

JOURNAL OF THE SENATE

Eighty-Third Regular Session

WEDNESDAY, May 3, 1978.

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

PETITIONS AND COMMUNICATIONS

State of Wisconsin
Department of State

April 25, 1978.

To the Honorable, the Senate

Senators:

I have the honor to transmit to you pursuant to s. 13.67 (2), the names of the registered lobbyists for the period beginning on March 27, 1978, and ending on April 21, 1978.

Yours very truly,
DOUGLAS LAFOLLETTE
Secretary of State

Name and Address of Lobbyist, Telephone Number -- Name and Address of Employer, Telephone Number -- Subject of Legislation Code Number -- Date of Employment.

Baldewicz, Joanne, 4311 South Honey Creek Drive, Greenfield, Wisconsin 53220, (414) 545-3105 -- Wisconsin Council for the Gifted and Talented, 518 7th Avenue, Wausau, Wisconsin 54401, (715) 845-9602 -- 08 -- March 27, 1978.

DeNell, F. Robert, 213 Chestnut Street, Fond du Lac, Wisconsin 54935, (414) 922-1600 -- Brotherhood Locomotive Engineers W.S.L.B., 213 Chestnut Street, Fond du Lac, Wisconsin 54935, (414) 922-1600 -- 11, 28, 29, 31 -- April 14, 1978.

Hackney, Edward T., 400 Washington Street, West Bend, Wisconsin 53095, (414) 334-2311 -- The West Bend Company, 400 Washington Street, West Bend, Wisconsin, 53095, (414) 334-2311 - - 03, 06, 07, 11, 21, 25, 28 -- April 20, 1978.

Hawkins, James M.D.R., 122 West Mifflin Street, Madison, Wisconsin 53703, (608) 256-7711 -- Menominee Restoration

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Committee, Keshena, Wisconsin 54135, (715) 799-3341 -- 31 --
March 28, 1978.

Pabst, Lynn, 345 Woodland Lane, Oconomowoc, Wisconsin
53066, (414) 567-0800 -- Wisconsin Council for the Gifted and
Talented, 518 South 7th Avenue, Wausau, Wisconsin 54401, (414)
545-3105 -- 08 -- March 27, 1978.

Peterson, Richard E., 202 East Union Street, Waupaca,
Wisconsin 54981, (715) 258-2345 -- Northridge Company, 9000
North 76th Street, Milwaukee, Wisconsin 53225, (414) 354-2000 --
31 -- April 4, 1978.

Schroeder, Robert W., 212 West Wisconsin Avenue, Milwaukee,
Wisconsin 53203, (414) 272-4060 -- Northridge Company, 9000
North 76th Street, Milwaukee, Wisconsin 53225, (414) 354-2000 --
31 -- April 4, 1978.

Legislative Subject Identification

Code	Subject
01	<i>Agriculture, horticulture, farming & livestock</i>
02	<i>Amusements, games, athletics and sports</i>
03	<i>Banking, finance, credit and investments</i>
04	<i>Children, minors, youth & senior citizens</i>
05	<i>Church & Religion</i>
06	<i>Consumer Affairs</i>
07	<i>Ecology, environment, pollution, conservation, zoning, land & water use</i>
08	<i>Education</i>
09	<i>Elections, campaigns, voting & political parties</i>
10	<i>Equal rights, civil rights & minority affairs</i>
11	<i>Government, financing, taxation, revenue, budget, appropriations, bids, fees & funds</i>
12	<i>Government, county</i>
13	<i>Government, federal</i>
14	<i>Government, municipal</i>
15	<i>Government, special districts</i>
16	<i>Government, state</i>
17	<i>Health services, medicine, drugs and controlled substances, health insurance & hospitals</i>
18	<i>Higher education</i>
19	<i>Housing, construction & codes</i>
20	<i>Insurance (excluding health insurance)</i>

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- 21 *Labor, salaries and wages, collective bargaining*
- 22 *Law enforcement, courts, judges, crimes & prisons*
- 23 *Licenses & permits*
- 24 *Liquor*
- 25 *Manufacturing, distribution & services*
- 26 *Natural resources, forests and forest products, fisheries,
mining & mineral products*
- 27 *Public lands, parks & recreation*
- 28 *Social insurance, unemployment insurance, public
assistance & workmen's compensation*
- 29 *Transportation, highways, streets & roads*
- 30 *Utilities, communications, television, radio, newspapers,
power, CATV, & gas*
- 31 *Other*

State of Wisconsin
Department of Justice
Madison, Wisconsin

April 28, 1978.

