
**STATE POLICY
& ECONOMIC
DEVELOPMENT
IN OKLAHOMA: 2000**



OKLAHOMA 2000, INC. BOARD OF DIRECTORS

KEITH BAILEY

President & CEO
The Williams Companies, Inc.
Tulsa

DAVID L. BOREN

President
University of Oklahoma
Norman

T.D. "PETE" CHURCHWELL

CSW Oklahoma - PSO President
Public Service Company of Oklahoma
Tulsa

JIM EPPERSON

President
Southwestern Bell - Oklahoma
Oklahoma City

EDMUND J. FARRELL

President & COO
ONG
Oklahoma City

MIKE FRETWELL

General Manager
Conoco Incorporated
Ponca City

JEANETTE L. GAMBA

President & CEO
Jordan Associates
Oklahoma City

GILBERT G. GIBSON

Director - Government Relations
Local Oklahoma Bank
Lawton

DR. JAMES E. HALLIGAN

President
Oklahoma State University
Stillwater

ROBERT S. KERR, JR.

Chairman
Kerr Foundation, Inc.
Oklahoma City

RONALD E. KING

President & CEO
BlueCross & BlueShield of Oklahoma
Tulsa

STANLEY A. LYBARGER

President & CEO
Bank of Oklahoma, NA
Tulsa

STEVEN E. MOORE

Chairman, President & CEO
OGE Energy Corp.
Oklahoma City

JAMES MULVA

Chairman, President and CEO
Phillips Petroleum Company
Bartlesville

DR. DONALD A. MURRY

Professor of Economics Emeritus
University of Oklahoma
Norman

DR. KENT OLSON

Professor of Economics
Oklahoma State University
Stillwater

RICHARD P. RUSH

President & CEO
The State Chamber
Oklahoma City

DR. LARKIN WARNER

Regents Professor of Economic Emeritus
Oklahoma State University
Oklahoma City

ROGER B. WHALEY

President
Bank of America
Tulsa

Published February, 2000

Copies of this publication are available at:

OKLAHOMA 2000, INC.

Attn: Bill Gross
Administrative Manager
330 NE 10th Street
Oklahoma City, OK 73104-3220
(405) 235-3691

OKLAHOMA 2000, INC.

OKLAHOMA 2000, INC., affiliated with The State Chamber – Oklahoma’s Association of Business and Industry, is a nonpartisan, non profit corporation created to perform and promote research regarding the role of industry in the civic, sociological and cultural betterment of the citizens of the State of Oklahoma. Oklahoma 2000, Inc. makes the results of its studies available to various State and Federal government agencies, legislators, and the general public.

Oklahoma 2000, Inc. is pleased to have provided support for this study, *The Oklahoma Constitution: Tradition and Change in a Developing State*. The results of this study and any views expressed in this report, however, are solely those of the research team. As always, they have worked independently of the officers, directors, and sponsors of Oklahoma 2000, Inc.

OFFICERS

T.D. “PETE” CHURCHWELL

Chairman

STEVEN E. MOORE

Vice Chairman

DR. KENT OLSON

President

DR. LARKIN WARNER

Vice President

RICHARD P. RUSH

Secretary

JILL GROSS

Administrative Manager

STATE POLICY AND ECONOMIC DEVELOPMENT IN OKLAHOMA: 2000

THE OKLAHOMA CONSTITUTION: TRADITION AND CHANGE IN A DEVELOPING STATE

A Report to
Oklahoma 2000, Inc.
by

Dr. Alexander Holmes
Regents Professor of Economics
University of Oklahoma

Dr. Donald A. Murry
Professor of Economics Emeritus
University of Oklahoma

Dr. Kent W. Olson
Professor of Economics
Oklahoma State University

Dr. Jean Shumway Warner
Policy Consultant
Oklahoma City, Oklahoma

Dr. Larkin Warner
Regents Professor of Economics Emeritus
Oklahoma State University

TABLE OF CONTENTS

Chapter I

Overview: Constitutional Problems, Findings and Policies 1

Chapter II

The Oklahoma Constitution in 2000:
A Continuing Memorial to its Cultural Traditions 7

Chapter III

Education and the Oklahoma Constitution 17

Chapter IV

Business Regulatory Authority in Oklahoma's
Constitution and Economic Development 31

Chapter V

State Question 640: Fiscal Effects
and Economic Growth 37

OVERVIEW: CONSTITUTIONAL PROBLEMS, FINDINGS AND POLICIES

This study identifies and examines selected problems inherent in the Oklahoma Constitution and suggests policies that might be used to deal with them. A state's constitution is an important part of the institutional structure that shapes the overall development of a state's resources and economy. Oklahoma 2000 is dedicated to finding ways to improve Oklahoma's prospects for resource and economic development. Thus, the organization has an abiding interest in the state's constitution.

This will be, in fact, the fourth time that Oklahoma 2000's *State Policy and Economic Development in Oklahoma* series has examined the constitution as a whole. Its predecessors include articles by Holmes (1984), Clark (1988), and Warner (1990). These are not the only instances, however, in which constitutional issues have been examined in this series; hardly a year has gone by since the series was started in 1982 without an examination of some aspects of the constitution or proposals to amend it.

This is the first time, however, that an entire study by Oklahoma 2000 has been devoted to the Oklahoma Constitution. One catalyst for this effort is a review of the constitution currently underway by committees of the Oklahoma Academy for State Goals, the results of which will be presented for public debate at the Academy's annual conference in April 2000. Some of the results of this study may be useful in that context, but they are intended for review and debate regardless of the nature and course of that forum.

Problems

The Oklahoma Constitution has been reviewed many times in the state's history and amended frequently. In spite of nearly a century of change, however, so much remains from the 1907 version that the same criticisms keep appearing on the policy agenda. Among these are the continued presence of often-lengthy sections that are statutory in nature, rather than constitutional, and sections that relate to circumstances that are quite unlike the circumstances of today. In

other words, there is a perceived need to streamline and modernize the constitution. Another abiding theme is that the constitution so diffuses the power of the executive branch that it diminishes both executive leadership and governmental accountability. Since the early 1960s, the constitution has been criticized frequently for the ways in which it limits the ability of state government to promote state economic development, either through investments of its own, or through investments and innovations in the private sector. These are also themes that engage the attention of the authors of this study.

Alexander Holmes begins the study with a chapter that places current constitutional debates in historical perspective. Holmes examines the cultural forces that shaped the original constitution - primarily populism and its distrust of big business and big government. He argues that they produced a constitution that severely limited the authority of the governor, and that they still do. In their zeal to curb the power of the governor, moreover, power has been diffused so completely that accountability has suffered.

The desire to curb government shows up, also, in the form of strict limits on local property tax rates for the common schools and other purposes. This may have impaired the state's ability to develop its human resources and may be a factor in the failure of Oklahoma's per capita personal income (PCPI) to grow as fast as PCPI in much of the rest of the country.

