STATE OF WISCONSIN

Assembly Journal

Eighty-Third Regular Session

WEDNESDAY, December 21, 1977.

The chief clerk makes the following entries under the above date:

AMENDMENTS OFFERED

Assembly amendment 1 to assembly substitute amendment 3 to **Assembly Bill 780** offered by Representative Hephner.

Assembly amendment 2 to **Assembly Bill 899** offered by Representative Dandeneau, by request of Joint Survey Committee on Tax Exemptions.

Assembly amendment 1 to **Assembly Bill 922** offered by Representative Loftus.

Assembly substitute amendment 1 to **Assembly Bill 942** offered by committee on State Affairs.

Assembly amendment 1 to **Assembly Bill 1049** offered by Representative Barry.

Assembly amendment 1 to **Assembly Bill 1052** offered by Representative Dorff.

Assembly amendment 1 to **Assembly Bill 1105** offered by Representative Lato.

INTRODUCTION AND REFERENCE OF RESOLUTIONS

Read and referred:

Assembly Resolution 32

Directing the assembly committee on agriculture to hold hearings relating to the regulation and control of equine infectious anemia.

By Representatives Hephner, Potter, Everson, Rogers, Loftus and Conradt.

To committee on Agriculture.

Assembly Joint Resolution 81

Encouraging the board of regents to direct the universities in the university of Wisconsin system to develop programs for offering classes in the evenings.

By Representatives Pabst, Dandeneau, McEssy, Hauke, Vanderperren, Conradt, Lewison, Lallensack, Litscher, Flintrop, Luckhardt, Rooney, Goodrich, Hanson, Hasenohrl, Wood, Behnke, Barczak, Donoghue, Opitz, Gerlach, Medinger, McClain, Becker, Ferrall, Duren, Merkt, Loftus, Klicka, Ward, Rutkowski, Czerwinski, Tuczynski, Lee, Barry, Brist, Ausman, Soucie, Andrea and Dueholm, co-sponsored by Senators Cullen, Goyke, Morrison, Adelman, Flynn, McCallum and Theno.

To committee on Education.

Assembly Joint Resolution 82

Relating to a legislative council study of recodification of the laws governing alcoholic beverages.

By Representative Dorff.

To committee on Excise and Fees.

INTRODUCTION AND REFERENCE OF BILLS

Read first time and referred:

Assembly Bill 1097

Relating to foster care maintenance payments.

By Representatives Merkt, Duren, Gower, Medinger, McEssy, Andrea, Olson, Engeleiter, Byers, Hephner, Travis, Tregoning, Klicka, Gunderson, Matty, Czerwinski and Lewis.

To committee on Health and Social Services.

Assembly Bill 1098

Relating to state waiver of old-age assistance liens.

By Representative Kedrowski.

To committee on Health and Social Services.

Assembly Bill 1099

Relating to repeal of limits on appropriations by counties for advertising.

By Representatives Kincaid, Swoboda, McClain, Jackamonis, Schricker, Thompson, Donoghue and Roberts, co-sponsored by Senator Krueger.

To committee on Local Affairs.

Assembly Bill 1100

Relating to residency requirements for real estate branch office supervisors.

By Representative Thompson.

To Joint Committee for Review of Administrative Rules.

Assembly Bill 1101

Relating to an interstate corrections compact and making an appropriation.

By Representative Schneider.

To committee on Criminal Justice and Public Safety.

Assembly Bill 1102

Relating to the registration and operation of motor-driven cycles, insurance for passengers of motor-driven cycles and providing a penalty.

By Representatives Hephner, Potter and Hanson.

To committee on Transportation.

Assembly Bill 1103

Relating to membership of the state capitol and executive residence board.

By Representative Barry.

To committee on State Affairs.

Assembly Bill 1104

Relating to contributing to the delinquency of children.

By Representative Dorff.

To committee on Criminal Justice and Public Safety.

Assembly Bill 1105

Relating to permitting certain vehicles to be registered on a monthly basis for specified months.

By Representatives Hasenohrl, Lato, Kincaid, Kedrowski, Vanderperren, Hanson, Everson and Day.

To committee on Highways.