Senate Committee on Organization
State Capitol
Madison, Wisconsin

Dear Senators:

You request my opinion as to the constitutionality of sec. 356 of Senate Bill 720 and the amendment to sec. 356 contained in senate amendment 3 to Senate Bill 720. Senate Bill 720 would merge the two trial courts of record in this state into a single level trial court. Section 356 of such bill would preclude a member having received retirement credit from service as a justice, judge or court commissioner from receiving annuity payments from the Wisconsin Retirement Fund (WRF) or Milwaukee County Retirement System (MCRS) while serving as a justice, judge or court commissioner.

Section 757.225, Stats., which would be created by sec. 356 of Senate Bill 720 states as follows:

"ANNUITY RESTRICTIONS. Any public employe retirement system to which the state or any political subdivision of the state has contributed on behalf of a person for service as a justice, judge or court commissioner shall temporarily suspend any annuity payments being made to the person during the time the person is serving as a justice, judge or court commissioner, and any annuity payments which are affected by this section shall be permanently forfeited without any right to payment at a later date. Annuity

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payments which have been temporarily suspended under this section shall be reinstated after a person ceases to serve as a justice, judge or court commissioner. The homerule provisions for the retirement system created by chapter 201, laws of 1937, as established by chapter 405, laws of 1965, do not apply to this section."

The section applies to members of the WRF and MCRS who have service credit as a justice, judge or court commissioner regardless of the period of such service. All annuity payments are forfeited (without right of recovery) during later service as a justice, judge or court commissioner even though the majority of annuity could result from service credits as an employe or elected official other than a justice, judge or court commissioner. Annuity payments are forfeited only as a result of service as a justice, judge or court commissioner.

It is my opinion that proposed sec. 757.225, Stats., as set forth in sec. 356 of Senate Bill 720 would, if enacted, violate the rights of those whose annuity payments were suspended to equal protection of the laws as guaranteed by the fourteenth amendment to the U.S. Constitution and Wis. Const., art I, sec. 1.

The standard of review and burden of proof falling upon a challenger of a statute are set forth at pp. 146-147 of *Weiner v. J.C. Penney Co.*, 65 Wis. 2d 139, 222 N.W. 2d 149 (1974), in these words:

"Before evaluating these contentions it is first necessary to set forth the standard of review applicable to equal protection claims arising under the fourteenth amendment to the United States Constitution and art. I, sec. 1, of the Wisconsin Constitution. As this court has stated many times, both amendments guarantee the same individual rights and impose the same restrictions on the legislature.

"Legislation regulating economic and fiscal affairs enjoys a presumption of constitutionality. As stated in *Simanco, Inc. v. Department of Revenue*:

" 'Only if a challenger can show that the classification is arbitrary and has no reasonable purpose or relationship to the facts or a justifiable and proper state policy will a legislative classification fall on the grounds of a denial of equal protection. (Citations omitted) '

"In *State ex rel. Ford Hopkins Co. v. Mayor*, as noted by plaintiffs, the court enumerated five standards pertaining to statutes attacked on equal protection grounds:

1. All classifications must be based upon substantial distinctions which make one class really different from another.

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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.