The constitution has also curbed state government's ability to raise money for public infrastructure (structures, highways, water resource projects, etc) by requiring the approval of the electorate for all general obligation bond issues. Although this is a popular populist position it will hardly guarantee the wise expenditure of funds. An election is no substitute for a rigorous evaluation in terms of social benefits and costs.

Holmes briefly mentions Article IX, the part of the constitution that provides for traditional public utilities regulation, and establishes the Oklahoma Corporation Commission as the regulatory agency. Much has been

made by previous researchers and study groups of the anti-business sentiment and the detailed regulatory provisions expressed in Article IX. Although this article is commonly viewed as outmoded and as containing much that could be placed in the statutes, Holmes does not identify it as an impediment to economic development.

The story is different where government assistance to, or participation with, the private sector for the purpose of economic development is concerned. According to Holmes, the original constitution precluded the use of tax exemptions for business and the lending of the state's credit - two of the tools used most widely by states in the interstate competition for business. The constitution has been amended several times since 1960, however, to permit their use by Oklahoma state government. Apparently the aura and lure of new technology and the prospect of more jobs sells rather well with the electorate.

We have not seen the last of proposed business incentives. A number of states have recently moved beyond incentives aimed directly at businesses, adding incentives for the suppliers of investment funds by providing preferential taxation of funds invested in in-state enterprises. States are also crafting incentives that are narrowly focused on particular business sectors - such as aerospace or financial services - that are especially likely to sell their products out of state. Several have specifically restricted certain incentives to businesses that make a specified share of their sales out of state. Some states have also recently replaced the traditional three-factor (income, property, sales) approach to determining the share of a company's total income that is subject to the state income tax, with an allocation based solely on where the company's products or services are sold. The effect is to reduce tax burdens on in-state businesses that sell significant proportions of their goods and services out of state, thus providing significant tax incentives for businesses with multi-state customer bases to locate in the states that are taking the lead in changing their apportionment formulas. It is only a matter of time before these and other incentives are on the policy agenda in Oklahoma, and we would not rule out continued voter approval of those that require constitutional amendments.

There is, in fact, a curious imbalance in the apparent ease with which the Oklahoma Constitution can be amended for economic development purposes. Amendment seems much more possible for financing eco-

omic development efforts by the private sector than for financing economic development efforts by the public sector. Thus we have a state, for example, wherein business incentives can be created but where property tax limits seem inviolate. This can't be because the uses of the property tax have nothing to do with economic development; indeed, the education financed by property taxes is vital to the state's development prospects. It probably reflects a commonly-held view that additional money for the public sector will simply be wasted or that government can do much better than they do with what they have. This view has surely played a role in recent efforts at educational reform in Oklahoma. And it may be true, at least to a degree. But it is no truer of education than it is of some business incentives. There is no assurance that they will generate benefits greater than costs in the form of tax revenues and public programs foregone.

Larkin and Jean Warner provide a thorough overview of the treatment of education in the Oklahoma Constitution, starting with higher education. They describe an especially troublesome history of politicized and fragmented governance, permitted and perhaps encouraged by the Constitution of 1907. This has been corrected to a significant degree by amendments to the constitution.

The most recent change in the constitution relating to higher education is the passage of State Questions 680 and 681, which amended Article X to facilitate and motivate state higher education institutions to participate in technology transfer and its fruits. S.Q. 680 permits higher education facilities to be used for research and development that has "potential economic value for a business enterprise." S.Q. 681 permits institutions and their employees personally to "have an ownership interest in technology" resulting from campus-based research and development. These are clearly amendments adopted for the sake of state economic development and the latest piece of evidence that the promise of economic development is a powerful agent for changing the Oklahoma constitution - provided that there is a clear stake in the change for the private sector. Without this, the support required for a change would probably not have materialized.

The Warners also addressed a 1988 amendment that allowed the then-recently-established Oklahoma Center for the Advancement of Science of Technology (OCAST) to make grants and loans to firms, and to take an equity position in firms "involved with research or

patents from projects involving Oklahoma colleges or universities.” This liberalization is evidence, once again, of the power of the prospect of economic development as a constitutional change agent.

They mention two anomalies in the constitution regarding the financing of higher education: the limited use by 2-year colleges of the property tax, and the prescribed allocation of School Land Office revenues to only a small share of the state’s colleges and universities. It may make good sense for the State Regents to designate as area vocational-technical districts the nine 2-year colleges not so designated, allowing them access to the local property tax. This would not require a constitutional amendment, however. It may also make good sense to give them the freedom to allocate School Land Office revenues according to criteria related to the purposes of higher education. This would require a constitutional amendment.

The features of the constitution relating to educational finance are more prominent, however, in their discussion of the state’s systems for vocational-technical education and elementary and secondary education.

The state’s widely-acclaimed system for vocational-technical education was created in 1966 with the passage of State Question 434, adding Section 9B to Article X of the constitution. This amendment granted to newly-created area vocational-technical school districts access to a 5 mill levy for operations, and the ability to issue bonds for capital up to an amount equal to 5 percent of net valuation of taxable property in the district. Simple majority voter approval was initially required annually for both the operating and the capital levies, but both the voter approval provision and the maximum levies are subject to change by the legislature. These are much more liberal terms than the ones applied by the constitution to the system of elementary and secondary education.

The constitution places especially restrictive conditions on the access of the so-called common schools to the property tax. It provides a strict limit on millage levies for operations, places a 10-percent-of-assessed value cap on bonded indebtedness, and requires a super-majority (60 percent) approval by the electorate of millage levies to service bonded indebtedness. The raising of local funds for local schools is diminished further by use of a statutory state aid formula that discourages local effort.

Finally, the Warners raise the issue of overall educational planning and coordination. They point out that the constitution, as amended, provides for three separate systems of education, and postulate that a single planning system that jointly addresses common education, vocational-technical education, and higher education may produce more effective and efficient management.

Murry’s essay addresses Article IX of the Oklahoma Constitution. This is a long and detailed article that has a reputation for being hostile toward business. Constitutional authorities have even labeled this article the worst single piece of any state’s constitution. Murry argues, however, that the manner in which the state’s regulatory authorities apply the provisions of Article IX is more important to the state’s business community than their existence in the constitution.

Article IX describes the industries subject to regulation, provides for the creation of a regulatory commission with specific powers whose members are elected in statewide votes, and outlines specific prohibitions on business behavior. Murry identifies the election of commissioners as an especially important constitutional provision because it imbues the commissioners with power that they do not have in states where they are appointed by the governor.

