26)  
George Martch, West Windsor  
Marvin Reed, Princeton Borough

Keith M. Jones (President, NAACP of New Jersey)  
Pasquale Maffei, Trenton

**October 19, 2004, Camden County College, Blackwood**

Hon. Fred H. Madden, Jr., Member, New Jersey State Senate (District 4)  
Hon. David R. Mayer, Member, New Jersey State Assembly (District 4)  
Judith Cambria, Manahawkin (League of Women Voters of New Jersey)  
Edward J. Dodson, Cherry Hill  
James Dougherty (President, New Jersey School Boards Association)  
Mark Markos (Cherry Hill Committee for Property Tax Reform)  
Edwin Klinewski, West Berlin  
Eli Hiller, Cherry Hill  
George A. Spadaro, Mayor of Edison (New Jersey State League of Municipalities)  
Ray Hellings, Cinnaminson  
Alexander Esposito, Haddonfield  
Creed Pogue, Estell Manor (Coalition for the Public Good)  
Patricia Kaletkowski, Long Beach Township  
Robert Stockwell, Carneys Point  
Blanca N. Gonzalez-Restrepo, Egg Harbor  
Richard J. Edgar, Gloucester Township  
Richard Floreck, Somerdale  
Raymond Pohl, Lakewood  
Victor Gilson, Bridgeton  
William J. Carlton, Jr., Plainsboro  
Dick McCarthy, Sicklerville  
Dolores Prokapus, Thorofare  
Vincent Grosso, Washington Township (Gloucester)  
Eugene St. Lawrence, Member, Gloucester Township Council  
Sara T. Davis, Member, Camden City Board of Education  
Dr. Joseph Schley, Atlantic City  
Billy Carroll, Audubon  
Seth Grossman, Somers Point  
William Love, Medford  
Fernando Powers, Sicklerville  
Nick Naum, Cherry Hill  
Irene Burke, Cherry Hill

**October 20, 2004, Rutgers University, New Brunswick**

Hon. Brendan T. Byrne, former Governor of New Jersey  
Hon. James J. Florio, former Governor of New Jersey  
Clifford A. Goldman, Ph.D., former New Jersey State Treasurer  
Michael M. Horn, Esq., former New Jersey State Treasurer

**October 26, 2004, Rutgers University, New Brunswick**

Philip Kirschner, President, New Jersey Business & Industry Association  
Richard Goldberg, President, Commerce and Industry Association of New Jersey  
Joan Verplanck, President, New Jersey State Chamber of Commerce  
Richard D. Loccke, Esq., Co-General Counsel, New Jersey State AFL-CIO  
Jeff Tittel, Director, New Jersey Sierra Club  
Judith Cambria, League of Women Voters of New Jersey  
Jon Shure, President, New Jersey Policy Perspective

**October 29, 2004, Rutgers University, New Brunswick**

Edithe A. Fulton, President, New Jersey Education Association  
Christopher Kniesler, Dir., Governmental Relations, New Jersey School Boards Ass'n  
Lynne Strickland, Executive Director, Garden State Coalition of Schools  
David Sciarra, Executive Director, Education Law Center  
Peter A. Cantu, 1<sup>st</sup> Vice President, New Jersey State League of Municipalities  
Marilyn Askin, President, AARP New Jersey  
Keith M. Jones, President, NAACP of New Jersey  
Gregg M. Edwards, President, Center for Policy Research of New Jersey  
Hon. Gary S. Stein, Justice of the New Jersey Supreme Court, Retired

**November 9, 2004, Rutgers University, New Brunswick**

Hon. William Schluter, former Member, New Jersey State Senate (District 23)  
Professor Richard Briffault, Vice Dean, Columbia Law School  
Professor Myron Orfield, Univ. of Minn., and Senior Fellow, Brookings Institution

**November 12, 2004, Rutgers University, New Brunswick**

Richard C. Leone, former New Jersey State Treasurer  
Professor Elmer Cornwell, Brown University

**Papers Presented:**

Professor Gerald Benjamin, State University of New York, New Paltz  
Martin Perez, Latino Leadership Alliance of New Jersey  
New Jersey Association of Counties  
Professor A. E. Dick Howard, University of Virginia Law School  
Ron Sworen, Mayor of Frenchtown, New Jersey Conference of Mayors  
Professor Dawn Clark Netch, Northwestern University Law School  
Hon. Alan B. Handler, Justice of the New Jersey Supreme Court, Retired

APPENDIX #3

Property Tax Convention Task Force  
Written Communications received thru 12/23/04

Task Force Website

<u>Writer</u>	<u>Pro</u>	<u>Con</u>	<u>Sought information</u>	<u>Total</u>
Businesses	5	4	1	10
Citizens	<u>254</u>	<u>76</u>	<u>41</u>	<u>371</u>
<b>Subtotal</b>	<b>259</b>	<b>80</b>	<b>42</b>	<b>381</b>

Other correspondence

<u>Writer</u>	<u>Pro</u>	<u>Con</u>	<u>Sought information</u>	<u>Total</u>
Business	1	8	0	9
Citizens	<u>63</u>	<u>14</u>	<u>66</u>	<u>143</u>
<b>Subtotal</b>	<b>64</b>	<b>22</b>	<b>66</b>	<b>152</b>
<b>GRAND TOTALS</b>	<b>323</b>	<b>102</b>	<b>108</b>	<b>533</b>

**Timeline for Property Tax Reform**

<u>Event</u>	<u>By</u>
Task Force Report	Friday, December 31, 2004
Report Considered by Legislators	Tuesday, March 1, 2005
Approve Public Questions for Ballot	Monday, August 1, 2005
General Election on Holding a Convention	Tuesday, November 8, 2005
Delegates Convene	Friday, December 16, 2005
Convention Adjourns	Monday, July 31, 2006
General Election on Convention Proposals	Tuesday, November 7, 2006



**APPENDIX #5**

	<u>Page</u>
12/1/04 OLS letter to Senator Lance	30
Rutgers CSCS paper on delegate compensation/composition	32
12/1/04 OLS letter to Senator Adler <i>et al.</i>	36
05/29/02 OLS letter to Senator Adler	42
12/8/04 OLS letter to Senator Lance	47

LEGISLATIVE SERVICES COMMISSION

ASSEMBLYMAN  
ALBIO SIRES  
*Chairman*

SENATOR  
BERNARD F. KENNY, JR.  
*Vice-Chairman*

SENATE

BYRON M. BAER  
ANTHONY R. BUCCO  
RICHARD J. CODEY  
NIA H. GILL  
LEONARD LANCE  
ROBERT E. LITTELL  
ROBERT W. SINGER

GENERAL ASSEMBLY

CHRISTOPHER "KIP" BATEMAN  
FRANCIS J. BLEE  
JOHN J. BURZICHELLI  
ALEX DECROCE  
GUY R. GREGG  
JOSEPH J. ROBERTS, JR.  
LORETTA WEINBERG



## New Jersey State Legislature

### OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

ALBERT PORRONI  
*Executive Director*  
(609) 292-4625

### STATE GOVERNMENT SECTION

GLENN E. MOORE, III  
*Director Of Central Staff*  
(609) 984-4811

AGGIE SZILAGYI  
*Section Chief*  
(609) 292-9106

December 1, 2004

Honorable Leonard Lance  
119 Main Street  
Flemington, New Jersey 08822

Dear Senator Lance:

This letter is in response to your recent request for information on state constitutional conventions since 1970 that have prohibited legislators from being delegates. The two states that have this prohibition are Montana and Tennessee.

#### Montana:

During the legislative session which authorized Montana's convention, the issue arose as to whether legislators could be delegates. Article V, section 7 of the 1889 Montana constitution stated: "No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state."

In *The Forty Second Legislative Assembly v. Lennon*, 481 P.2d 330 (1971), the Montana Supreme Court interpreted this section to prohibit members of the Legislature in 1971 from serving in the 1972 convention.

The Court found that the position of delegate to a constitutional convention is a civil office under the state. According to the Court: "To draw a distinction between other state officers and delegates to a constitutional convention, both of whom act as agents of the people exercising sovereign powers in their behalf, is to deny our basic concept of government."

The Court then discussed the purpose of restricting legislators and other officeholders from serving as delegates. First, such a restriction ensures independent consideration of the provisions of

Honorable Leonard Lance  
December 1, 2004  
Page 2

the new constitution. Second, it reduces the concentration of political power at the convention. Third, it prevents incumbents from creating new offices for themselves or increasing their own salary or compensation.

**Tennessee:**

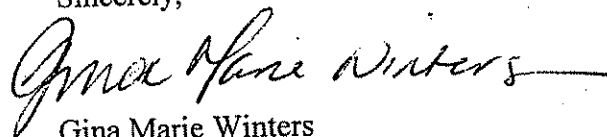
Article II, Section 26 of the Tennessee Constitution states:

"No judge of any court of law or equity, secretary of state, attorney general, register, clerk of any Court of Record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this state hold more than one lucrative office at the same time; provided, that no appointment in the Militia, or to the Office of Justice of the Peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either House of the General Assembly."