However, in *State ex rel. LaFollette v. Reuter* the court held that before a statute would be held unconstitutional for violating these standards, the attacker must meet a very heavy burden of proof and persuasion:

“ ‘... to declare an act of the legislature as to a classification violative of the equal-protection clause, it is first necessary to prove that the legislature has abused its discretion beyond a reasonable doubt.’ ”

In *State ex rel. LaFollette v. Reuter*, 36 Wis.2d 96, 109, 153 N.W.2d 49 (1967), the court quoted from an earlier case which considered the matter of legislative classification, *Kiley v. Chicago, M. & St. P. Ry. Co.*, 142 Wis. 154, 159, 125 N.W. 464 (1910):

“ ‘...no court is justified in declaring classification baseless unless it can say without doubt that no one could reasonably conclude that there is any substantial difference justifying different legislative treatment...’ ”. (Emphasis by the court)

The classification embodied in proposed sec. 757.225, which limits the effect to justices, judges or court commissioners, in my view lacks any legitimate basis.

The apparent purpose of sec. 757.225, Stats., is to prevent a sitting judge from receiving a state or municipal retirement annuity at the same time as he receives a salary. While this clearly constitutes regulation of an area of legitimate legislative concern, I find no rational basis for applying the prohibition solely to judges as a class. A former district attorney, for example, is not precluded from receiving a public retirement benefit while sitting as a justice, judge or court commissioner. Nor is a justice, judge or court commissioner precluded from receiving the retirement annuity while serving as a state appointed or elected official or employe other than a justice, judge or court commissioner.

I can perceive of no fact situation which would cause the courts to conclude that application of the prohibition solely to justices, judges

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and court commissioners constitutes other than an arbitrary classification prohibited by the equal protection clauses of the U.S. and Wisconsin Constitutions. Proposed sec. 757.225 violates four out of the five standards set forth in *State ex rel. Ford Hopkins Co. v. Mayor*, 226 Wis. 215, 276, N.W. 311 (1937), as quoted in *Weiner v. J.C. Penney, supra*. Applying standard (1), I see no substantial distinction between justices, judges and court commissioners in comparison with other elected officials which would support the classification. Standard (2) specifies that "classifications adopted must be germane to the purpose of the law." Limiting the application of the prohibition to justices, judges and court commissioners seems to be the antithesis to such purpose. The proposed statute is violative of standard (4) which requires that the law apply equally to each member of the class. For example, consider two judges at retirement age with credit in a covered retirement system—one who retires commences receiving a retirement benefit based on his then age and thereafter becomes a sitting judge and the other who doesn't elect to retire before again becoming a sitting judge. The first judge upon again becoming a sitting judge would under sec. 757.225 "permanently forfeit" his annuity benefit during the period of his service "without any right to payment at a later date." The second judge not having started on annuity would lose nothing since when he finally retires, he will have his benefit computed on his age at that time. The proposed law does not apply equally to the two judges since the first judge loses the value of the annuity payments withheld during the period he again served as a judge. Finally, standard (5) requires that the characteristics of each class must be different from those of the other classes so as to suggest the propriety of different legislation. Here the intended evil to be suppressed does not suggest that the public interest is in any way served by singling out judges as the only class subjected to the limitation. I conceive of no valid distinction between judges and other state officers and employes which would support the distinction in treatment of proposed sec. 757.225, Stats.

I have concentrated upon the equal protection question as the basis for this opinion since equal protection involves the total spectrum of justices, judges and court commissioners, present and future. The proposed legislation does, however, in the case of specific individual justices, judges and court commissioners also offend the prohibition against impairment of contracts of Wis. Const. art. I, sec. 12. Elected officials and employes have vested or contractual rights in the statutory retirement systems. See sec. 41.21(2), Stats., as to the WRF and sec. 6 of ch. 326, Laws of 1957, as to the MCRS.

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Withholding or diminishing the retirement annuity after retirement as set forth in proposed sec. 757.225, Stats., would probably in a number of specific cases impair the member's vested or contractual rights.

Senate amendment 3 to Senate Bill 720 would delete the original proposed sec. 757.225, Stats., and substitute therefor the following language:

“Salary Restrictions. Any person commencing a new term of office on or after the effective date of this act (1977) who receive compensation for service as a justice, judge or court commissioner under s. 20.923, and who is also receiving annuity payments from a public employe retirement system to which the state or a political subdivision of the state has contributed in behalf of the person for service as a justice, judge or court commissioner, shall have the compensation authorized under s. 20.923 reduced by the amount of such annuity payments received. This section does not apply to compensation for reserve judges authorized under s. 753.075.”