Murry compares Oklahoma’s Corporation Commission with agencies with similar functions in the neighboring states and finds they differ little in objectives and procedures, in spite of some differences in how officials are chosen, the constituents they represent, and the industries they regulate. He concludes from this analysis that there is no change in Article IX of the constitution that is clearly called for to *make* Oklahoma businesses more competitive. Although changes may be necessary to *keep* Oklahoma regionally competitive, it appears that, if necessary, Oklahoma state government can achieve this objective through statutory changes by the legislature or through modifications in regulatory rules and practices of the Corporation Commission. If there is to be a general revision of the State Constitution, however, Murry argues that there is at least one issue concerning Article IX that merits public debate; namely, whether or not the members of the Corporation Commission should be elected or appointed.

In the final chapter in this volume, Olson examines State Question 640, the proposition approved by voters

in 1992 that requires any tax increase approved by less than three-fourths of both houses of the legislature to be submitted to a vote of the people. The specific focus of the chapter is on the probable effect of SQ 640 on state economic development.

Olson examines how SQ 640 is likely to change the sources and uses of state government funds and then analyzes the effects of these changes on state economic development. His analysis shows that SQ 640 will slowly reduce the overall burden of state *taxes*, but that the magnitude of the reduction is very small and long-in-coming, and that is likely to be offset by an increase in the overall burden of state *revenue*. There will be a change in the relative importance of various taxes, with the sin taxes and the income tax becoming relatively more important. SQ 640 will also increase the use of fees and borrowing as means of funding government programs.

Given these changes in possibilities for raising revenue, SQ 640 will hit elementary and secondary education the hardest. This sector faces a slowly growing General Revenue Fund, limited possibilities for funding via fee increases, and limited capacity for additional borrowing. In addition, prospects for replacing state funds with the local property tax are not encouraging. Coupled with limited capacity for cost containment and an increase in demand for services, the common schools will most likely experience a reduction in service quality; i.e., a decline in student performance. Fee increases in higher education will keep quality up, but reduce enrollment. In spite of their revenue-reducing nature, SQ 640 probably increases the likelihood of increased use of tax incentives.

The changes just outlined have conflicting effects on the state's prospects for economic growth. On the one hand, the reduction in the tax burden and the increased reliance on sin taxes will have a positive growth effect. On the other hand, the increased reliance on the income tax, the increased use of fees and borrowing, the budget difficulties faced by the common schools, and the increased use of tax incentives, will negatively affect growth. Although the effects go both ways, a negative impact on economic growth is much more likely. This impact could be relatively small because many of the negative effects of SQ 640 are going to occur as small increments spread out over a long period of time. This may not be the case, however, for some potential effects—especially the effects associated with

higher education enrollment and the performance of elementary and secondary students.

Policy Implications for Economic Development

There is an economic development agenda for constitutional reform, but it is probably not what many envision. It probably has little to do with Article IX - the often-cited anti-business article, with the exception of the need for further study and debate about the issue of whether commissioners should be elected or appointed. It may be desirable to revise Article IX in the interest of leaving in the constitution what is constitutional, and placing the rest in the statutes where it may more properly belong, but that is not an economic development issue. It may be about positioning the constitution to allow more incentives for business, such as incentives targeted at industries that do well in out-of-state markets, but caution is advised here because of the poor record of incentives in generating benefits relative to costs. The principal problems created by the constitution for economic development lie elsewhere - primarily in how the constitution allows both the state and local governments to raise revenue, for both general purposes and for specific programs, especially the common schools.

The founding fathers created a constitution that is very difficult to change. The most striking testament to this is the retention of various limits on the local property tax, especially as they impact common school funding. The most striking exception in recent years has been the adoption of changes that promote, or at least appear to promote, economic development. The result, however, has been the creation of a constitution in 2000 that promotes unbalanced economic development; one that promotes one aspect of development but not another. In the long run, the limits on funding of the human resource component of the growth equation may reduce the effectiveness of incentives designed specifically for development.

The top priority items among the changes in the constitution that will better promote economic development are: (1) the elimination of the millage caps on the local property tax as they relate to elementary and secondary education, and (2) equal treatment in the constitution of all purposes funded by the property tax.

If there are further impediments to the crafting of business incentives, they should be removed. At the same time, however, there is a need to require that public investments in business incentives pass the same kind of test that businesses impose on their own investments; namely, that prospective benefits exceed prospective costs. Hopefully, this could be done statutorily; this is an important principle, but not one of constitutional stature.

There is an economic development case for rescinding the changes in Article V due to the passage of State Question 640. Such action would avoid potentially harmful outcomes at relatively little, or no, cost. If this change were made, the Legislature would gain some degrees of freedom to pass tax legislation and respond to public needs that it does not now have. Eliminating SQ 640 would not impair the right of Oklahoma voters, however, to vote pro-tax legislators out of office or to register their disapproval of tax increases through the initiative process. Coupled with the interstate competition faced by the state if its taxes get too far out of line, it is not unreasonable to believe that there would be adequate checks against legislative abuse of the power to tax in the absence of the limits established by SQ 640.

There is one outcome of SQ 640, however, that may not be corrected by rescinding the measure. This is the use of moral obligation or appropriation risk bonds that has cropped up in the wake of the limits

imposed by SQ 640. Given recent Supreme Court rulings regarding this practice, it may be necessary to amend the constitution to reinforce the intent of the constitution to ensure a balanced state budget.

The state benefits when its educational system is effectively managed, as well as adequately financed. Lingering questions about educational governance should be resolved, especially whether there should be a single planning system that jointly addresses common education, vocational-technical education, and higher education. In the interests of letting the managers manage, the State Regents for Higher Education should be allowed to allocate all of the revenues generated by the School Land Office for higher education across the entire system as needed.

References

- Clark, William (1988) "Constitutional Reform and Economic Development in Oklahoma," *State Policy and Economic Development in Oklahoma: 1988*, Oklahoma City: Oklahoma 2000, Inc.
- Holmes, Alexander (1984) "Oklahoma's Constitution and Economic Development Policies: Are They Compatible?" *State Policy and Economic Development in Oklahoma: 1984*, Oklahoma City: Oklahoma 2000, Inc.
- Warner, Larkin (1990) "Oklahoma Constitutional Revision 1988-1989," *State Policy and Economic Development in Oklahoma: 1990*, Oklahoma City: Oklahoma 2000, Inc.

THE OKLAHOMA CONSTITUTION IN 2000: A CONTINUING MEMORIAL TO ITS CULTURAL TRADITIONS

Oklahoma's constitution is both a reminder of its cultural roots and living proof, through amendments recently adopted, that these roots are still very much alive and bearing fruit today. To understand Oklahoma's constitution is to know and understand both the tenor and times when it was written and the people of the state today. For all the amendments that have been adopted, Oklahoma's constitution still retains the hallmarks of the original: distrust of power, both the power of those elected by the people and distrust of the very people themselves.