Tennessee Attorney General Opinion 68 (August 4, 1971) stated that persons holding state jobs, including members of the General Assembly, were not eligible to serve as delegates to the Constitutional Convention. According to the opinion, members of the General Assembly, as well as constitutional convention delegates, are state officers and that the office they hold is a lucrative office under the meaning of this provision of the Tennessee Constitution.

I hope this information is a satisfactory response to your request. If you have any questions or concerns, or require further research, please contact me at (609) 292-9106.

Sincerely,



Gina Marie Winters  
Associate Research Analyst

## COMPENSATION OF DELEGATES AND THE COMPOSITION OF STATE CONSTITUTIONAL CONVENTIONS

G. Alan Tarr and Robert F. Williams

Members of the Task Force have raised a question as to whether paying delegates would affect the sorts of people who could afford to serve in the constitutional convention. The concern was that if delegates were not paid, ordinary citizens could not afford to leave their jobs to serve and that as a result, the composition of the convention would be unrepresentative. Although this may make sense intuitively, the available research (summarized and interpreted in this paper) reveals no connection between compensation of delegates and the social composition of state constitutional conventions.

We begin with two caveats. First, no research has directly addressed the connection between delegate pay and the composition of conventions, so we are extracting data collected for other purposes and attempting to draw conclusions based on those data. Second, because there have been few conventions in recent years, the available data are from thirty or more years ago, and one must consider whether the conclusions drawn from those data would hold up in the present day.

### Historical Practice

Until about 1960, the standard practice was not to pay convention delegates. Thus, the failure to pay delegates to the 1947 New Jersey convention coincided with the prevailing practice. Since 1960, the practice has been to pay delegates to unlimited conventions but not to pay delegates to limited conventions. Thus, the failure to pay delegates to the 1966 New Jersey limited convention coincided with the prevailing practice. It appears that the distinction drawn between limited and unlimited conventions relates to the expected length of those conventions and hence the financial burden of serving as a delegate.

### Level of Compensation

Even when convention delegates were paid for their service, the level of compensation varied considerably from state to state. For example, delegates to the New Mexico convention of 1969 received \$20 per day; delegates to the Michigan convention of 1961 received \$1,000 a month for seven months; delegates to the Connecticut convention of 1965 and the Maryland convention of 1967 received \$2,000 for four months service; delegates to the Hawaii convention of 1968 received the same pay as legislators--\$2,500 plus a per diem for a two-month session; and delegates to the New York convention of 1967 received \$15,000 for less than six months service.

The varying levels of compensation affect financial incentives. A study of the Maryland convention concluded that few legislators served as delegates, in part because, having been paid a low salary for their work as legislators, they could not afford to take further time away from their occupations to serve as delegates, also at a low salary.

### Compensation and the Composition of Conventions

The most detailed study available is of the Maryland convention of 1967, in which delegates were paid \$2,000 for four months service. The 142 delegates to the convention included:

- 74 lawyers
- 19 small business owners
- 15 educators
- 12 housewives
- 5 government employees
- 3 union members
- 1 technical worker

85% of the delegates had a college degree, and 65% had a postgraduate degree, with almost half making more than \$20,000 a year (the highest category of income in the survey of delegates). 13% were women, and the percentage of African-Americans was 11% lower than their representation in the population of the state. Eleven state legislators ran, and all were elected. Twenty-two delegates were former legislators. The main study of the Maryland convention concluded that "the modal delegate was a white, protestant, middle-aged lawyer who worked in a city and lived in a suburb." (Wheeler & Kinsey, 1970, p. 30) In comparison with the Maryland legislature at the same point in time, lawyers, educators, and housewives were over-represented at the convention, while small business people and technical workers were significantly underrepresented. It seems fair to conclude that modest pay for delegates did not lead to the election of a cross-section of the population of the state.

Comparative studies of delegates at various conventions provide less detail. One can divide the conventions into those with no salary (Rhode Island), low salary (Maryland and New Mexico), and high salary (Hawaii and New York). The data in the table below are expressed in percentages above that group's representation in the overall population of the state. For example, a figure of 41% on gender would mean that the percentage of delegates that were males was 41% higher than the percentage of males in the state's population. A figure of 2% on race would mean that the percentage of delegates that were white was 2% higher than the percentage of whites in the state's population. Similarly, a figure of 56% on education would mean that the percentage of delegates that ranked high on education was 56% higher than the percentage of those with a high level of education in the state's population, and a figure of 41% on occupation would mean that the percentage of delegates with a high-status occupation was 41% higher than the percentage of people within the state with a

high-status occupation. Taking the available data on over-representation of males, whites, those with high education, and those with high-status occupations, and relating that to the salary of delegates (no salary, low salary, high salary), one finds:

	<u>No salary</u>	<u>Low salary</u>	<u>High salary</u>
Gender	+41%	+38% +37%	+43% +47%
Race	+2%	+11% -----	+21% +2%
Education	+56%	+70% +64%	+78% +77%
Occupation	+41%	+57% +42%	+56% +65%

We interpret these data as indicating that there is at best a minimal connection between whether/how delegates are compensated and the characteristics of those delegates. Insofar as there is any connection, the unpaid delegates to the Rhode Island convention appear more diverse than those serving in conventions in which delegates are paid. This finding is exactly contrary to the expectation that by paying delegates one would ensure a more demographically representative convention.

What might account for this finding? Although compensating delegates might remove the financial disincentive discouraging ordinary citizens from serving as delegates, it does not ensure that they will be elected as delegates. Even if more ordinary citizens campaign to become delegates, there is no guarantee that they will be elected. Rather, what the scholarly literature suggests is that the key factor determining the composition of state constitutional conventions is the mode of selection of delegates (partisan/nonpartisan, large district/small district), rather than the compensation of delegates.

#### SOURCES

Cornwell, Elmer E., Jr., Jay S. Goodman, and Wayne R. Swanson. *State Constitutional Conventions; The Politics of the Revision Process in Seven States*. New York: Praeger, 1975.

Sturm, Albert L. *Thirty Years of State Constitution-Making: 1938-1968*. New York: National Municipal League, 1970.

Wheeler, John P., Jr., and Melissa Kinsey. *Magnificent Failure: The Maryland*

*Constitutional Convention of 1967-1968.* New York: National Municipal League 1970.

LEGISLATIVE SERVICES COMMISSION

ASSEMBLYMAN  
ALBIO SIRES  
*Chairman*

SENATOR  
BERNARD F. KENNY, JR.  
*Vice-Chairman*

SENATE

BYRON M. BAER  
ANTHONY R. BUCCO  
RICHARD J. CODEY  
NIA H. GILL  
LEONARD LANCE  
ROBERT E. LITTELL  
ROBERT W. SINGER

GENERAL ASSEMBLY

CHRISTOPHER "KIP" BATEMAN  
FRANCIS J. BLEE  
JOHN J. BURZICHELLI  
ALEX DECROCE  
GUY R. GREGG  
JOSEPH J. ROBERTS, JR.  
LORETTA WEINBERG



# New Jersey State Legislature

## OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

ALBERT PORRONI  
*Executive Director*  
(609) 292-4625

LEGISLATIVE COUNSEL

ALBERT PORRONI  
*Legislative Counsel*

LEONARD J. LAWSON  
*First Assistant Legislative Counsel*

MARCI LEVIN HOCHMAN  
*Assistant Legislative Counsel*

JAMES G. WILLSON  
*Senior Legislative Counsel*

December 1, 2004

Honorable John H. Adler  
1916 Route 70 East  
Suite 3  
Cherry Hill, New Jersey 08003

Honorable Leonard Lance  
119 Main St.  
Flemington, New Jersey 08822

Honorable Joseph J. Roberts, Jr.  
Brooklawn Shopping Plaza  
Route 130 & Browning Rd.  
Brooklawn, New Jersey 08030

Honorable Kevin J. O'Toole  
573 Valley Rd., Suite 2  
Wayne, New Jersey 07470

Dear Senators Adler and Lance and Assemblymen Roberts and O'Toole:

You have asked for a legal opinion as to whether legislation to convene a State constitutional convention may provide that members of the Legislature or other elected officials are ineligible to serve as delegates to that convention.<sup>1</sup> You have also asked whether members of the Legislature may serve as delegates to such a convention if delegates are compensated for their service as delegates or if delegates are not compensated but receive reimbursement of expenses.

For the reasons set forth below, you are advised that legislation to convene a State constitutional convention may provide that members of the Legislature or other elected officials

---

<sup>1</sup> The New Jersey Constitution is silent in regard to the holding of a constitutional convention. Nevertheless, the authority for convening a convention is implied and is derived from the sovereignty of the people and vested in the Legislature. In general, the question of holding a convention is submitted for approval by the voters. 16 C.J.S. Constitutional Law §8 (1984). Delegates to the 1947 and 1966 New Jersey Constitutional Conventions were elected by the people. Members of the Legislature served as delegates at both conventions. Delegates were not compensated, but delegates to the 1947 convention received \$10 per day for expenses and in 1966 delegates were reimbursed for actual expenses.