This new proposed sec. 757.225, Stats., would require the reduction of the salary of the justice, judge or court commissioner by the amount of the annuity received. Other conditions are basically the same. The salary reduction is applicable only to a justice, judge or court commissioner and is conditioned upon annuity payments based upon service as a justice, judge or court commissioner. No reduction is required while serving in any other state office nor is the reduction required if the annuity resulted solely from service other than as a justice, judge or court commissioner. The proposed section singles out the judiciary and applies a penalty to persons whose service is related to the judicial function of government while exempting from the penalty other non-judicial officials of similar stature. While there is a strong presumption of constitutionality which attaches to an act of the legislature, such presumption is rebutted if no facts can reasonably be conceived that would sustain the presumption. *Weiner, supra*, p. 147. I conceive of no legitimate basis which would support the singling out of the judiciary in this manner. It is, therefore, my opinion that the classification in the latter proposed sec. 757.225, Stats., is violative of the equal protection guarantees of the U.S. and Wisconsin Constitutions.

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CAPTION: If sec. 356 of Senate Bill 720 or the amendment to sec. 356 contained in senate amendment 3 to Senate Bill 720 were enacted into law, either would be constitutionally invalid.

Sincerely,
BRONSON C. LA FOLLETTE
Attorney General

EXECUTIVE COMMUNICATIONS

State of Wisconsin
Office of the Governor
Madison, Wisconsin

April 26, 1978.

To the Honorable, the Senate:

I am returning **Senate Bill 688** without my approval.

The bill broadens the types of projects eligible for industrial revenue bond financing to include hotels, motels and other residential facilities which regularly serve patients or staff members of hospitals or clinics.

The bill represents the most recent expansion of the purposes for which industrial revenue bonds can be used in Wisconsin. This incremental approach tends to overlook the complex questions raised by the industrial revenue bonding mechanism that operates in Wisconsin but originates in federal law. In reality, industrial revenue bonding is a subsidy from the federal treasury to a private business.

In its simplest terms, industrial revenue bonding permits eligible businesses to borrow money to finance their construction or expansion at a lower rate than conventional interest charges. This lower rate is achieved by permitting businesses to take advantage of the borrowing status of local governments who are able to issue tax-exempt bonds bearing an interest rate substantially below that of conventional financing.

In some instances, the subsidy can be very substantial. For example, a \$1 million loan for a duration of twenty years at a conventional interest rate of 10 percent would result in an interest charge of \$1,349,192. Industrial revenue bonding would make that same \$1 million available at an interest charge of \$887,859 -- a savings of \$461,334. Such a subsidy would be more easily justified in those instances in which it makes possible industrial development that would not otherwise occur in economically-depressed areas. Senate Bill 688 contains no such limitation -- nor does existing state

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law -- nor does the federal law which makes industrial revenue bonding possible.

It is important to point out that federal tax policy is as much at issue in this veto as the changes in state law made by Senate Bill 688. The federal law on industrial revenue bonding is so broad that it encourages individual states to use this tool for every imaginable purpose as a means of seeking an advantage in attracting industry from other states. This interstate competition makes a bad federal policy worse.

President Carter's tax reform proposal calls for the elimination of small issue industrial revenue bonds except in areas of economic distress. I believe that is a step which should receive careful consideration by the Congress. The notion that the use of industrial revenue bonding is in effect "free money" funneled from the federal coffers into Wisconsin industry is entirely mistaken. Wisconsin citizens pay federal taxes too.

Finally, what is needed is an overall state policy on the proper role of industrial revenue bonding in Wisconsin. I have directed the Department of Revenue to develop such a policy in preparation for the 1979-80 session of the legislature.

Sincerely,
MARTIN J. SCHREIBER
Governor

State of Wisconsin
Office of the Governor
Madison, Wisconsin

April 25, 1978.

To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have nominated and with the advice and consent of the senate do appoint Doris Stacy, of Milwaukee, as a member of the Personnel Board, to serve for the term ending May 1, 1979.