History Of The Times And The Adoption Of The First State Constitution¹

Oklahoma remained a territory longer before becoming a state than any other territory accepted into the Union prior to that time. From the Organic Act of 1890 to statehood in 1907, a government established in Washington, D.C. and managed through the power of the distant president of the United States, governed the affairs of the people. The president typically appointed governors who had no ties to the territory; indeed, most did not even live in the state before their appointment. Thus, these territorial governors had no support from local groups, little understanding of local concerns, and no real long-term investment in the future of the area. Although Oklahoma Territory was predominantly Democratic, for 14 of the years that Oklahoma was a territory, the president was a Republican, and territorial appointments were made as patronage benefits to Republicans. Further, the territorial governor had control of significant federally-appointed positions within the territory, including land office clerks and judgeships. Indeed, it seems that patronage appointments were the principal actions of the territorial government. It is little wonder that when it came time to write a constitution for the new state, the Democratically-controlled constitutional convention would be careful to curb the power of the new government.

But the Oklahoma politics of territorial days included much more than simple Democratic and Republican Party factions. A well-recognized and well-organized Populist Party fielded candidates with some success, and an emerging Socialist Party was developing that was to figure prominently in the policies of the new state through the early 1920's.² By the time of the constitutional convention, the Populist Party and the Progressives had merged into the Democratic Party, but they had forever laid their stamp on the platform of the coming convention.

Their principles were embodied in the Sequoyah Convention of 1905 "called" in an aborted attempt to have Indian Territory admitted as a separate state.³ This "convention" was little more than a ruse to force the issue of admitting Oklahoma as a unified state and to promote the political careers of a handful of ambitious men, especially William H. "Alfalfa Bill" Murray. The Sequoyah Constitution, however, became the platform upon which Democratic delegates ran for the constitutional convention in 1906. Of the 112 delegates selected for the state constitutional convention, 99 were Democrats and 12 were Republicans. The lone Independent switched immediately to Democratic after the election.

The outcome of the constitutional convention was preordained when Bill Murray was selected as the president of the convention backed by 34 delegates from the Sequoyah Convention. Virtually none of the delegates had had any previous experience in politics or the management of the people's business; only 12 of the delegates had a college degree. The Progressive/Populist agenda would be adopted whole cloth.

The Progressive/Populist agenda, as articulated by the likes of William Jennings Bryan and others, sought reform through providing greater power to government to regulate business in the interest of "social justice". This was the era of "trusts" and "combines" such as Standard Oil, school textbook trusts, and abuses of corporate power such as stock

and bond manipulation schemes. Upton Sinclair's, *The Jungle*, had appeared in 1906⁴ and so-called muck-raker journalists had bombarded the public with horror stories of corporate excesses at the expense of consumers. In Oklahoma, the corporations with the greatest power were railroads, utilities, and banks. The constitutional convention was to give them special attention, with detailed provisions for their regulation.

The Progressive/Populist agenda, however, also held that government should be responsive to the people through access to their government. Two methods provided to accomplish this were the referendum and the initiative. The Progressive platform went even further with a call for universal suffrage. This was not realized in the Oklahoma constitution, which limited suffrage to males over the age of 21. Women were allowed to vote in school district elections, however, as they had in territorial days.

Without pressure from President Theodore Roosevelt, who had to approve the constitution prior to it being submitted to the people of Oklahoma, the convention would have adopted prohibitions against Blacks voting. There were provisions for racially segregated schools, however, in the original constitution,⁵ and Jim Crow laws were quickly enacted by the new legislature. Indeed, Senate Bill 1, the first act of the new legislature, provided for segregation by race in rail cars and stations and streetcars in an act "Promoting the comfort of passengers on railroads, [etc]".⁶ This bill passed 37 to 2, with four absent and one excused from voting.

Curiously, the Progressive/Populist foundation of the Oklahoma constitution resulted in an almost schizophrenic position toward the granting of power. On the one hand, power was to be vested in government sufficient to balance that which was wielded by corporations, especially utilities, while, on the other hand, government power, itself, was not to be trusted, and curbs were placed on the exercise of power by government. Government, as seen through the eyes of the Progressive/Populist, was both friend and foe. The provisions for referenda and initiatives were ways of maintaining power in the hands of the people. Interestingly, the use of the recall for elected state officials was not contained in the constitution.

Constitutional Flexibility And Risk

A constitution is a tradeoff between flexibility and rigidity, between trust in the legislative and executive branches' actions, and the power of the people to affirm or deny change. Greater flexibility implies greater risk of change and is reflected in a constitution that lays out general principles of government. Fear of change and distrust of those who have the power to make changes, results in a constitution that is specific in its provisions and places limits on the actions of elected officials.

The final product of the constitutional convention as adopted on September 17, 1907, was lengthy in the extreme, with extensive specificity in each article. The vast majority of what should be a fundamental statement of principles was, in fact, language that is more properly contained in statutes. A detailed list of who can be provided rail passes, for example, comprised hundreds of words. To some extent the framers of Oklahoma's first constitution can be forgiven the extensive use of statutory language because of the need for direction to the first legislature and the need to create the very institutions that would be given life in the constitution. A great deal of the length of the original constitution is also due to the geographic descriptions it provides of the county boundaries.

Much of the constitution allowed amendment through statutory changes rather than through the more cumbersome process of statewide votes on specific questions. Nevertheless, much still remains to this day that is more properly statutory than constitutional. Indeed, the error of the original constitution in placing statutory language in the constitution was repeated over and over with the amendments that followed. It can not be ignored that the original reason for the specificity of the first constitution, distrust of elected officials, is the reason that later amendments are placed before the people with this same degree of specificity.

Just what constitutes statutory language and constitutional language can be debated.⁷ If a constitution is to be a document of the principles of government, little in the way of specificity ought to be included. How a department of the government ought to operate, what rules they may deem appropriate, and indeed, just what departments of government ought to be established, properly belongs in statutes. In 1916, through

initiative petition, the people were asked to add to the constitution a department of revenue – clearly a statutory decision rather than a constitutional decision. This amendment failed, and in 1931 the Oklahoma Tax Commission was created by statute. In 1937, the people were asked to add the Department of Welfare as a constitutional agency. This amendment was approved and is the predecessor agency of the current Department of Human services. In 1956 the Department of Wildlife Conservation was created as a constitutional agency of government and, through its governing board, has operated almost completely independent of legislative and executive oversight.

From an economic development perspective, there is good reason to separate what is statutory from what is constitutional. Economic development thrives in an environment of minimum risk. A constitutional provision provides some assurance that change will not be made to fundamental institutions without careful deliberation extended over some period of time during which the issues can be fully aired. In this sense, economic development is promoted by constitutional provisions on such basic principles as due process, and stable courts to enforce contracts and maintain the principle of private property. Much has been made of the difficulties of economic development in parts of the world where these principles are not assured.