Honorable John H. Adler  
Honorable Leonard Lance  
Page 2  
December 1, 2004

Honorable Joseph J. Roberts, Jr.  
Honorable Kevin J. O'Toole

are ineligible to serve as delegates to the convention. You are also advised that members of the Legislature would be precluded from serving as delegates if the position of delegate is compensated, even if legislator-delegates are excluded from receiving compensation payable to other delegates. Finally, it is our opinion that reimbursement of delegates for expenses, in the absence of the payment of compensation, would not preclude members of the Legislature from serving as delegates.

Your first question concerns whether the holding of more than one public office may be prohibited by law. Certain forms of dual office holding are prohibited by the State Constitution. For instance, members of the Legislature and the Governor are prohibited from serving in Congress or holding a federal or State office or position, of profit. N.J. Const. Art. IV, Sec. V, par. 3; Art. V, Sec. I, par. 3. Supreme Court Justices and Superior Court Judges are similarly prohibited from holding another federal or State office or position, of profit. N.J. Const. Art. VI, Sec. VI, par. 7.

Other forms of dual office holding are currently prohibited by statute.<sup>2</sup> A person may not simultaneously hold more than one of the following offices: Presidential elector, United States Senator, member of the House of Representatives, member of the Legislature, or county clerk, register, surrogate or sheriff. A person may not be elected to the House of Representatives, or as a Presidential elector, who holds an office of trust or profit under the United States. N.J.S.A.19:3-5. It is unlawful for a person to simultaneously hold an elective county office and an elective municipal office. (However, legislators may hold an elective or appointive office or position in county or municipal government.) N.J.S.A.40A:9-4. A freeholder is ineligible for appointment to certain offices or positions filled by the freeholder board. N.J.S.A.40A:9-23. A county sheriff may not hold other civil office, but may simultaneously serve as county disaster coordinator provided that no compensation is received for that position. N.J.S.A 40A:9-108.

The power to legislate in this area by either authorizing or prohibiting the simultaneous holding of public offices or positions is only limited by what may be expressly limited in the

---

<sup>2</sup> The common law also prohibits the holding of incompatible offices. Offices are incompatible when they cannot be executed by the same person, when they cannot be executed with care and ability, where one is subordinate to or interferes with the other, or where one office is under control of the other. State ex rel. Clawson v. Thompson, 20 N.J.L. 689, 690 (Sup. Ct. 1846); N.J. Sports and Exposition Auth. v. McCrane, 119 N.J. Super. 457, 542 (Law Div. 1971) aff'd 62 N.J. 248 (1973). We do not believe that the common law doctrine is implicated if legislators were to serve as convention delegates.

Honorable John H. Adler  
Honorable Leonard Lance  
Page 3  
December 1, 2004

Honorable Joseph J. Roberts, Jr.  
Honorable Kevin J. O'Toole

Constitution.<sup>3</sup> The generally accepted view of prohibitions on dual offices is that they do not adopt an unconstitutional qualification for eligibility in the Legislature;<sup>4</sup> nor are they violative of equal protection under minimal or heightened scrutiny analysis.<sup>5</sup>

The New Jersey Supreme Court has stated that the constitutional proscriptions against certain forms of dual office holding were not intended by the framers to be exclusive and that the Legislature is free to prohibit other forms of dual office holding by statute. *Reilly v. Ozzard*, 33 N.J. 529, 539, 550 (1960). Accordingly, the Legislature may, consistent with the provisions of the State Constitution, prohibit an individual from holding more than one public office.

Thus, legislation providing for the convening of a State Constitutional Convention may provide that members of the Legislature or other elected officials are ineligible to serve as delegates to that convention.

Your second question requires an examination of whether under the provisions of the New Jersey Constitution which prohibit a member of the Legislature from holding another State office or position, of profit, a member would be precluded from serving as a delegate to a State constitutional convention if compensation for services or reimbursement of expenses is paid to delegates.

Three provisions of the State Constitution are relevant:

1. No member of the Senate or General Assembly, during the term for which he shall have been elected, shall be nominated, elected or appointed to any State civil office or position, of profit, which shall have been created by law, or the emoluments whereof shall have been increased by law, during such term. The provisions of this paragraph shall not prohibit the election of any person as

---

<sup>3</sup> See *Ahto v. Weaver*, 39 N.J. 418, 423-424 (1963); 63C *Am Jur 2d*, Public Officers and Employees, §69.

<sup>4</sup> See *State v. Musto*, 187 N.J. Super 264, 286 (Law Div. 1982), citing *Reilly v. Ozzard*, 33 N.J. 529, 539 (1960); *Joyner v. Mofford*, 706 F.2d 1523, 1528-1531 (9th Cir.), *cert denied*, 464 U.S. 1002 (1983).

<sup>5</sup> *Joyner*, *supra*, 706 F.2d at 1531-1533; see also *State v. Musto*, *supra*, 187 N.J. Super. at 310-311.

Honorable John H. Adler  
Honorable Leonard Lance  
Page 4  
December 1, 2004

Honorable Joseph J. Roberts, Jr.  
Honorable Kevin J. O'Toole

Governor or as a member of the Senate or General Assembly.

3. If any member of the Legislature shall become a member of Congress or shall accept any Federal or State office or position, of profit, his seat shall thereupon become vacant.

4. No member of Congress, no person holding any Federal or State office or position, of profit, and no judge of any court shall be entitled to a seat in the Legislature. [ N.J. Const., Art. IV, Sec. V, pars. 1, 3 and 4 ]

Whether a compensated delegate to a State Constitutional Convention holds an office or position of profit is a question of first impression in this jurisdiction. Nevertheless, in Vreeland v. Byrne, 72 N.J. 292 (1977), it was held that a State senator's appointment to the New Jersey Supreme Court violated paragraph 1 above because legislation enacted during his service in the Legislature increased the salary of justices, notwithstanding that the legislation made the increase inapplicable to present members of the Legislature who may subsequently be appointed to the court, the latter provision being impermissible special legislation.<sup>6</sup>

Thus, under paragraph 1, a member of the Legislature serving when legislation convening a constitutional convention is enacted and the position of delegate "created", would be ineligible to serve as a delegate to that convention if a delegate holds a State office or position of profit. If that is the case, a member accepting the position of delegate would vacate his seat in the Legislature pursuant to paragraph 3. Similarly, under paragraph 4, a person serving as a delegate would be ineligible to be elected or selected to serve in the Legislature.

In analyzing the language of N.J.S.A.2C:51-2 which provides that a person forfeits public office, position, or employment upon conviction of certain crimes, the Superior Court, Appellate Division stated that, "Our courts have recognized that such terms as 'public office' or 'public position' should be broadly construed, 'especially in dealing with questions of integrity in government.'" (citations omitted) Pasture v. County of Essex, 237 N.J. Super. 371, 379 (App. Div. 1989), cert. denied, 122 N.J. 129. (1990).

---

<sup>6</sup> See also Student Public Interest Group of New Jersey v. Byrne, 86 N.J. 592 (1981), holding that appointment of an assemblywoman as a commissioner of the Board of Public Utilities was not invalid where legislation increasing the commissioners' salaries was enacted after the assemblywoman resigned from the Legislature.

Honorable John H. Adler  
Honorable Leonard Lance  
Page 5  
December 1, 2004

Honorable Joseph J. Roberts, Jr.  
Honorable Kevin J. O'Toole

Whether service as a delegate to a state constitutional convention constitutes a state office or position of profit was considered by the Illinois Supreme Court in Livingston v. Ogilvie, 250 N.E. 2d 138 (1969). The court held that judges were ineligible to serve as delegates to a state constitutional convention under a provision in the Illinois constitution providing that "Judges shall...not...hold any other office or position of profit under...this State," notwithstanding that the act convening the convention provided that, while delegates would be compensated, public officials serving as delegates would not be compensated.<sup>7</sup> The court determined that excluding public officials serving as delegates from receipt of compensation payable to delegates generally, "does not make such membership, which is a position of profit, not a position of profit." Livingston, 250 N.E. 2d at 144.<sup>8</sup>

While decisions of the courts of other states are not binding on the New Jersey courts, they are instructive and may be looked to for guidance. Chamber of Commerce E. Union Cty. v. Leone, 141 N.J. Super. 114, 130 (Ch. Div. 1976). Thus, the holding of the Illinois Supreme Court in Livingston may serve as persuasive authority in this jurisdiction for the proposition that a compensated delegate to a constitutional convention holds a State office or position of profit within the meaning of the language used in the New Jersey Constitution.

Accordingly, it would appear that if the legislation convening a State Constitutional Convention provides for the payment of compensation to convention delegates, members of the Legislature would be precluded from serving as delegates. In addition, it appears that this

---

<sup>7</sup> Ill. Pub. Act 76-40, §8 and § 9 (1968). Delegates were paid \$650 per month and received \$75 per day for expenses as well as a mileage allowance and postage allotment.