Assembly Bill 1106

Relating to provision of services to policyholders by the commissioner of insurance, granting rule-making authority and making an appropriation.

By Representatives Lato, Hasenohrl, Lallensack, Kedrowski, Hanson, Kincaid, Medinger, Litscher, Wahner and Becker.

To committee on Insurance and Banking.

Assembly Bill 1107

Relating to requiring creditors to file notices of satisfied liens and termination statements.

By Representatives Lato, Litscher, Hasenohrl, Hanson, Dandeneau, Kincaid, Lallensack, Kedrowski, Wahner and Becker.

To committee on Insurance and Banking.

Assembly Bill 1108

Relating to requiring licenses for and regulation of the transportation, processing and disposal of dead animals, making an appropriation, and providing a penalty.

By Representative Mohn.

To committee on Agriculture.

The following opinion was received pursuant to the December 9, 1976 request of the Assembly Organization committee.

OPINION OF THE ATTORNEY GENERAL

December 19, 1977

OAG 106-77

Mr. Everett E. Bolle
Director of Legislative Services
Wisconsin State Assembly
State Capitol
Madison, Wisconsin 53702

Dear Mr. Bolle:

At the request of the Assembly Organization Committee you have asked for my opinion on the constitutionality of a property tax exemption under the following two proposals:

1. A proposal to exempt from all property taxation "homestead property" owned by Wisconsin residents.

2. A proposal to exempt from property taxation that portion of property taxes levied for school purposes on "homestead property" owned by Wisconsin residents.

The term "homestead property" would include the dwelling used by the taxpayer as his principal residence and all attached farmland, and all attached nonfarmland not to exceed 40 acres.

The stated public purpose of these proposals is to enable Wisconsin citizens to retain ownership of their homesteads, which ownership is being threatened by the financial burdens imposed by such taxation.

Our first concern is whether the proposals fulfill a valid public purpose of a statewide concern. What constitutes a public purpose is in the first instance a question for the Legislature to determine. Although the supreme court will not be bound by legislative expressions of public purpose, it will give such expressions great weight and afford very wide discretion to legislative declarations of public purpose. *State ex rel. Hammermill Paper Co. v. La Plante*, 58 Wis.2d 32, 50, 205 N.W.2d 784 (1973).

The public purpose here is to allow Wisconsin residents to retain home ownership, which allegedly is being threatened by burdens of high property taxation. The stated public purpose is suspect in the absence of any facts to support it, even though it enjoys the presumption. What indication is there that home ownership is being threatened because of property taxation? The high cost of new and existing dwellings may be a greater threat to persons desiring home ownership than property taxation. There may be some evidence that farm ownership is being threatened because of property tax burdens, but the proposals extend far beyond this concern. At any rate, if the stated purpose is not supported by the facts, its validity will not be upheld simply because the Legislature has so declared. No facts have been presented to justify the validity of the stated public purpose. Home ownership remains very popular in Wisconsin, even with the property tax burdens placed upon homesteads.

Further, assuming such a threat to home ownership exists, one must consider the alternative to home ownership, which is to rent a dwelling place. No matter how virtuous the benefits of home ownership may be, some persons prefer to rent property and others could not afford home ownership even if not subject to property taxation. The elimination of the property tax on homestead property would result in an onerous burden upon remaining property taxpayers. Those who could not afford to own homes would be paying higher rents increased by landlords who would have to make their tenants absorb the greater property taxes imposed upon their rental properties.

At this point the reasonableness of the classification must be considered. In the City of Madison the total property tax assessment for May 1, 1976, was $2,046,468,300. Of this total,

$1,231,518,950 can be attributed to "residential" properties, which includes about 2500 vacant lots, about 4500 two-to-four unit apartment buildings, and about 30,000 single-family residences. Taking into account that this "residential" figure goes beyond the definition of "homestead property" as defined in the proposals, nevertheless, the impact of the proposals would appear to shift the burden of almost 50 percent of the total from "homestead property" owners to the others whose property would remain taxable.

There is concern as to whether both proposals would be declared to be in violation of the equal protection clause of the fourteenth amendment to the Federal Constitution, and Wis. Const. art. I, sec. 1. This section of the Wisconsin Constitution is equivalent to the fourteenth amendment to the Federal Constitution. *State ex rel. Sonneborn v. Sylvester*, 26 Wis.2d 43, 132 N.W.2d 249 (1965).