But economic development requires also that government be flexible in the face of changing economic conditions. Thus, there is a trade-off between flexibility and stability, and risk and assurance. Constitutional provisions mandating economic variables that can change over time reduce the flexibility of the government. The original constitution set specific interest rate maximums that, if it had not provided for amendment by the legislature, would have frozen Oklahoma's economic development until the difficult and time-consuming process of constitutional amendment resulted in change. Much of the original constitution, particularly in the area of business regulation, contains language so specific that changes occurring naturally in institutions and corporate structures make it either irrelevant or in need of confusing case law to provide modern-day interpretation.⁸ Such language placed in the statutes would reduce the risk of confusing interpretation and thus promote economic development.

Economic development also requires flexibility to respond in a timely way to the changing needs of citizens. Constitutional provisions limiting the curriculum of certain universities to those serving the agrarian economy of 1907 would ultimately require the difficult process of constitutional change or forever condemn Oklahomans to preparation for jobs in a declining industry.

Economic development also requires expenditure by government on a host of public services. Besides the obvious need to maintain law and order, roads, schools and protection against fraud are required for economic development. A constitution that limits the ability of government to respond to these needs will limit economic development. A government structure that disperses power so that action is limited or difficult to take in a timely fashion will also hinder economic development.

While the Oklahoma constitution has undergone extensive change, its history does not demonstrate that change is easy to accomplish. Forty-eight percent of proposed constitutional amendments have been passed since statehood; only 20, or 6 percent, on the basis on an initiative by the people. Until 1974, a majority of those voting for a proposition could still fail to have the amendment approved because of the so-called "silent" vote. Thirty-one constitutional amendments were defeated by the silent vote, 7 of which would have amended Article X on revenue and taxation. The amendment process had been designed to be difficult, and until the amendment process was amended in 1974 (State Question 495) with 56 percent of the vote, the will of the voters at the polls could be thwarted by the weight given to those who did not vote at all.

This hurdle stopped a number of proposed changes that would have had profound effects on the Oklahoma of today. In 1911, the silent vote killed an amendment to require the legislature to fund 5 months of elementary and secondary education. Twice the silent vote stopped a change in the structure of higher education governance. In 1923, and again in 1935, attempts were made to create a board of regents for Oklahoma A & M in place of governance by the State Board of Agriculture. In 1964, an initiative by the people to increase the maximum millage levy for common schools by 5 mills was defeated by the silent vote. The silent vote also

killed two attempts to constitutionally require that public service companies had to receive approval from the Corporation Commission before acquiring competing parallel lines. And as a curiosity, in 1914, only seven years after adoption of the original constitution, a majority of the people voting approved an amendment to abolish the state senate and create a unicameral legislature. This change was also defeated by the silent vote.

Populists And Control Of Government

Every analysis of the Oklahoma constitution has reached the same conclusion: power in Oklahoma's government is so dispersed by design that executive authority is virtually nonexistent. From an economic development perspective, this delays timely action and creates confusion as to where to effect a change in the system if some action is required. From an accountability perspective, it virtually eliminates accountability for government actions. Nowhere is this more obvious than in the executive structure of the central government. At statehood, no fewer than 34 statewide positions were subject to voter approval, excluding members of the congressional delegation.⁹ Each person so elected claimed a constituency and, thus, cooperation among these officials was difficult to achieve at best. Twice the state has had a governor and lieutenant governor from different political parties. When combined with the constitutional provision that the lieutenant governor has all powers of the governor when the governor is absent from the borders of the state, it is little wonder that the executive branch is often viewed as ineffectual. There have, in fact, been occasions when the lieutenant governor has used the appointment authority of the governor when the governor has been absent, in order to advance the lieutenant governor's political goals.

Perhaps the biggest stumbling block to developing a coherent policy of the executive branch of government is the dispersal of power through the management of state agencies by appointed boards and commissions. A governor cannot directly affect the policies of an agency until late in the term of office as positions on governing boards are changed. Because board appointments are political by their very nature, it is not unusual for holdover board members to actively thwart the policies of a new governor out of nothing more than pure spite growing out of the election result.

Compounding this is the almost complete breakdown in the separation of power between the executive and legislative branches of government. For many boards, the Speaker of the House and the Pro Tempore of the Senate are the appointing authority. Often the number of appointments on a board is equally divided among the House, Senate, and the governor. This gives a two-thirds weight to the legislative branch relative to the executive branch. Further, in no case are legislative appointments subject to confirmation, while virtually all gubernatorial appointments are subject to confirmation by the Senate. If a state agency runs afoul of the will of the public, it is difficult to find a single party to take the responsibility or to develop a solution.

This situation was not created by accident. From a Populist view, a government that is weak is a government that is good. However, it was never envisioned in 1907 that state agencies could develop such autonomous power. Indeed, the disapproval in 1916 in a statewide referendum of the creation of a separate state agency to collect taxes was an effort to maintain fewer separate agencies. Today, however, many state agencies operate with little or no direct guidance from any single source that is responsible to the will of the people. In this sense, the desire of the Populist for responsive government has been thwarted by making the actions of the government more distant rather than more responsive.

Revenue Amendments and The Populist Philosophy

Oklahoma's constitution cannot be judged solely on the basis of that which was adopted in 1907. While amendment is difficult and time-consuming, the state constitution today is much altered from the original. 324 State Questions have been put to the people in statewide elections for the purpose of amending the constitution.¹⁰ In spite of all these proposals, nearly one every three months since statehood, the tone and philosophy of the constitution are unaltered. Women have been given the right to vote, and the right to hold elective office, many elective offices have been eliminated, consolidated, and or made appointive,¹¹ but the dispersal of power embodied in the original constitution, and the lack of flexibility of action for the legislative and executive branches, remains intact. Throughout the amendment process, there seems to be no change from the original principle that government

cannot be trusted to act without direct control by the people. Oklahoma's constitution is still not a blueprint for a *representative* form of government in anything but name.

A review of the original constitution's provisions for government revenues clearly shows this distrust. The original created many elected offices, provided little in the way of executive authority, and spoke plainly and resoundingly on the subject of tax limitation. Article X, Revenue and Taxation, enumerated the taxes that the legislature could use to defray the cost of government, forbade the issuance of debt without a vote of the people, and established a rigid separation between the public and private sectors in terms of tax forgiveness and the use of state credit. Interestingly, the use of a graduated income tax was allowed, unlike the U.S. Constitution. It was not until 1913, when the sixteenth amendment was added to the U.S. Constitution, that such a tax was allowed at the national level.

Of all of the articles of the constitution that have been amended, or for which amendments were proposed, Article X has by far received the greatest attention. Of the 324 amendments placed before the people, 118, or 36 percent, address Article X. To a significant degree, this can be attributed to the way the property tax was originally treated in Article X.