<sup>8</sup> Under other provisions of the Illinois Constitution (containing wording that was different from that applicable to judges), the court in Livingston concluded that members of the General Assembly could serve as delegates. See also Forty-Second Legislative Assembly v. Lennon, 481 P. 2d. 33. (Mont. 1971) in which the Montana Supreme Court held that a provision in the Montana Constitution banning dual office holding prohibited legislators from serving as convention delegates.

Honorable John H. Adler  
Honorable Leonard Lance  
Page 6  
December 1, 2004

Honorable Joseph J. Roberts, Jr.  
Honorable Kevin J. O'Toole

ineligibility could not be cured by including a provision in the legislation providing that delegates will be compensated, but that legislators who are delegates will not be compensated.<sup>9</sup>

Nevertheless, it is well-settled that the allowance of expenses necessary to enable public officials to perform their duties is not a grant of extra compensation. O'Donnell v. Board of Chosen Freeholders of County of Morris, 31 N.J. 434 (1960). Indeed, numerous statutes provide for the reimbursement of expenses to members of bodies on which members of the Legislature serve.<sup>10</sup> None have been challenged on the grounds that such reimbursement renders an uncompensated position one "of profit" within the meaning of the State Constitution.

In conclusion, you are advised that legislation to convene a State Constitutional Convention may provide that members of the Legislature or other elected officials are ineligible to serve as delegates to the convention. You are also advised that members of the Legislature would be precluded from serving as delegates if the position of delegate is compensated, even if legislator-delegates are excluded from receiving compensation payable to other delegates. Finally, it is our opinion that reimbursement of delegates for expenses, in the absence of the payment of compensation, would not preclude members of the Legislature from serving as delegates.

Very truly yours,

Albert Porroni  
Legislative Counsel

By: Peter J. Kelly  
Peter J. Kelly  
Principal Counsel

AP: K/aa

---

<sup>9</sup> However, this issue could be addressed by a temporary constitutional amendment allowing legislators to serve, either with or without compensation, if compensation is to be paid to delegates generally. Such an amendment would require voter approval at the same general election at which the voters decide on whether to convene a convention.

<sup>10</sup> See for example, N.J.S.A.26:2C-8.19 (Low Emission Vehicle Review Commission); N.J.S.A.34:15C-3 (State Employment and Training Commission); N.J.S.A.34:15C-18 (State Council for Adult Literacy Education Services); and N.J.S.A.52:16A-25 (New Jersey State Council on the Arts).

ASSEMBLYMAN  
JACK COLLINS  
*Chairman*

SENATOR  
DONALD T. DIFRANCESCO  
*Vice-Chairman*

SENATE

BYRON M. BAER  
JOHN O. BENNETT  
GERALD CARDINALE  
RICHARD J. CODEY  
BERNARD F. KENNY, JR.  
ROBERT E. LITTELL  
JOHN A. LYNCH

GENERAL ASSEMBLY

PETER J. BIONDI  
JOSEPH CHARLES, JR.  
PAUL DIGAETANO  
JOSEPH V. DORIA, JR.  
NICHOLAS R. FELICE  
NIA H. GILL  
LORETTA WEINBERG



# New Jersey State Legislature

## OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

ALBERT PORRONI  
*Executive Director*  
(609) 292-4625

LEGISLATIVE COUNSEL

ALBERT PORRONI  
*Legislative Counsel*

LEONARD J. LAWSON  
*First Assistant Legislative Counsel*

MARCI LEVIN HOCHMAN  
*Assistant Legislative Counsel*

JAMES G. WILLSON  
*Senior Legislative Counsel*

May 29, 2002

Honorable John H. Adler  
231 Route 70 East  
Cherry Hill, New Jersey 08034-2421

Dear Senator Adler:

You have asked, through Doug Wheeler of the Senate Democratic Office, for a legal opinion as to the constitutionality of the provisions of Senate Bill, No. 478 or Assembly Bill, No. 540 of 2002: which direct the Chief Justice of the New Jersey Supreme Court to certify that proposals made by the constitutional convention to be convened pursuant to this legislation do not exceed the convention's instructions or limited purpose before those proposals may be placed on the ballot for voter approval; and which authorize the convention to submit for voter approval revisions to the statutes that the convention deems necessary along with any amendments to the State Constitution that it may propose.<sup>1</sup>

S-478/A-540 would provide for the convening of a State constitutional convention for the purpose of reforming the system of property taxation in this State. The question as to whether a convention should be convened would be placed on the ballot at a general election.<sup>2</sup> Upon

---

<sup>1</sup> You have indicated that your inquiry was prompted by an unpublished essay "Constitutionalizing the Convention," by G. Alan Tarr, Professor of Political Science at Rutgers-Camden. Professor Tarr argues that the provision directing the Chief Justice to review the convention's proposals prior to placement on the ballot violates Article VI of the New Jersey Constitution which prescribes the power of the Supreme Court. He also asserts that the provision authorizing the convention to propose legislative changes is inconsistent with Article IV of the Constitution which vests the legislative power in the Senate and General Assembly.

<sup>2</sup> Since both bills were introduced during the 2000-2001 legislative term and prefiled for introduction in the current legislative term, the references to specific dates will need to be updated if the bills are released from committee.

Honorable John H. Adler  
Page 2  
May 29, 2002

approval by the electorate of the holding of the convention, 80 delegates (two from each legislative district) would be elected at a special election held the following March. Ten additional delegates would be selected by a committee consisting of the Chief Justice of the New Jersey Supreme Court and four members of the New Jersey President's Council, an organization representing public and private institutions of higher education in this State. The Governor and all former Governors would also be delegates. The convention would convene in April, complete its work by August, and provide for the submission of its proposals to the voters at the next general election.

Section 2 of the legislation sets forth the convention's mandate:

2. The convention shall recommend amendments to the New Jersey Constitution and revisions to the statutes which, while revenue neutral in their overall impact, eliminate inequities in the current system of property taxation, ensure greater uniformity in the application of property taxes, reduce property taxes as a share of overall public revenue, provide alternatives which lessen the dependence of local government on property taxes, and provide alternative means, including possible increases in other taxes, of funding local government services. As used in this act, "revenue neutral" means that the aggregate amount of all revenues enacted under powers of the State, as accurately as can be estimated and measured, shall be the same after changes recommended by the convention as they were before such changes. The convention shall be limited to considering and making recommendations in regard to the aforesaid matters and the implementation thereof.

Section 20 provides that when the convention has completed its work and agreed upon a proposal of amendments to the State Constitution reforming the system of property taxation, as well as any necessary revisions to the statutes:

[t]he Chief Justice shall review the convention's proposal and, within two days, determine whether the convention has complied with its instructions as voted by the people and not exceeded those instructions or its limited purpose in any way. Upon determining that the convention has complied with its instructions and not exceeded those instructions or its limited purpose, the Chief Justice shall certify to the convention that it is in compliance with its instructions. Upon receipt of the certification from the Chief

Honorable John H. Adler  
Page 3  
May 29, 2002

Justice, the convention shall form the question and interpretive statement to be placed upon the ballot.

The New Jersey Constitution confers upon the State Supreme Court "appellate jurisdiction in the last resort in all causes provided in this Constitution." N.J. Const. Art. VI, Sec. II, par. 2. The court also is directed to make rules governing administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. In addition, the court has jurisdiction over admission to the practice of law and the discipline of attorneys. N.J. Const. Art. VI, Sec. II, par. 3.

Although the State Constitution, unlike the federal constitution, contains no express language limiting the judicial power to actual cases and controversies, the State Supreme Court "will not render advisory opinions or function in the abstract." In re Camden County, 170 N.J. 439, 448-449 (2002). In effect, S-478/A-540 directs a single member of the court to perform an action which is not authorized by the Constitution, namely to render an advisory opinion in a matter which has not been brought before the court on appeal. Although various statutes direct the Chief Justice to perform administrative responsibilities related to the courts and to make appointments to certain public bodies, such as the State Commission of Investigation (N.J.S.A. 52:9M-1), these laws do not require the Chief Justice to make a judicial decision in a matter not properly before the court.

The New Jersey Constitution is silent on constitutional conventions. However, it is well-established that, absent specific direction in the Constitution otherwise, the Legislature may provide for calling a convention. II, Monograph, George, "Amendment and Revision of State Constitutions," 1947 Constitutional Convention, 1759-1765; Jackman v. Bodine, 43 N.J. 453, 474 (1964); Bessemer v. Birmingham Electric Co., 40 So.2d 193 (Ala. 1949); Stander v. Kelley, 250 A.2d 474 (Pa. 1969) cert. den. and appeal dismissed 395 U.S. 827 (1969).