It must be observed that there is a strong presumption of constitutionality which would attach to a legislative enactment. Only if a classification is arbitrary and has no reasonable purpose or reflects no justifiable public policy will it be held violative of constitutional guarantees of equal protection. Moreover, where a tax measure is involved, the presumption of constitutionality is strongest. *Simanco, Inc. v. Department of Revenue*, 57 Wis.2d 47, 54-57, 203 N.W.2d 648 (1973).

The five standards necessary for a proper classification not violative of the equal protection clause are set forth in *Hortonville Ed. Asso. v. Joint Sch. Dist. No. 1*, 66 Wis.2d 469, 484, 225 N.W.2d 658 (1975), as follows:

> "'(1) All classifications must be based upon substantial distinctions which make one class really different from another.
>
> "'(2) The classifications adopted must be germane to the purpose of the law.
>
> "'(3) The classifications must not be based upon existing circumstances only. They must not be so constituted as to preclude additions to the numbers included within a class.
>
> "'(4) To whatever class a law may apply, it must apply equally to each member thereof.

> "'(5) The characteristics of each class should be so far different from those of other classes as to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation.' *See also: Dane County v. McManus* (1972), 55 Wis. 2d 413, 423, 198 N. W. 2d 667; *State ex rel. Ford Hopkins Co. v. Mayor* (1937), 226 Wis. 215, 222, 276 N. W. 311."

However, in spite of these strong presumptions, a most serious problem remains as to whether Wisconsin residents owning "homestead property" represent a classification so separate and apart from other residents who do not own their principal dwelling places that the propriety of the classification can be upheld.

In *State ex rel. Harvey v. Morgan*, 30 Wis.2d 1, 139 N.W.2d 585 (1966), the supreme court upheld the constitutionality of a relief measure afforded to certain persons 65 years of age and over who owned or rented their homesteads. There was no opportunity in that case to attack the reasonableness of the classification for failure to treat owners and renters alike.

The proposals appear to meet three of the tests enumerated above. But, it is much more questionable whether the second and fifth tests can be met.

There are further distinctions in the definition of "homestead property" which should be considered. The term differentiates between "attached farmland" and "attached nonfarmland" by exempting all of the former and only up to 40 acres of the latter. In addition, some farmland would remain to be taxed if it were not "attached" to the dwelling or if the dwelling were occupied by a nonowner or by an owner who had a different principal residence.

Is there a reasonable basis for making these distinctions which is germane to the purpose of the law? Are the characteristics of each classification so different from other classes to reasonably suggest at least the propriety of substantially different legislation?

Any evidence of a need to preserve farmland cannot justify the classification *per se*. The proposals are not designed to simply preserve farmland. Any farmland which is not attached to the dwelling place of an owner who used that dwelling place as his principal residence would continue to be subject to taxation. Thus, the proposals have a more limited purpose. They are intended to encourage the retention of ownership of only that farmland which happens to be attached to a principal dwelling of a resident owner.

The facts upon which to base the reasonableness of such a classification have not been presented. Why is it a matter of statewide concern that this limited classification is being threatened by the burdens of property taxation?

Since the proposals involve *ad valorem* taxation, the tax uniformity clause under Wis. Const. art. VIII, sec. 1, also should be considered.

This clause was recently amended in April, 1974, to permit the taxation of agricultural land on a different basis than the taxation of other real property. This proposal does not exempt all agricultural land. It exempts only a certain kind of agricultural land, leaving the remaining agricultural land which would not qualify under the "homestead property" exemption as being subject to taxation. Although the uniformity clause now permits the taxation of agricultural land on a different basis, there is serious doubt as to whether it allows for nonuniformity of treatment within the classification for agricultural land. In other words, even though agricultural land does not have to be taxed on a uniform basis with nonagricultural land, nevertheless, all agricultural land must be taxed alike. As a class, all agricultural land could be exempt. These proposals, however, provide for the exemption of only a certain kind of agricultural land, not all agricultural land.