At the time of statehood, Oklahoma and most other states relied primarily on the property tax for revenues. In keeping with the Populists' general distrust of government power, the original state constitution provided for maximum millage levies. For all units of government together - state, cities/towns, townships, counties and school districts - the maximum levy was set at 43.5 mills. Each jurisdiction was provided its own maximum, with little flexibility. The school districts' maximum was set at 5 mills, although up to an additional 10 mills could be approved by a vote of the people. The county maximum was set at 8 mills with an additional levy of 2 mills for school purposes, although only one mill could be used for high schools. Public buildings could be funded with a 5-mill levy if approved by the people. By way of comparison, the average millage levy in Oklahoma today is 80 mills for all purposes, levied on an average assessed valuation of 12 percent of the market value of property subject to taxation. In 1907 the assessed value was set at 100 percent of market value. The 1907 constitutional millage maximum is thus equivalent to a millage levy today of 362 mills.

This rigid allocation of millage levy maximums has had profound effects on the various amendments that were to follow. As schools began to offer education beyond three months each year, and other functions of government were demanded by the people in the form of vocational-technical education, libraries and health services, these millage limits required amendment. The tact that was taken was to create new taxing jurisdictions with their own millage maximums rather than increasing the limits on existing units of government to provide these services. This has further proliferated the number of governmental units and thus dispersed both power and responsibility. Although multi-county libraries are constituted as separate constitutional units of government, spending approximately eight percent of property tax revenues, few Oklahomans know the lines of authority that control these governmental units. Voter turnout in school district elections is notoriously low, but not as low as in vo-tech district elections. True to the Populist desire to disperse power, the continuation of the original design of 1907 through this type of amendment has aided in separating the people from control of their government. It is important to note, however, that in creating the vocational-technical school system, the constitutional amendment allows for adjusting the millage maximum through legislative action. This is a very real benefit in terms of flexibility for government, balanced by the power of the people to reject or accept such an increase through an election at the district level.

Economic Development and Separation Of Government and The Private Sector

The original constitution was clear on the separation of the private and public sector: the private sector was to be taxed and regulated and the public sector was to provide no special benefits to the private sector in terms of tax forgiveness, gifts, or use of the state's credit. In short, the private sector and the public treasury were to be separated except through the application of uniform taxes.

Many of these provisions have been altered since the people adopted the original constitution. In response to inter-state competition to curry favor from corporate site locators, Oklahoma, like many other

states, began to develop programs to “improve the business climate”. These programs became of particular interest in the early 1960’s as the national economy began a period of sustained economic growth and firms began to expand their capital investment in new plants and technologies. Locations for plants in other places than the traditional northeast and Ohio valley areas were more often being considered. Inducements in the form of tax abatements and subsidies were becoming common tools of state public policy to lure these new plants with their large payrolls.

The original Oklahoma constitution strictly prohibited the use of many of the policy tools being used in other states. The prohibition against tax exemptions is found in no fewer than five separate sections. Four of these prohibitions are found in Article V defining the powers of the legislature. In Section 46 the legislature is barred from passing “local or special laws” ...

“Exempting property from taxation,” and

“Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability.”

Article V, section 50, states that:

“The Legislature shall pass no laws exempting any property within this state from taxation...”

Article V, Section 53, forbids the Legislature to...

“Release or extinguish...the indebtedness, liability, or obligation of any corporation, or individual...”

Article X, Section 5, states that:

“The power of taxation shall never be surrendered, suspended or contracted away...”

The original constitution also clearly forbade the use of state credit for any purpose. Article X, Section 15, states in part:

“The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation or association....”

And in Section 17 the constitution states:

“The legislature shall not authorize any county or subdivision thereof, city, town, or incorporated district...to loan its credit to any corporation, association, or individual.”

Taken together, these provisions of the original constitution prohibited the use of many of the new economic development tools that were being used in other states to compete for jobs. It is of interest that the original framers were not unaware of the potential benefits of tax abatement for economic development. The original Article X, Section 6, states in part:

“The Legislature may authorize any incorporated city or town, by a majority of its electors voting thereon, to exempt manufacturing establishments and public utilities from municipal taxation, for a period not to exceed five years, as an inducement to their location.”

Nevertheless, the use of state-level tax abatements or the use of state credit was strictly forbidden and these prohibitions remained unchanged for more than 50 years.

The first of these changes created the Oklahoma Industrial Finance Authority through the passage of State Question 391 – a measure only narrowly approved by the voters in July, 1960, despite strong support from two previous governors and a popular sitting governor, J. Howard Edmondson, and strong editorial support from both major metropolitan newspapers.¹² While editorial writers claimed the new industrial jobs coming from such a change would benefit rural areas where declining population and fewer jobs were available, the election results clearly indicate that it was urban support that cleared the way for this new economic development tool.¹³

The new Oklahoma Industrial Finance Authority acted quickly and issued two million of its authorized 10 million dollars in bonds by May 12, 1961, and approved its first two loans on October 7, 1961, both in the Tulsa area. State Question 391, although placed before the people more than half a century after the first constitution was adopted, still retains the tone and character of the framers of the original. A strict limit on the amount of bonds that could be issued was placed in the constitution with no provision for amendment by the legislature in anticipation of changing economic times. This ten-million-dollar limit quickly became exhausted and in 1969, and again in 1970, the people

were asked to increase the limit. They rejected both proposals and it was not until 1986 that the voters allowed the Oklahoma Industrial Finance Authority to increase its bonding capacity to anything like the amount needed to offset the decreased purchasing power of the dollar since 1961.

Like interest subsidies to business, tax abatement was also touted as an important economic development tool in attracting jobs to states. The original constitution strictly forbade the granting of gifts or tax forgiveness, with specific reference to the property tax. Coupled with the prohibition against contracting away tax liability, this provision was invoked by the State Supreme Court to undo a supposed agreement between the Oklahoma Industrial Authority and General Motors Corporation that allowed them to pay only an in-lieu property tax.¹⁴

On the heels of this decision, the people were asked to amend the constitution to allow this type of agreement in the name of economic development. State Question 588 was approved in April, 1985, allowing the exemption of new or expanding manufacturing plants from ad valorem taxation for a period of five years. The ease with which this amendment passed may be attributable to the difficult economic times Oklahoma had suffered, beginning in 1981 with the collapse of the oil boom. Banks had failed at unprecedented rates and unemployment was at levels unseen since the depression of the 1930's; all this, following a period of euphoric growth and increased wealth unknown in Oklahoma history.

The original constitution, in keeping with the strict separation philosophy of the Populist/Progressive writers, also forbade government ownership, either directly or indirectly, in private sector companies. Article X, Section 15, reads, in part:

“...nor shall the state become an owner or stockholder in, nor make donation by gift, subscription to stock, by tax or otherwise, to any company, association, or corporation.”