It would appear, however, that the convention can only be authorized to propose amendments to the constitution which will be submitted for the approval of the voters:

A constitutional convention is not a coordinate branch of the government, and exercises no governmental power, but rather is a body raised by law, in aid of the popular desire to discuss and propose amendments which have no governing force so long as they remain propositions. The fundamental difference between the two is that the legislature has the power to take final action--that is, to make the laws--whereas the constitutional convention has a more narrowly limited power to propose changes for submission to a vote



Honorable John H. Adler  
Page 4  
May 29, 2002

of the people. Thus, a constitutional convention has no enacting capacity, unless an incidental one of narrow range is implied as necessary for the purpose of preparing questions of revision and submitting them to the people. Delegates to a constitutional convention exercise no part of the state's sovereign power delegated by the people to the three branches of government. [16 Am Jur.2d Constitutional Law §25 (1998)]

Similarly, there is authority to the effect that:

... in the absence of constitutional provisions regarding the convention, a convention if called acts under the constitution in existence, and by such constitution the exercise of executive, judicial, and regular legislative power are expressly conferred upon existing organs of government, which cannot properly be replaced until a new constitution framed by the convention is put into operation. Where the existing constitution provides that a certain power shall be exercised only by an organ of the existing government, as in provisions that money shall not be paid from the state treasury except under the authority of a legislative act, it is undoubted that a convention assembled under such a constitution may not exercise the power ... [Walter Fairleigh Dodd, The Revision and Amendment of State Constitutions, 103-104 (1910)]

Thus, it would appear that while a convention may submit proposed constitutional amendments to the voters for their approval, it is without authority to similarly submit proposed statutory changes, the power to enact laws having been delegated under the constitution to the Legislature subject to the approval of the Governor.

In conclusion, it is our opinion that the provisions of S-478/A-540 which provide for the convening of a constitutional convention cannot properly direct the Chief Justice to review and certify constitutional amendments proposed by the convention prior to placement of those amendments on the ballot for voter approval and that the convention would be without authority

Honorable John H. Adler  
Page 5  
May 29, 2002

to propose for voter approval statutory changes implementing proposed constitutional amendments.<sup>3</sup>

Very truly yours,

Albert Porroni  
Legislative Counsel

By: Peter J. Kelly  
Peter J. Kelly  
Principal Counsel

AP:K/sl  
c Doug Wheeler  
c Senator Martin, Assemblymen Roberts and Geist, and Assemblywoman Greenstein pursuant to P.L. 1999, c.244 (N.J.S.A. 52:11-61h).

---

<sup>3</sup> Professor Tarr's rather creative solution of reframing the bills into constitutional amendment proposals to overcome the constitutional challenges by "constitutionalizing the convention" appears to raise other policy concerns. A less dramatic and more conservative approach would be to cure the offending provisions by amending them to ameliorate their effects as noted.

LEGISLATIVE SERVICES COMMISSION

ASSEMBLYMAN  
ALBIO SIRES  
*Chairman*

SENATOR  
BERNARD F. KENNY, JR.  
*Vice-Chairman*

SENATE

BYRON M. BAER  
ANTHONY R. BUCCO  
RICHARD J. CODEY  
NIA H. GILL  
LEONARD LANCE  
ROBERT E. LITTELL  
ROBERT W. SINGER

GENERAL ASSEMBLY

CHRISTOPHER "KIP" BATEMAN  
FRANCIS J. BLEE  
JOHN J. BURZICHELLI  
ALEX DECROCE  
GUY R. GREGG  
JOSEPH J. ROBERTS, JR.  
LORETTA WEINBERG



## New Jersey State Legislature

### OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

ALBERT PORRONI  
*Executive Director*  
(609) 292-4625

LEGISLATIVE COUNSEL

ALBERT PORRONI  
*Legislative Counsel*

LEONARD J. LAWSON  
*First Assistant Legislative Counsel*

MARCI LEVIN HOCHMAN  
*Assistant Legislative Counsel*

JAMES G. WILLSON  
*Senior Legislative Counsel*

December 8, 2004

Honorable Leonard Lance  
119 Main Street  
Flemington, New Jersey 08822

Dear Senator Lance:

You have asked for a legal opinion as to whether constitutional amendments, as well as possible statutory changes, proposed by a State constitutional convention<sup>1</sup> convened for the limited purpose of reforming the State's system of property taxation may be submitted for voter approval as a single ballot question.

Your question requires us to consider the nature of a constitutional convention as well as whether the New Jersey Constitution's requirements that "every law shall embrace but one object," N.J. Const. Art. IV, Sec. VII, par. 4 (the "single object" rule), and that multiple constitutional amendments must be voted on "separately and distinctly," N.J. Const. Art. IX, par. 5 (the "separate vote" requirement), have application in the context of a constitutional convention which is authorized to propose constitutional amendments and which may be authorized to propose statutory changes.

The New Jersey Constitution sets forth in detail the manner by which amendments to the constitution may be proposed by the Legislature and approved by the electorate. It is silent, however, on the subject of constitutional conventions convened for the purpose of recommending constitutional amendments or a new constitution for voter approval. Nevertheless, New Jersey has had three constitutional conventions - in 1844, 1947 and 1966 - convened to replace or revise

---

<sup>1</sup> The New Jersey Constitution vests the lawmaking power in the Legislature. N.J. Const. Art. IV, Sec. I, par. 1. Accordingly, a constitutional convention has no authority to recommend statutory changes to the voters unless a constitutional amendment, albeit temporary, authorizing it to do so is adopted first.

the State Constitution, despite the fact that this issue is not addressed in either the current constitution or its two predecessors.<sup>2</sup>

When a State constitution, such as New Jersey's, is silent in regard to the holding of a constitutional convention, the authority for convening a convention is implied and derived from the sovereignty of the people and vested in the Legislature. 16 C.J.S. Constitutional Law §8 (1984). "A convention has no inherent power, but only delegated powers; the convention derives its whole authority from the people's vote." 16 AmJur 2d, Constitutional Law §26 (1998). Thus, a convention is an expression of the sovereign will of the people under powers reserved to them upon adoption of the State Constitution.

Accordingly, the State Constitution's limits on the manner by which the Legislature may enact legislation, such as the "single object" rule, or by which the Legislature may propose constitutional amendments, like the "separate vote" requirement, do not appear to apply when the people have approved legislation convening a constitutional convention and that legislation addresses the manner in which the convention may place its proposals before the electorate. (See McKnight v. City of Decatur, 37 S.E.2d 915 (Ga, 1946), in which the Georgia Supreme Court held that the state constitution's separate vote requirement for constitutional amendments did not apply to the adoption of a revised or new constitution; and 16 C.J.S. Constitutional Law §13 (1984).)

This argument is further supported by the fact that the New Jersey Constitution of 1844, which was in effect when the 1947 constitutional convention was convened, contained a separate vote requirement for constitutional amendments proposed by the Legislature. N.J. Const. Art. IX (1844). Nevertheless, the act convening the 1947 convention directed the convention to submit its proposals to the voters "either as a whole or in such parts and with such alternatives, as the convention may deem desirable." P.L.1947, c.8, s.3. Thus, the separate vote requirement was not seen as an impediment to the ability of the convention to submit its proposal to the voters in its entirety for approval or disapproval. Similarly, the legislation convening the 1966 constitutional convention to conform legislative districts with the one-person, one vote doctrine,

---

<sup>2</sup> The generally accepted procedure for holding a convention is as follows. The Legislature and the Governor must enact a law putting the question of whether a convention should be convened before the State's electorate. The holding of a convention must be approved by the voters who also elect delegates to the convention. The delegates to the convention may agree upon proposed amendments to the constitution or a proposed new constitution. The proposed amendments or new constitution must be submitted to the voters for approval. The legislation convening a convention may limit the scope of the convention's authority and the convention may not propose amendments which are beyond the authority delegated to it.

Honorable Leonard Lance

Page 3

December 8, 2004

directed the convention to "agree upon its proposal" and submit it "for approval or rejection by the voters." These precedents suggest that the legislation convening a constitutional convention controls the manner in which the convention may place its proposals before the electorate.

A brief review of the single object rule and the separate vote requirement may, nevertheless, be helpful. Both doctrines were recently examined by the New Jersey Supreme Court in Cambria v. Soaries, 169 N.J. 1 (2001), which held that the separate vote requirement did not prevent the use of one constitutional amendment to dedicate two types of State revenues to the Transportation Trust Fund. The court indicated that the purpose of both the single object rule and the separate vote requirement was to prevent "logrolling", a practice in which popular and unpopular proposals are combined in a single act or constitutional amendment in order to secure passage of the unpopular measures. The court noted that the single object rule is intended to ensure "relatedness" among the components of a piece of legislation:

All that is required is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one subject. The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds, as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical; it is enough that the matters are connected with and related to a single subject in popular signification. [Cambria, 169 N.J. at 11 (quoting New Jersey Association on Correction v. Lan, 80 N.J. 199, 215 (1979).]