There is an excellent discussion of the test under the tax uniformity clause in the case of *Gottlieb v. Milwaukee*, 33 Wis.2d 408, 147 N.W.2d 633 (1967). The supreme court adopted the following standards of tax uniformity at p. 424:

> "1. For direct taxation of property, under the uniformity rule there can be but one constitutional class.
>
> "2. All within that class must be taxed on a basis of equality so far as practicable and all property taxed must bear its burden equally on an *ad valorem* basis.
>
> "3. All property not included in that class must be absolutely exempt from property taxation.
>
> "4. Privilege taxes are not direct taxes on property and are not subject to the uniformity rule.
>
> "5. While there can be no classification of property for different rules or rates of property taxation; the legislature can classify as between property that is to be taxed and that

which is to be wholly exempt, and the test of such classification is reasonableness.

"6. There can be variations in the mechanics of property assessment or tax imposition so long as the resulting taxation shall be borne with as nearly as practicable equality on an *ad valorem* basis with other taxable property."

The amendment of Wis. Const. art. VIII, sec. 1, so as to allow the tax treatment of agricultural and undeveloped lands to differ from the tax treatment of other real property, was adopted in April, 1974, after *Gottlieb*. With this exception, the *Gottlieb* standards still are applicable.

It appears that the proposals violate the requirements enumerated under items 2, 3 and 5 above.

Although I have discussed both proposals together, it should be pointed out that there are even greater problems with the second proposal than the first because the second proposal creates only a partial exemption from property taxation within the limited classification.

Under the circumstances, the inherent difficulties of the proposals prevent me from issuing an opinion which would conclude that the proposals are constitutionally sound and capable of withstanding a test of judicial scrutiny.

Sincerely yours,

BRONSON C. La FOLLETTE

Attorney General

CAPTION:

Proposals for exemptions of "homestead property" from local property taxation probably are unconstitutional under the equal protection clause of the state and federal constitutions and the tax uniformity clause of the state constitution.

The following opinion was received pursuant to the May 12, 1977 request of the Assembly Organization committee.

December 20, 1977

OAG 109-77

Mr. Everett E. Bolle
Director of Legislative Services
Wisconsin State Assembly
220 West, State Capitol
Madison, Wisconsin 53702

Dear Mr. Bolle:

You have requested my opinion regarding "the constitutionality of the territorial distribution requirement for signatures collected in a vocational, technical and adult education district petition drive." Your reference is to that part of sec. 67.12(12)(e)5., Stats., which provides that a vocational, technical and adult education district board need not submit a resolution to incur indebtedness by borrowing on promissory notes to a vote of the people in the district unless within a specified time there is filed with the secretary of the district board a petition requesting a referendum thereon at a special election.

The statute provides as follows:

> "... The district board need not submit the resolution to the electors for approval unless within 30 days after the publication or posting there is filed with the secretary of the district board a petition requesting a referendum thereon at a special election. Such petition shall be signed by electors from each county lying wholly or partially within the district. The number of electors from each county shall equal at least 2.5% of the population of the county as determined under s. 16.96(2)(c) .... If a county lies in more than one district, the board of vocational, technical and adult education shall apportion the county's population as determined under s. 16.96(2)(c) to the districts involved and the petition shall be signed by electors equal to the appropriate percentage of the apportioned population. ..."

You point out that in the Moraine Park District the resident populations of the counties or parts of counties contained in the district are estimated, as of January 1, 1976, by the Department of Administration acting under sec. 16.96(2), Stats., as follows: Dodge County, 59,158; Fond du Lac County, 88,125; Green Lake County, 17,414; Washington County, 64,978; Winnebago County, 1,326; Waushara County, 2,437; Calumet County, 5,093;

Marquette County, 99; Columbia County, 30; and Sheboygan County, 165.

In my opinion, that part of sec. 67.12(12)(e)5., Stats., requiring that the petition for referendum be signed by electors from each county equal to at least 2.5% of the population of the county, in its application to the Moraine Park District, is unconstitutional as violative of the equal protection clause, U. S. Const. amend. XIV, and Wis. Const. art. I, sec. 1, which is to be equated with the fourteenth amendment. *State ex rel. Sonneborn v. Sylvester*, 26 Wis.2d 43, 132 N.W.2d 249 (1965).