Article X, Section 17 contains a similar prohibition restricting the legislature from authorizing political subdivisions of the state to become stockholders in companies.

A variety of modern-day economic development tools were thus disallowed by the constitution. Venture capital partnerships between the state and start-up

companies, joint ventures in research and development using the resources of the state's universities, and appropriations to companies or the use of state property at free or reduced value for incubator sites, are all purported to be beneficial means of attracting jobs to a state. None of these methods could be used under the state constitution as originally constructed. The rationale, of course, was a fear that legislators and members of the executive branch could not make such decisions without succumbing to the temptation of corruption as corporations pursued their private interests. Such concerns are not without foundation and precedent.¹⁵ Notwithstanding these concerns, the people have approved on a limited basis the creation of partnerships between agencies of government and the private sector. These amendments are of very recent origin and may indicate a reduction in the Populist sentiment that was so strong in the framing of the original state charter.

In 1988, while the state was still fresh from the trauma of the oil bust and when old ways of doing things were brought into question, State Question 611 was passed. This measure created a state agency, the Oklahoma Center for the Advancement of Science and Technology (OCAST), that could use appropriated dollars to fund partnerships with private sector firms for the purpose of developing research programs, with the hope that new business ventures would result. OCAST has spent nearly \$100 million of appropriated funds on this effort since its inception, with mixed results in terms of the original goals of the program. Even with the major shift in the Populist philosophy represented by this amendment, the restrictive nature of constitutional change in Oklahoma is still evident. In terms of constitutional language, State Question 611 is statutory in nature, reflecting the general distrust of flexibility in government actions characterized by the Populist perspective.

In November, 1998, the state constitution was amended again, further breaking down the rigid barriers between the public and private sectors. State questions 680 and 681 amended Article X to allow the use of public facilities by private sector companies and the creation of partnership contracts with state universities in the area of research and development of technology. These changes represent the greatest departure from the inflexibility that characterizes the historical tone of the constitution. The legislature is given great latitude

in setting limits on these arrangements. Even so, only institutions of higher education are allowed to enter into contracts of this type and only for specific types of research activities. How broadly this will be interpreted in the future cannot be forecast at this time.

Conclusions

It is tempting to conclude that the inflexibility of the state constitution, as reflected in its heavy reliance on statutory language in the original version, has diminished with time. One might even want to draw the conclusion that Oklahomans' Populist distrust of government, private business, and even the people themselves, has been gradually replaced with a different cultural perspective.¹⁶ The major changes in the constitution that have occurred to support such a conclusion are, however, very recent. These features of the original constitution remained unaltered for nearly a century. Little else in the constitution has remained unaltered for so long.

Perhaps more relevant in arguing against such a conclusion is what has been added to the constitution, also in recent times. In 1988, the power of the executive branch was diluted by making the Commissioner of Labor an elected official, revising the amendment of 1975 that had made the position appointed. In 1992, State Question 640 was added to Article V, requiring a super-majority vote in both houses of the legislature before a tax increase could be effective. Other provisions made it easier for an initiative petition to stop a tax increase before it could be put in place.¹⁷ This constitutional provision was borne of voter frustration with tax increases following the oil bust that were required to maintain government services in the face of the dramatic declines in revenues. State Question 640 represents the Populist sentiment completely: the legislature cannot be trusted to make decisions in the best interest of the people and therefore the people must proscribe their power with the rigid provisions of a constitutional prohibition. Of all tax limitation amendments that have been placed in state constitutions in recent years, Oklahoma's is by far the most inflexible.

The people, through initiative petition, have also spoken recently with echoes of their Populist culture through State Question 632, passed in September 1990. This amendment, favored almost two-to-one by the people, limits terms of legislators to 12 years. No

clearer message of the general distrust by the people of power in government could be sent. Public discussion at the time of the election focused on the "career" politician and the supposed loss of contact with the will and wishes of the people through continued service. This is an interesting observation for a part-time legislature where the capitol is no more than a few hours drive from any member's district and virtually all members return to their homes each Friday during the four months of the session. Nevertheless, in keeping with the Populist culture, term limits are another way to diminish the power of government.

The Populist culture of Oklahoma of 1907 is quite deeply ingrained and shows no signs of abatement. In terms of economic development policies, this can pose an impediment to a number of prescriptions that have been put in place in other states. Inter-state competition may call for similar policies in Oklahoma, even though the net effects of such policies are debatable.

Perhaps most interesting is the paradoxical result of applying the Populist philosophy when it comes to the responsiveness of the government to the will of the people. The desire to forestall presumed negative actions that would come with power is so great that all actions are made more difficult. This results in blurred lines of responsibility or control, and the bad deeds the Populist philosophy wishes to cure occur because they can go unchecked. Agency heads can act with little concern for the will of the people because they are not directly responsible to them through the election process, and they are protected from scrutiny by the insulation provided by their governing boards. Multiple layers of government have been created requiring vigilance of the voter beyond that which is reasonable. When the people wish action, they find no one place that can satisfy their demand, further increasing cynicism and disillusionment with government. Pity the poor Populist who lives in fear of power borne of jealousy of success, convinced that success is always won through some type of chicanery or exploitation of others, and never able to believe that there are those who truly believe in public service.

Oklahoma has gradually amended her constitution to allow some policies contrary to the Populist culture and it could be argued that, given an economic crisis, Oklahomans would accept further amendments. The amendment process is, nevertheless, a daunting task for any group to undertake, given the cardinal premise

of the Populist culture: nobody desires power for any purpose other than their own private benefit.

Endnotes

¹See Danney Goble (1980) *Progressive Oklahoma: The Making of a New Kind of State*, Norman, OK: University of Oklahoma Press, for a complete analysis of the state constitutional convention.

²Worth, Robert M (1987) *Oklahoma Populism: A History of the Peoples' Party in the Oklahoma Territory*, Norman, OK: University of Oklahoma Press.

³See Amos D. Maxwell (1953) *The Sequoyah Constitutional Convention*, Boston: Meador Publishing Company.

⁴Sinclair, Upton (1906) *The Jungle*, New York: Doubleday.

⁵Oklahoma State Constitution (1907), Article XIII, Section 3.

⁶Oklahoma Senate Journal (1907), Chapter 15, 201.

⁷Fellman, David (1960) "What Should a State Constitution Contain?" in W. Brooke Graves, Ed., *Problems in State Constitutional Revision*, Battleboro, VT: Vermont Publishing Company.

⁸The nonsense contained in the Supreme Court decision in *Fent v. Oklahoma Capitol Improvement Authority* (No. 92, 390, July 13, 1999) concerning "moral obligation" bonds, self-liquidating bonds, and appropriation-risk bonds is a classic example of, in the words of Justice Lavender (Opala and Wilson joining), "nothing less than artful subterfuge and sophistry" resulting from changed terms for old concepts.