Thus, the single object rule has been broadly construed. In interpreting the separate vote requirement applicable to constitutional amendments, the court indicated that a more strict interpretation was appropriate in view of the serious nature of amending the constitution. "Put simply, to meet the separate vote requirement of the New Jersey Constitution, any proposed amendment must not make two or more changes to the constitution unless they are closely related to one another." Cambria, 169 N.J. at 19.

Thus, as a general rule, legislation passed by the Legislature must comply with the single object rule and constitutional amendments proposed by the Legislature must conform to the separate vote requirement. However, as discussed above, the fact that the constitution is silent

Honorable Leonard Lance

Page 4

December 8, 2004

on the subject of constitutional conventions and that the power to convene a convention is implied, suggests that a convention operates outside the scope of these limitations. This is further supported by the unique responsibility of a constitutional convention, which may be charged with significantly revising or replacing the State Constitution. In addition, the concept that a constitutional convention could be authorized to propose statutory changes, as well as constitutional amendments, appears to be unusual. The only other convention that we are aware of to have this responsibility was held in Ohio in 1802 when Ohio was seeking statehood. Accordingly, there is no precedent on the issue of whether amendments and statutory changes proposed by a convention must be voted on separately or may be voted on as a single unit. It may be that the amendments and statutory changes are so interrelated that separate consideration would simply be impossible and that for the convention to fulfill its mandate the amendments and statutes must be voted on together. These limits would certainly not apply to the convention's proposals if the temporary constitutional amendment necessary to allow the convention to propose statutory changes were to specifically address this issue.

In conclusion, it is our opinion that a State constitutional convention convened for the limited purpose of reforming the State's system of property taxation that is authorized in the legislation creating it to propose only constitutional amendments may submit its proposal for voter approval as a single ballot question or as separate choices as may be authorized by its implementing legislation. It is also our opinion that constitutional amendments, as well as statutory changes proposed by a convention which is authorized by a temporary constitutional amendment to propose statutory changes, may be submitted for voter approval as a single ballot question, but that any doubt in this regard could be resolved by including a provision to this effect in the temporary constitutional amendment necessary to authorize the convention to propose statutory changes.<sup>3</sup>

Very truly yours,

Albert Porroni  
Legislative Counsel

By: Peter J. Kelly  
Peter J. Kelly  
Principal Counsel

AP:K/sl

---

<sup>3</sup> We do not believe that a temporary constitutional amendment authorizing a convention to propose statutes *and* present its proposals for constitutional amendments and statutes as a single ballot question would be inconsistent with single object or separate vote requirements.

**STATEMENT OF SENATE MINORITY LEADER LEONARD LANCE**

I dissent from the recommendation set forth in the *Report of the Property Tax Convention Task Force to the Governor and the Legislature* regarding the scope of the proposed constitutional convention. I believe that it is essential to include spending as well as revenue measures in the convention's mandate.

Any lessening of the overall property tax burden in relation to other forms of taxation will only be temporary unless spending proposals are included in the convention's recommendation to the people. For the convention to succeed in achieving the goal of proposing significant and enduring property tax reform the delegates must be entrusted to examine - within prescribed limits - those matters that propel the continued escalation of the property tax burden.

Contrary to the majority recommendation of the task force, I believe that discussions of government spending can be properly limited to matters related to property tax reform -- I would suggest that discussion be confined to Article VIII, the Taxation and Finance Article of the Constitution -- and should not include divisive social issues.

Without including a debate on spending proposals the convention will provide merely temporary property tax relief and not true property tax reform for the people of the State.

## **DISSENT**

**from the report of the Property Tax Convention Task Force**

**Respectfully submitted by**

**ASSEMBLYMAN KEVIN J. O'TOOLE**

I must respectfully dissent from this report because it does not include specific recommendations that I believe are of paramount importance to the ultimate goal of providing relief to the property tax payers of New Jersey: that the Legislature begin direct action as soon as possible on comprehensive property tax reform, regardless of whether or how it eventually chooses to constitute a convention; and on what specific areas the Legislature and/or a convention could focus in order to achieve such reform.

### **PURPOSE**

The purpose of this dissent is to facilitate those deliberations by identifying factors contributing to the property tax problem, comment on the responsibilities of the various parties involved, and specifically identify topics for the consideration of either body in seeking a solution. It is my sincere desire and hope that should these topics be considered and suggested changes be enacted, containment of property taxes will be an attainable goal.

### **THE CURRENT CRISIS**

Over the past decade, each of the two major political parties has had a period of simultaneous control of the Executive and Legislative branches of state government, and thus had the opportunity to enact significant property tax relief. Both parties have addressed the problem in one way or another, but unfortunately for New Jersey taxpayers, lasting reform has remained elusive.

Property taxes have never been higher, and the rate of increase also has never been higher than it has been over the past couple of years. Property taxes have skyrocketed by 7% or more in each of the last two years, far beyond the rate of inflation and a huge 43% spike in the rate of increase compared to the average over the previous 10 years.

As a legislator, and more recently as a member of the Property Tax Convention Task Force, I have heard taxpayers from all around New Jersey relate their personal stories as to how they are trying to cope with the unprecedented escalation in property taxes in recent years. Seniors on fixed incomes are struggling to pay ever more in



property taxes, many attempting to stay in their long-time family homes and, in too many cases, ultimately being forced out of those homes. They and others are faced with the choice of paying for higher government spending or putting food on the table; paying inflated tax bills or buying their prescription medications. Young and growing families are being forced to stay in homes they have outgrown, or to delay indefinitely the American dream of owning a home, as property tax hikes are pricing them out of the housing market. Many are simply moving out of New Jersey.

The property tax system has long been in need of reform, but the problem of soaring property tax rates has never been more severe nor more acute than it is right now. Property taxes are doing more harm than just draining incomes; they are financially strangling retirees, workers, and families all across New Jersey. This crisis cannot be effectively quelled with more tinkering of the kind that has been tried in the past. Immediate and comprehensive reform, using bold strokes determined by "thinking outside the box," is the only way to address the current crisis and provide real and lasting property tax relief.

#### THE LEGISLATURE'S RESPONSIBILITY

*Remedying the problems associated with high property taxes is a legislative responsibility; and ... [t]here is a need for the Legislature to convene in a special session dedicated solely to addressing property tax reform in this State ....*

- Assembly Concurrent Resolution No. 99 of 2004  
(also found in Senate Concurrent Resolution No. 20 of 2004)

The passage above is part of a resolution that would require the Legislature to convene a special session on property tax reform. The resolution carries the names of 52 members of the General Assembly – well over the majority of 41 needed to guarantee passage – and 18 members of the State Senate, which is nearly half and includes the Senate President and Acting Governor. Clearly, there is a consensus even in the Legislature on what the taxpayers already know: that the Legislature has a duty to act on the issue of property tax relief.

It would be difficult to argue with critics who may say that the lack of action on this resolution, or on any other serious effort to reform and reduce property taxes, by the Legislature only proves that the Legislature is unwilling to act, or incapable of acting, on this issue. Nevertheless, it remains the Legislature's responsibility to do so, and no one should be given the impression that calling for a constitutional convention or any other vehicle to address the problem is an acceptable substitute for legislative efforts to provide relief as soon as possible.

Regardless of whether legislation authorizing a convention is eventually approved, there is no reason legislative action cannot take place while the legislation is being considered or even as the convention process takes place. The Legislature should not abdicate its responsibility just because another body is examining the issue. Such inaction in the midst of the current crisis would be like leaving an accident victim unaided just because an ambulance may be on the way.

Even under the most accelerated process possible, a convention would not be able to submit its proposals to the voters at a general election until 2006 at the earliest, meaning that any reform would not be in place until around the beginning of 2007, and taxpayer relief would not be realized until some time after those reforms have begun to have an impact. It would be simply unconscionable for the Legislature to stand idly by and point to a process that may provide far-off reform while property tax payers continue to suffer.

Members of my caucus in the General Assembly have embarked on an effort designed to produce a plan for consideration in the near term. We hope the rest of the Legislature will join us in agreement on this plan, or bring other plans to the table, or both.

However, as a member of this task force my intent is not to speak for my caucus, and so I do not do so in this statement. Rather, my duty is to share my thoughts and ideas with fellow task force members and the public, and to listen to theirs, in an effort to provide the best possible advice to the Legislature. This statement reflects and expands upon the comments I have made during the course of the task force's work, and I hope it is a helpful part of the public discussion needed on real reform.

#### THE TASK FORCE'S RESPONSIBILITY

The purpose of this statement is not solely to dissent from the substantive recommendations of the task force. The members of the task force, with the able assistance of its own staff and the Office of Legislative Services, have conducted serious discussions and produced a significant package of recommendations on the topics mandated by P.L.2004, c.85, the statutory charter of the task force. However, as a member of that body I note that the statute includes the following in its "findings" section:

[T]he immediate convening of a task force of experts for the purpose of making concrete recommendations by a date certain to determine how to bring about all possible property tax relief within the current system and how a constitutional convention to consider systemic change should be composed is imperative to ensure that the long-standing problem of property taxes is addressed in the most effective, efficient and fair way possible. [emphasis supplied]

It appears, then, that in addition to making recommendations concerning the establishment and operation of a constitutional convention, the task force should also develop recommendations on how all possible relief can be provided. In accepting appointment to the task force I accepted a charge to do as much as possible to advance any and all ideas for bringing about property tax relief.