The constitutional guaranty of equal protection of the laws requires that a statute granting rights or privileges to one class of persons must grant the same rights and privileges to other classes of persons similarly situated, *Christoph v. Chilton*, 205 Wis. 418, 237 N.W. 134 (1931), and that all persons shall be treated alike under like circumstances and conditions, both in privileges conferred and in liabilities imposed. 16 Am. Jur. 2d, *Constitutional Law* sec. 488.

Application of that part of the statute requiring the petition to be signed by electors from each county equal to at least 2.5% of the population of the county to the Moraine Park District results in unequal treatment of the electors in each of the counties or parts thereof that lie within the boundaries of the district in their statutory right to sign the petition demanding that a referendum be held. The weight accorded the signature of an elector in Columbia County, for example, is 2,203 times the weight awarded the signature of an elector in Fond du Lac County. In effect, that part of the statute referred to above, in its application to the particular circumstances you mention, results in an unlawful classification. Since electors in one county of the district would be affected in the same way as electors in other counties in the district as a result of an indebtedness incurred by the district, there can be no valid basis for treating any of them differently or according the signature of an elector in one part of the district more weight than a signature of an elector in another part of the district in exercising the statutory right to petition for a referendum on the district board's resolution to incur an indebtedness.

While you mention the "one man, one vote" principle in your request, it should be noted that the United States Supreme Court has only applied the concept of "one man, one vote" to the selection of persons by popular election to perform governmental functions, *In re Natural Resources Development Bond Act*, 47 Ill.2d 81, 264 N.E.2d 129 (1970), although at least one state has also applied it

in dealing with voting rights relating to an amendment of a state constitution. *State v. State Canvassing Board*, 78 N.M. 682, 437 P.2d 143 (1968).

Nevertheless, in my opinion, the rationale of the "one man, one vote" principle, as it reflects a particular application of the equal protection clause, U.S. Const. amend. XIV, and Wis. Const. art. I, sec. 1, is also applicable to the present situation wherein the electors of a political subdivision of the state are granted the statutory right to petition to demand that a referendum be held on an issue which will affect all the electors in the district in exactly the same way.

It was in the so-called reapportionment cases, starting with *Baker v. Carr*, 369 U.S. 186 (1962), followed by *Gray v. Sanders*, 372 U.S. 368 (1963), and then by *Reynolds v. Sims*, 377 U.S. 533 (1964), and others, that the principle of equal representation, or as it is commonly called, the "one man, one vote" principle, emerged and was developed.

In *Gray*, *supra*, the Georgia county unit system was held unconstitutional in a statewide primary election because that system resulted in a dilution of the weight of the votes of certain Georgia voters merely because of where they resided. The Court stated:

> "... If a State in a statewide election weighted the male vote more heavily than the female vote or the white vote more heavily than the Negro vote, none could successfully contend that that discrimination was allowable. ... How then can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote -- whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. ..." *Id.* at 379.

In *Reynolds*, *supra*, concerning the right to give votes of residents of geographical areas of widely varying population equivalently disproportionate weight, the Court had the following to say:

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State. ..." *Id.* at 568.

In *State v. State Canvassing Board, supra*, the court was faced with a provision in the New Mexico Constitution providing that no amendment affecting provisions as to elective franchise shall be valid unless ratified by vote with at least two-thirds of those voting in each county in the state voting for such amendment. In holding that the constitutional requirement was unconstitutional under the "one person, one vote" principle and equal protection clause of the fourteenth amendment because of the wide disparity in population among counties resulting in greatly disproportionate values to votes in the different counties, the court found that no rational distinction could or should be drawn between voting on representatives in the Legislature and voting on constitutional amendments.

In *State ex rel. Sonneborn v. Sylvester, supra*, then sec. 59.03(2), Stats., provided that the composition of boards of supervisors in all but two counties shall consist of the chairman of each town board, a supervisor from each city ward or part thereof in the county, and a supervisor from each village or part thereof in the county. The court found that since the statute on its face did not purport to apportion the representative districts on the basis of population, and since there was a great disparity in the weight of votes in different districts caused by the statutory method of selecting county board supervisors, the statute was violative of both the equal protection clause, U.S. Const. amend. XIV, and Wis. Const. art. I, sec. 1.