Sincerely,
MARTIN J. SCHREIBER
Governor

Read and referred to committee on Governmental and Veterans' Affairs.

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**State of Wisconsin
Office of the Governor
Madison, Wisconsin**

April 27, 1978.

To the Honorable, the Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State:

Senate Bill	Chapter No.	Date Approved
710 -----	279 -----	April 27, 1978

Sincerely,
MARTIN J. SCHREIBER
Governor

**State of Wisconsin
Office of the Governor
Madison, Wisconsin**

May 2, 1978.

To the Honorable, the Senate:

The following bills, originating in the senate, have been approved, signed and deposited in the office of the Secretary of State:

Senate Bill	Chapter No.	Date Approved
294 -----	306 -----	May 2, 1978
406 -----	307 -----	May 2, 1978
563 -----	308 -----	May 2, 1978
585 -----	309 -----	May 2, 1978
608 -----	310 -----	May 2, 1978
627 -----	311 -----	May 2, 1978
650 -----	312 -----	May 2, 1978

Sincerely,
MARTIN J. SCHREIBER
Governor

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MESSAGE FROM THE ASSEMBLY

By Everett E. Bolle, chief clerk.

Mr. President:

I am directed to inform you that the assembly has Adopted and asks concurrence in:

MOTIONS UNDER JOINT RULE 7

A joint certificate of congratulations by Representative Duren, cosponsored by Senator Morrison for THE UW CENTER-RICHLAND ROADRUNNERS on their WCC basketball championship;

A joint certificate of congratulations by Representative Duren; cosponsored by Senator Morrison for PAUL NOOYEN on winning the National Junior College Wrestling Title.

MOTIONS

MOTION UNDER JOINT RULE 7

A joint certificate of commendation by Senator McKenna; cosponsored by Representative Lorman for LLOYD AND SYLVIA LIEDTKE on their retirement from the University of Wisconsin-Whitewater.

MOTIONS UNDER SENATE RULE 97

A certificate of congratulations by Senator Berger and Representative Behnke for DANIEL HUCKE on being named the Wisconsin Basketball Player of the Year;

A certificate of commendation by Senator Krueger and Representatives Kincaid and Donoghue for HERMAN SMITH for his dedicated service to tourism in Wisconsin;

A certificate of commendation by Senator Krueger and Representative Donoghue for CLARENCE "MAC" MCLEOD for his dedication and service to the people of the Merrill area;

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A certificate of congratulations by Senator Theno for **THE BOB NICHOLS RINK OF SUPERIOR** on winning the World Curling Title;

A certificate of commendation by Senator Theno for **GORDON DAHLIE** for his dedicated service to Price County and this state;

A certificate of commendation by Senator Theno for **LUCIEN ORSONI** on his retirement;

A certificate of congratulations by Senator Krueger and Representative Donoghue for **HENRY HENKELMANN** on his posthumous election to the Taxidermy Hall Of Fame;

A certificate of congratulations by Senator Lasee for **MIKE SEVCIK** on being named the Outstanding Young Farmer of 1978;

A certificate of congratulations by Senator Risser for **WALTER O. ZIMMERMAN** on his 80th birthday;

A certificate of commendation by Senator Risser for **LEE KEMP** on his successful wrestling season;

A certificate of congratulations by Senator Lasee for **THE WASHINGTON HIGH SCHOOL, TWO RIVERS CHESS TEAM** on winning their sixth straight Wisconsin High School Tournament;

A certificate of congratulations by Senator Lasee for **CORA HONOLD** on being Door County's oldest citizen;

A certificate of congratulations by Senator Lasee for **LINDA ADAMS** on winning five prizes in the Wisconsin Women's Press Contest.

CHIEF CLERK'S REPORT

The chief clerk records:

Senate Bill 688

Correctly enrolled and presented to the Governor on April 26, 1978.

Senate Bill 710

Correctly enrolled and presented to the Governor on April 27, 1978.

Senate Bill 294

Senate Bill 406

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Senate Bill 563

Senate Bill 585

Senate Bill 608

Senate Bill 627

Senate Bill 650

Correctly enrolled and presented to the Governor on May 1, 1978.