Inherent in that challenge is a mandate to determine how to reduce the government's dependence on property taxes. The solution to the problem of high and continuously escalating property taxes is not to simply create a new tax or increase an existing one in hopes of achieving a "reduction" in property taxes. As the task force has been told repeatedly during its hearings, that approach has been tried several times in the past and has proven not to be effective. That fact should be self-evident; if the tax-hike approach were effective, this task force would never have been created.

Further, reliance on a steeply progressive personal income tax structure is problematic because the income tax is intrinsically unstable. As has been seen over the past few years, income tax revenue is highly susceptible to changes in the stock market. When high income earners see a decline in their personal income due to declines in the stock market, the state naturally sees a concomitant reduction in anticipated income tax revenue. In addition, many investors fearing further declines and seeking greater stability will shift their investments to the tax-exempt bond market, further reducing income tax revenue to be realized by the state.

The solution to the property tax problem lies in efforts to find creative and innovative ways to control and reduce government spending at all levels, and thereby reduce the need for increasing property taxes to sustain government as we know it. To be realistic and intellectually honest with taxpayers, public officials must acknowledge that we have to think differently, and some pain must be realized, to achieve real and lasting property tax relief. The so-called solutions of the past have not worked, so we must go in a new direction if we are serious about lightening the load for middle class homeowners and saving seniors from choosing between taxes and subsistence.

#### ISSUES FOR CONSIDERATION:

There are a number of issues the Legislature and/or the convention should examine when considering property tax reform and relief, including the overall structure of local government and taxation in New Jersey, and spending by the state and local governments. Below I note some of the specific areas that I believe should be reviewed and considered as part of this process. They include some difficult and thorny matters, but they should not be ruled out on that basis.

The existing system of property taxation and of the local governments (county, municipal, and school district) that drive property tax rates has evolved over hundreds of

years, and is certainly not a structure that would be chosen if designed today from scratch. True reform of the system would be a monumental undertaking, but it is possible to move in that direction if there is a willingness to put all tax-driving elements on the table for reconsideration and reform.

Avoiding difficult choices and controversial ideas is what has brought us to this point, and there cannot be any lasting reduction of the property tax burden unless elected officials, including legislators and future delegates to a constitutional convention, have the fortitude and intellectual honesty to deal with the real factors contributing to the present crisis. Taxpayers deserve nothing less from those they entrust with public office.

Spending issues must be fully addressed in order for the convention, or any other overall property tax reform effort, to have any credibility at all and to have any lasting impact. These issues include both local and state government components.

**School funding:** Any serious reappraisal of government spending must begin with an examination of the present allocation of resources. The largest part of the property tax bill is the share for school funding, so it is clearly necessary to revisit the formula by which the state awards school aid. The most significant issue regarding state funding remains the allocation of school aid to the so-called Abbott districts, which currently are funded by the state at amounts calculated to guarantee per-pupil spending at levels equal to the those in the highest-spending non-Abbott districts. Thus, decisions by school boards in relatively affluent school districts are presently driving billions of dollars in state spending for payments to 31 school districts.

This system involves an unbalanced allocation of state funds among school districts, but the Legislature has failed to adequately review and reform the system as it must for the benefit of all students in all districts. Students in Abbott districts have not been well served by a system which is neither thorough nor efficient in providing them with the education they need and deserve. This task force has heard testimony that, despite massive infusions of state money into those districts, the students are still being provided a substandard education and thus are being cheated out of their prospects for a better economic future.

Years of experience have shown that a lack of resources in the Abbotts is not the problem; rather, the problem is a system that remains ineffective, inefficient and unaccountable to the students, their parents and the taxpayers. Continuing to pour a grossly disproportionate share of overall state education dollars into that system will not solve the problem, and may in fact contribute toward it by promoting inefficiency, ignoring accountability, and rewarding ineffectiveness.

The state must continue to give special attention to the Abbott districts, owing to their special problems, but school districts across the state have proven that a quality education can be provided at a more reasonable cost. Accountability must be stressed,

and that could be accomplished by promoting more disciplined budgetary decision-making that focuses on the areas that truly contribute toward a complete and effective education.

Proposed constitutional amendments presently before the Legislature would address the Abbott funding issue, including one – sponsored by fellow task force member Senator Leonard Lance and others – that would require the state to fund Abbott districts so that per-pupil spending in those districts would equal the statewide average expenditure per pupil. The entire matter of school funding must be examined, and these proposals deserve consideration as part of that examination.

**State borrowing:** Another constitutional matter requiring more attention is the state's practice of borrowing more and more to fund various programs. Although the constitution limits the state's ability to borrow without voter approval, creative ways of evading those limits have been employed on a regular basis, leading to huge amounts of debt being placed on taxpayers who were given no direct say on the matter despite the clear intent of the constitutional provision. State payments for ever increasing debt are encumbering resources that could instead be used for property tax relief. Further, debt incurred without voter approval is generally subject to a higher interest rate than voter approved debt, and thus is more expensive to the taxpayers whose approval is circumvented.

While the Supreme Court recently upheld a challenge to a particularly egregious borrowing scheme and ordered the state not to undertake a similar scheme in the future, avenues continue to exist by which the state can borrow without voter approval. A constitutional amendment to close these loopholes and guarantee that the state must have voter approval before issuing more debt should be considered.

**Government spending caps:** Over the years there have been attempts to cap state and local spending, but these caps are riddled with exceptions and loopholes and have not done enough to slow the rate of property tax increases. This year the Legislature tried again, but failed to give careful consideration to the proposals and failed to take enough input before acting. As a result, a school spending cap was enacted that requires school districts to "spend down" their surplus and thereby practically guarantees property tax increases in the near future. The county and municipal cap revisions leave many exemptions intact. This issue must be revisited in a deliberate and thoughtful way. As part of this review, a comprehensive plan to cap all state and local government spending increases according to inflation, as indicated by the Consumer Price Index, should be developed and considered.

**Waste and fraud:** Whether by accident or, as in too many cases, by design and intent, waste and fraud in government spending exists and contributes to high property tax rates. Despite this, there is no agency or body dedicated to auditing the spending of public funds at every level of government. Various proposals have been considered by

the Legislature from time to time, yet no significant action has been taken in this area. An agency whose sole continuing mission is to reduce waste and fraud, and to increase efficiencies and economies wherever possible, at every level of government could be established and would more than pay for itself through its work. Such a body could be modeled on the federal Grace Commission or Government Accountability Office, or could be an expanded version of the State Commission of Investigation or of the Office of the State Auditor. Agencies with similar purposes established in other states could be reviewed in order to determine the most effective model.

**Local government spending:** Part of such an agency could be devoted to providing local government budget review teams for voluntary audits of local governments upon request. Unannounced spot audits should also be considered as a way to ensure that local governments give continued attention to budget efficiency issues, including not only reviews of budget line items but also routine practices such as contracting and purchasing procedures.

In addition, specific aspects of local government operations must be addressed by the Legislature or the convention, including:

- ***Duplication of services among state and local governments.*** In recent years laws were enacted to encourage sharing of services among local governments. However, these incentive programs have not been fully funded, which appears to be part of an unfortunate lack of seriousness by the state to do all it can to reduce unnecessary local administrative costs. The state should fully fund, and aggressively promote, incentive grants for shared services, and should further maintain a continuing effort to identify and eliminate unnecessary duplication of services between local governments, and between the state and local governments.
- ***Small town administrative costs:*** There are nearly 200 municipalities in New Jersey with populations of fewer than 5,000. The state should encourage, and perhaps should even consider mandating, the merger of administrative municipal services in adjacent small towns.
- ***The role of county governments:*** County governments were established at a time when an intermediate level of government between the state and its municipalities had administrative advantages, but their necessity in modern times is open to question. Proposals presently before the Legislature would provide for a review of county governments. Such a review should be performed, and the gradual elimination of county government over five years should be considered.

**Special education funding:** State funding to offset the cost of special education has been inadequate to keep much of the cost from being passed on to property tax payers. The situation is worsened by the fact that the federal government has not been

meeting its responsibility to pay 40% of such costs, and has been paying less than half the necessary amount. The state must step in and provide more of the funding for special education, and should cover all costs above a given percentage. The state must also be more aggressive in pressing the federal government to pay its fair share.

**Education tax credits:** The costs of the public education system would be much higher if it were not for the many thousands of parents who pay property taxes and have the right to send their children to public schools, but choose to send them to private schools or educate them at home. However, escalating property taxes may have the effect of foreclosing on those options as parents find themselves less and less able to handle both the tax payments and the costs of private or home schooling. Should more of the children who are currently attending private school or are home schooled begin to enter the public school system, property taxes will rise even further and overcrowding of the public schools will become an even worse problem. To prevent further overburdening of the public school system and related property tax increases, a state income tax credit could be provided to parents for each child who attends a private school or is home schooled.