The court pointed out that "It is true these cases [reapportionment cases] dealt with a right to vote preserved in a constitution and for an office created by the constitution; but the rationale of the decisions applies equally as well to a statutory right to vote." *Id.* at 55. The court reasoned that:

> "Although the legislative power of a county may in fact be limited by the statutes, nevertheless the constitution by sec. 22, art. IV empowers the legislature to confer on the board of supervisors such powers of a local, legislative and administrative character as it shall from time to time

> prescribe. Under this authorization the legislature in ch. 59, Stats., has granted a substantial bundle of legislative powers to county boards and may grant additional substantial powers. Such powers are not to be confused with the powers of administrative boards and commissions to enact rules and regulations even though the latter have the effect of law. Since the composition of the legislature must conform to the principle of equal representation, it is logical that the arm or political subdivision of such legislature enacting legislation should be governed by the same principle of equal representation," *id.* at 56-57,

and held that the principle of equal representation applies to a county board of supervisors when that board is given legislative power and is composed of elective members.

Hence, just as the court in *State v. State Canvassing Board, supra*, could see no rational distinction between voting on representatives in the Legislature and voting on constitutional amendments, I can see no rational distinction between voting on representatives on a county board and voting on referenda which affect the substantial rights of the people in a vocational, technical and adult education district.

In *Moore v. Ogilvie*, 394 U.S. 814 (1969), an Illinois statute providing that the 25,000 or more signatures of qualified voters prescribed for nominating petitions of independent candidates for offices to be filled by voters at large must include the signatures of 200 qualified voters from each of at least 50 of the 102 counties in the state, notwithstanding that it was designed to require statewide support for launching a new political party rather than support from a few localities, was declared unconstitutional as violative of the equal protection clause of the fourteenth amendment since the fact that the Illinois population was highly concentrated in a few counties admitted of the possibility that voters in sparsely populated counties might block access to the ballot by large numbers of the state's voters who supported an independent or new party candidate.

The Court, in extending the "one man, one vote" principle to the situation presented, held that the use of nominating petitions by independents to obtain a place on the Illinois ballot was an integral part of the Illinois elective system and that all procedures used by a state as an integral part of the election process must pass muster against charges of discrimination or of abridgement of the right to vote.

The Court reasoned:

> "It is no answer to the argument under the Equal Protection Clause that this law was designed to require statewide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.
>
> "Under this Illinois law the electorate in 49 of the counties which contain 93.4% of the registered voters may not form a new political party and place its candidates on the ballot. Yet 25,000 of the remaining 6.6% of registered voters properly distributed among the 53 remaining counties may form a new party to elect candidates to office. This law thus discriminates against the residents of the populous counties of the State in favor of rural sections. It, therefore, lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment." *Id.* at 818-819.

In my opinion, the use of a petition to require that a referendum be held on a district board's resolution to incur an indebtedness is an integral part of the statutory right to vote at such a referendum. See 63 Op. Att'y Gen. 391 (1974). Hence, just as the right to petition for the nomination of candidates, as an integral part of the elective system, is afforded protection under the equal protection clause of the fourteenth amendment, so also must be the right to petition for a referendum on a district board's resolution to incur an indebtedness.

Equal protection in its guaranty of like treatment to all similarly situated only permits classification which is reasonable and founded on material differences and substantial distinctions which bear a proper relation to matters or persons dealt with by legislation and to the purposes sought to be accomplished. *Brennan v. Milwaukee*, 265 Wis. 52, 60 N.W.2d 704 (1953). All of the electors in the Moraine Park District are equally affected as regards the tax effect that may result from the district incurring an indebtedness and, therefore, their right to petition for a referendum must be equally protected by the law by having their signatures accorded equal weight in petitioning for a referendum on the issue of indebtedness.

It is true, of course, that statutes are presumed constitutional, *WKBH Television, Inc. v. Dept. of Revenue*, 75 Wis.2d 557, 250 N.W.2d 290 (1977), and that they will be held unconstitutional only when it so appears beyond a reasonable doubt. *White House Milk Co. v. Reynolds*, 12 Wis.2d 143, 106 N.W.2d 441 (1960). However, in this instance, there can be no doubt that the signatures of electors in certain counties are accorded greatly disproportionate weight as compared with the signatures of electors in other counties since this is a mathematical certainty given the present composition of the Moraine Park District.