**State spending:** There must be a serious effort to reform state government spending in order to free more resources for additional aid to schools and municipalities. Personnel costs constitute an enormous part of state and local budgets, and therefore must be reviewed if any significant savings are to be found. Some areas of possible reform are virtually self-evident, particularly when state policies are compared to the private sector. The vast number of private sector workers in New Jersey are paying taxes to support benefits for public employees that are much greater than those they themselves enjoy.

It is well known, and has been for some time, that the state pension system is not only generous but is structured in ways that make it ripe for abuse. Pensions are generally determined by formulas designed to provide the maximum possible payment, and are not necessarily related to the retiree's actual contributions to the system. These formulas should be reviewed, and consideration should be given to whether pensions should bear a greater relationship to the contributions made and salary earned over the entire course of the retiree's service. Political insiders should not be allowed to artificially enhance their pensions through a salary spike in their last few years of service, which is generally done through appointment to high-paying positions.

Savings could also be realized through reforms to the State Health Benefits Program that average taxpayers would find to be reasonable and fair. For example, copayments that are generously low could be set at levels that bear more resemblance to those found in the private sector, with annual adjustments made by the State Treasurer based on changes in the copayments of private health plans. This and other ideas should be part of an overall review of personnel costs.

**Property tax cap:** If issues such as those noted above are addressed in an effective way, it may be possible to place direct limits on property taxes. One of the common criticisms of the current property tax system, and a valid one, is that the tax rate varies considerably depending on where the taxpayer lives. If any progressivity is to be maintained in the system, the tax rate will have to be related to the value of the property. However, there should be more uniformity and predictability in how the rate is determined.

A cap on the property tax rate providing that the tax cannot exceed one percent of the property's true assessed value could be part of a comprehensive property tax reform plan. For example, the owner of a \$300,000 home should not have to pay more than \$3,000 in property taxes. This would provide for greater fairness in the system, and would keep government spending and tax levels under control.

In summary, this statement represents an initial, and by no means exhaustive, delimitation of ideas intended to address issues that, by their very nature and the costs involved, demand public debate if one is serious about controlling property taxes.

## CONCLUSION

The above suggestions are provided for two reasons: to identify some specific areas where the Legislature and a convention could find savings and efficiencies, and to illustrate that a sincere effort to reduce and control property taxes must involve a willingness to consider ideas on their merits, and not just on their political implications. For too long taxpayers have been left to suffer by elected officials who subordinate taxpayers' interests to political interests. This must change. The desire to avoid controversy cannot continue to trump the need for reform. Every element of the current system must be on the table for discussion.

There is much work to be done in order to provide needed relief to the property tax payers of New Jersey. Further delay will only allow the present crisis to get worse. Action must begin immediately, regardless of whether there will ever be a constitutional convention. The most important recommendation this task force could and should make is that the Legislature begin 2005 with a commitment to consider all options necessary to deliver property tax reform as soon as possible, and a determination to keep working until relief has been achieved. I must respectfully dissent from a final report that does less.



# CITIZENS FOR PROPERTY TAX REFORM

P.O. Box 574, Upper Freehold, NJ 08501

Phone: 609-208-9280, E-mail: [Chairman@Citizens4propertytaxreform.org](mailto:Chairman@Citizens4propertytaxreform.org)  
[www.citizens4propertytaxreform.org](http://www.citizens4propertytaxreform.org)

---

## THE PROPERTY TAX REFORM TASK FORCE

Cy Thannikary's Statement at the Closing Session on Tuesday, December 21, 2004

Mr. Chairman, Mr. Vice Chairman and Members of the Task Force.

I want to thank you, Mr. Chairman and Mr. Vice Chairman, for your leadership in guiding us through this complex process of defining a constitutional convention to reform New Jersey's most oppressive property tax system. You have been fair and respectful of all those who appeared before this Task Force. You have been gracious and eloquent in expressing your views. For all of that, I extend my sincere thanks to you both. I also want to thank the staff, Eric Shuffler, Ed McBride and Jack Donnelly, for a remarkable job in summarizing this complex issue in a mere 20-page report. My gratitude to all the members of the Task Force for their contributions.

In my professional capacity I have traveled quite extensively all around the world, mostly in developing countries, and I have seen places where there is no democracy, freedom and no opportunity to express one's views without the fear of going to jail. The work of this Task Force, to me, is democracy in action. I am grateful that I have been a part of this democratic process.

Now, I wish to share a personal experience I have had in this process. Here is a letter I received (show the letter) from a lady who lives in Matawan, New Jersey. Her name is Norma Gene (not her real name). She is 80 years old. She has lived in her house for 40 years. She has raised 3 children, sent them to school, provided for her family and always paid her taxes on time. "I don't go shopping, to the beauty parlor or on trips", she wrote. She has been working for the past 8 years at minimum wage to supplement her small social security income and to pay for her medicine and property taxes. Lately she has not been able to work due to illness and a few hospitalizations. And today she has a lean on her house, because she cannot pay her property taxes. She lamented in vain and wrote, "Everything is out of control to the point of being immoral".

A 79 year-old man from Marlboro, New Jersey, told me that he simply couldn't afford to pay his ever-increasing property taxes. Now, he has to make a choice ... to pay for his life-saving medicine or to pay for his property taxes.

An 80-year-old man from Montclair, New Jersey called and told me that he has lived in his home all his life. Now, his taxes are \$20,000, which he cannot afford. He pleaded to all of us do something about this most hated tax.

These older Americans, to me, are both our bridge to all that is precious in our history and to the enduring foundation on which we build our future. And yet they are unable to stay in their homes, that "they worked their whole lives to own", with dignity and without the fear of a possible eviction.

Even our young people cannot afford to live in New Jersey anymore. My friend's son moved from New Jersey to Pennsylvania because he could not afford to pay his property taxes and, at the same time, support

his young family. His parents are devastated, because they cannot see their beautiful young granddaughter as often as they used to. The system is tearing our families apart.

These young people are those who pledge their allegiance to the flag every morning - - "*One nation, under God, indivisible, with liberty and justice for all*" - - with an abiding faith in the system and in their elected officials. And yet, the system and our elected officials failed to provide them with the justice and fairness that has always been promised. They have been left without any choice except to pick up and leave the state.

These are the stories of people who have paid their dues, paid their taxes on time and played by the rules. These are amazing people. They are people who are hurting. And yet, they still rise to tell their stories again and again with grace and eloquence, if there is someone to listen.

The former Governor was right when he said, at the opening of this Task Force meeting, New Jersey's "property tax is a tax without a conscience".

This Governor was right when he said that the system is "literally tearing our communities apart". And if you ask Norma Gene, the lady who wrote to me, she will say, "it has reached the point of being immoral".

Therefore, on behalf of our statewide coalition and in the name of millions of senior citizens, middle class and poor families, who have suffered too long under New Jersey's unjust and unfair property tax system, I respectfully ask the Governor and our distinguished legislators to accept the recommendations of this Task Force. We ask them to support the proposed property tax reform convention. We ask them to give us the opportunity to be citizens, not as spectators, to find a solution to this problem and be a part of the renewal of our cities, our schools and our neighborhoods.

We respectfully ask our legislators to set aside their political differences and introduce a bi-partisan bill calling for a restricted property tax reform convention. By supporting the proposed convention, you can help to write the next chapter in the remarkable story of "We, the people", a story that began more than 200 years ago - - and hasn't ended yet. This could be your legacy.

As for us, we plan to stay active until the job is done. We have already served notice to two gubernatorial candidates that we plan to make property tax reform a campaign issue at the next year's State elections.

Mr Chairman, we came a long way. The people of New Jersey have waited too long -- over 30 years - - at least, to have an open discussion about this issue. Some believe that the convention should discuss spending issues. I understand and respect their viewpoint. But we need to start someplace. I believe we came up with a respectable set of recommendations. What we have today may not be all that we wanted. At least we have a good beginning. We must build on these recommendations. Therefore, I support the recommendations of the Task Force. Now, if the legislature wants to introduce bills to cut spending at all levels, we will be there to support them on that issue as well.

In supporting these recommendations, we, the Citizens for Property Tax Reform, have a vision for New Jersey where every person has a chance to achieve the American dream to buy a home, earn a decent living, provide for their families and, for seniors on fixed income, to stay in their homes without having to choose between paying for their medicine or for their taxes.

Members of the Task Force, I thank you for your support. Thank you Mr. Chairman.

Cy Thannikary, Chairman  
Phone: 609-208-9280  
E-mail: Thannikary@aol.com

***Our Mission***

*To Support A Property Tax Reform Convention*

**[www.Citizens4propertytaxreform.org](http://www.Citizens4propertytaxreform.org)**