Having concluded that that portion of sec. 67.12(12)(e)5., Stats., which requires that in order to require the district board to hold a referendum a petition must be signed by electors from each county lying wholly or partially within the school district equal to at least 2.5% of the population of that county or portion thereof lying in the district is unconstitutional in its application to the Moraine Park District, the question arises whether the invalid portion of sec. 67.12(12)(e)5., Stats., also renders the remaining valid provisions ineffective.

Section 990.001(11), Stats., provides as follows:

> "The provisions of the statutes are severable. The provisions of any session law are severable. If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application."

It has been held that where a part of a statute is declared unconstitutional, the determining factor as to whether the remainder of the statute is invalid by reason thereof is the intention of the Legislature. *Madison v. Nickel*, 66 Wis.2d 71, 223 N.W.2d 865 (1974); *State ex rel. Broughton v. Zimmerman*, 261 Wis. 398, 52 N.W.2d 903 (1952). An entire act is not invalidated because of the unconstitutionality of a part thereof if the part upheld constitutes independently of the invalid portion a complete law in some reasonable aspect, unless the Legislature intended it to be effective only as an entirety and would not have enacted the valid part alone. *Burke v. Madison*, 17 Wis.2d 623, 117 N.W.2d 580 (1962), *rehearing denied*, 17 Wis.2d 623, 638a, 118 N.W.2d 898 (1963); *State ex rel. Milwaukee County v. Boos*, 8 Wis.2d 215, 99 N.W.2d 139 (1959).

In my opinion, the unconstitutionality of that part of sec. 67.12(12)(e)5., Stats., requiring the obtainment of the signatures of electors in each county equal to at least 2.5% of the population of the county as applied to the Moraine Park District, can be eliminated from the statute with the remainder constituting, independently of the invalid portion, a complete law in some reasonable aspect without violating the intention of the Legislature.

Section 67.12(12)(e)5., Stats., is the result of a compromise between the Assembly and Senate versions of Assembly Bill 857. Originally, Assembly Bill 857, which, as amended, became the present sec. 67.12(12)(e)5., Stats., required that the petition for referendum be signed by 1,000 electors of the district. Senate Substitute Amendment 1 to Assembly Bill 857 required that the petition be signed by electors in the district equal to at least 10% of the persons voting for governor at the last election in the district. Hence, it seems reasonable to conclude that what was intended was that, in order to require a vocational, technical and adult education district board to submit its resolution to incur indebtedness to a referendum, there must be a showing of a certain amount of support in the district for such a referendum as evidenced by the signatures on the petition.

Therefore, in my opinion, only that part of sec. 67.12(12)(e)5., Stats., requiring that the petition for referendum contain the signatures of electors from each county in the district equal to at least 2.5% of the population in each such county is unconstitutional as violative of the equal protection clause of U.S. Const. amend. XIV, and Wis. Const. art. I, sec. 1, and, said section, in its application to the Moraine Park District, should be read as requiring that the petition for referendum be signed by electors equal to at least 2.5% of the population of the district as a whole.

Sincerely yours,
BRONSON C. La FOLLETTE
Attorney General

CAPTION:

That part of sec. 67.12(12)(e)5., Stats., requiring the petition requesting that a referendum be held on a vocational, technical and adult education district board's resolution to incur indebtedness to contain the signatures of electors from each county in the district equal to at least 2.5% of the population of the county is unconstitutional as applied to the Moraine Park District. Equal protection of the laws is denied to electors in certain counties of the district in that their signatures on the petition, because of the wide

disparity in population among the counties, are accorded greatly disproportionate weight as compared to the signatures of electors in other counties.

COMMITTEE REPORTS

The committee on Criminal Justice and Public Safety reports and recommends:

Assembly Bill 874

Relating to revision of the children's code and providing penalties.

Adoption of assembly substitute amendment 1:
Ayes: (8) Noes: (0)

Passage: Ayes: (8) Noes: (0)
To Joint Committee on Finance.

LOUISE M. TESMER
Acting Chairperson

The committee on Elections reports and recommends:

Assembly Bill 792

Relating to the composition of municipal boards of canvassers for municipal elections and allegations necessary to obtain a recount.

Adoption of assembly substitute amendment 1:
Ayes: (9) Noes: (0)

Passage: Ayes: (9) Noes: (0)
To committee on Rules.

Assembly Bill 884

Relating to requirements for election officials, ballots, nominations, canvassing, recounts, administration of elections, prohibited election practices, granting rule-making authority, providing penalties and making an appropriation.

Adoption of assembly substitute amendment 1:
Ayes: (9) Noes: (0)

Passage: Ayes: (6) Noes: (3)
To committee on Rules.

Assembly Bill 1031
Relating to registration to vote with identification card issuing officers.

Adoption of assembly amendment 1:
Ayes: (9) Noes: (0)

Passage: Ayes: (7) Noes: (2)
To committee on Rules.

Senate Bill 287
Relating to dates for election notices, circulation and filing of nomination papers and certain related events and functions in connection with the spring primary and election.

Concurrence: Ayes: (8) Noes: (1)
To committee on Rules.

TOM HAUKE
Chairperson

The committee on Health and Social Services reports and recommends:

Assembly Bill 1059
Relating to recombinant DNA experiments and granting rule-making authority.

Passage: Ayes: (10) Noes: (0) Not Voting: (1)
To Joint Committee on Finance.

JOSEPH CZERWINSKI
Chairperson

The committee on Judiciary reports and recommends:

Assembly Bill 1056
Relating to proof of possession with intent to transfer a gambling device.

Adoption of assembly amendment 1:
Ayes: (8) Noes: (0)

Passage: Ayes: (8) Noes: (0)
To committee on Rules.

Assembly Bill 1067
Relating to closing estates by sworn statement.

Adoption of assembly substitute amendment 1:
Ayes: (6) Noes: (2)

Passage: Ayes: (6) Noes: (2)
To committee on Rules.

Assembly Bill 1075
Relating to juries and providing penalties.

Adoption of assembly amendment 1:
Ayes: (6) Noes: (2)

Passage: Ayes: (8) Noes: (0)
To committee on Rules.

JAMES RUTKOWSKI
Chairperson

The committee on Local Affairs reports and recommends:

Assembly Bill 678
Relating to filling vacancies in the office of county executive in counties having a population of less than 500,000.

Passage: Ayes: (8) Noes: (0)
To committee on Rules.

Assembly Bill 720
Relating to appointment of town assessors.

Adoption of assembly substitute amendment 1:
Ayes: (8) Noes: (1)

Passage: Ayes: (8) Noes: (1)
To committee on Rules.

Assembly Bill 722
Relating to revising an appropriation to allow land improvements at correctional institutions.

Passage: Ayes: (8) Noes: (0)
To Joint Committee on Finance.

Assembly Bill 773
Relating to allowing town clerks to be either appointed or elected.

Adoption of assembly substitute amendment 1:
Ayes: (9) Noes: (1)

Passage: Ayes: (7) Noes: (3)
To committee on Rules.

Assembly Bill 824
Relating to county aid for town bridges or culverts.

Adoption of assembly amendment 1:
Ayes: (8) Noes: (2)

Passage: Ayes: (6) Noes: (4)
To committee on Rules.

Assembly Bill 851
Relating to county auditor positions.

Passage: Ayes: (7) Noes: (1)
To committee on Rules.

Assembly Bill 939
Relating to inspection of completed assessment rolls.

Passage: Ayes: (8) Noes: (0)
To committee on Rules.

Assembly Bill 965
Relating to interest on late payments of real estate taxes and special assessments.

Adoption of assembly substitute amendment 1:
Ayes: (6) Noes: (3)

Passage: Ayes: (6) Noes: (3)
To committee on Rules.

GARY BARCZAK
Chairperson

The committee on State Affairs reports and recommends:

Assembly Bill 942
Relating to meetings of state governmental bodies in locations accessible to persons in wheelchairs.

Adoption of assembly substitute amendment 1:
Ayes: (9) Noes: (0)

Passage: Ayes: (8) Noes: (1)
To committee on Rules.

JOHN R. PLEWA
Chairperson