⁹In 1910, even the lofty post of State Printer was deemed such an important policy making position that it was subjected to direct voter oversight.

¹⁰The people have voted in statewide elections on 379 state questions; however, a state question may address both statutory changes and amendments. Also note that state questions are numbered consecutively whenever an initiative is filed, and

often the petition is abandoned or set aside by the Oklahoma Supreme Court and no vote is taken. Thus, while 683 state questions have been numbered to date, the number of elections is much smaller.

¹¹In 1975, the constitution was amended to make the Commissioner of Labor an appointed official rather than an elected official. In 1988, however, the constitution was amended to make this commissioner an elected official again!

¹²"Deserving State Support," *Daily Oklahoman*, July 25, 1960.

¹³See the analysis of the election results in "Notable Notes", *Daily Oklahoman*, August 14, 1960, p. B4, in which the author, J. Willis Baker, boldly chastises those voting against State Question 391, saying "those voters must have been thinking 'No, we are not interested in helping to bring more industry to Oklahoma.'"

¹⁴See *General Motors Corporation v. State Equalization Board* (1983). Also see Alexander Holmes (1984) "Oklahoma's Constitution and Economic Development: Are They Compatible?" in *State Policy and Economic Development in Oklahoma: 1984*, Oklahoma City, OK: Oklahoma 2000, Inc., for a detailed discussion of this case.

¹⁵See Harry Holloway, with Frank Meyers (1993) *Bad Times for Good Ol' Boys*, Norman, OK: University of Oklahoma Press, for a detailed discussion of but one of a number of cases of government/corporate corruption in Oklahoma's history; some of which have reached even into the chambers of the State Supreme Court and the executive mansion.

¹⁶See Alexander Holmes, et al (1998) "Social Culture and Economic Development," in *State Policy and Economic Development in Oklahoma: 1998*, Oklahoma City, OK: Oklahoma 2000, Inc., for a detailed discussion of the historical roots of Oklahoma's culture and its effects on economic development.

¹⁷See Donald Murry, et al (1996) *In Search of Smaller Government: The Case of State Finance in Oklahoma*, Oklahoma City, OK: Oklahoma 2000, Inc. Chapter IV in the current study is an analysis of the probable effect of SQ 640 on state economic development.

EDUCATION AND THE OKLAHOMA CONSTITUTION

The original Oklahoma Constitution of 1907 contained a basic provision calling for the new state to establish and support educational and other public institutions (Art. XXI) and for the “establishment and maintenance of a system of public schools” (Art. I, Sec. 5). This broad authority has served as a foundation for state government’s creation of systems of higher education institutions, vocational-technical school districts, a state-local library system, and pre-K through grade 12 or “common schools.” In this report we examine the evolution of the constitutional provisions relating to these educational systems. Then we suggest several major themes and anomalies in the education-related parts of the Constitution. Finally, we introduce selected challenges for constitutional reform.

Higher Education

The Oklahoma Constitution’s provisions relating to the state’s system of higher education cover four principal topics: (1) the structure of governance, (2) technology transfer, including the use of institutional facilities and the financial involvement of staff in commercial applications of research and development, (3) access to property tax revenues by two-year colleges which are also statutory vocational-technical education districts, and (4) the revenues from school land and related assets owned by the state and allocated to selected institutions.

By far the most extensive impact is from the constitutional determination of the structure of higher education governance. Newly-approved (1998) provisions regarding higher education and cooperation with private business in research and development with potential commercial applications will have a significant impact on the state’s research institutions and on the state’s technology-based economic sectors. Although currently limited in its application, the method of financing two-year colleges that are vo-tech districts

may be a harbinger of things to come. The allocation of school land funds is best viewed as an anachronism that had a rational basis at the time of statehood. Another anachronism linked to the Constitution involves the former practice of racial segregation in which Langston University was the only state higher education institution admitting African Americans until the late 1940s; this topic will be treated below in the discussion of public school segregation.

The Structure of Governance

In this section the term “governance” refers to the structure by which various public boards oversee the general operations and academic programs of colleges and universities. When the Oklahoma Constitution was adopted, there were already in place seven public institutions of higher education in the former Oklahoma Territory—three of which had been created as early as 1890. No such public institutions existed in Indian Territory (the state’s eastern half). The very last section of the new Constitution entitled “Schedule” called for the boards of regents of the seven institutions to continue in office unless otherwise provided by law. The only specific directive on governance called for a Board of Agriculture to also serve as the Board of Regents of all State Agricultural and Mechanical Colleges (Art. VI, Sec. 31). This board, all of whose members were required to be farmers, was reduced from eleven to five members by an amendment approved in 1912.

Prior to statehood, appointments at public institutions of higher education often involved political patronage.¹ The 1907 Constitution did not attempt to remove higher education from the patronage system. The tone was set immediately when in 1908 Governor Haskell used his appointment power over boards of regents to replace the president of the University of Oklahoma with one of his political supporters, and to dismiss more than a third of the institution’s faculty.

No doubt the expansion of patronage as well as concern for geographic balance and student access led to the creation of more state institutions—especially in the former Indian Territory. Within three years of its admission to the union, Oklahoma had nineteen state colleges and universities.²

Governance and the allocation of appropriations to the state colleges and universities were relatively uncoordinated during the state's first thirty-five years. Almost the entire framework was statutory rather than constitutional. In 1935, for example, there were 18 state institutions managed by nine separate governing boards. The closest to a coordinated sub-system involved the state's six teachers colleges—all of which were governed by the State Board of Education.³ Five of the agriculturally-related institutions were governed by the State Board of Agriculture. Seven institutions had their own separate boards. In some instances board appointments required the advice and consent of the state Senate; in others there was no such constraint. Some of the boards served at the will of the governor even though the members had fixed terms.⁴

The poor performance of Oklahoma's state supported higher education system is described by Dan Hobbs, former Vice Chancellor of the Oklahoma State Regents for Higher Education:

During the 1920s and 1930s, the public colleges were hopelessly embroiled in Democratic politics—the only kind then available in Oklahoma. Every gubernatorial election was followed by wholesale changes in the membership of institutional governing boards, as each incoming governor replaced his predecessor's appointees with his own. With changes in governing boards came changes in presidents, teachers, janitors, and grounds-keepers. During the 1920s, there were fifty-three different presidents presiding over the eighteen public institutions, an average of one new president every three years. In the 1930s, fifty more presidents rotated through the system, creating conditions of instability which almost guaranteed educational failure.⁵

Moreover, the instability at institutions was not simply a matter of the exercise of patronage. Ideology was sometimes involved. In 1922, for example, a coalition involving farmers, laborers, and socialists took over the Democratic Party and placed their candi-

date, Jack Walton, in the Governor's office. Oscar Ameringer, arguably the most famous of the state's socialists, wrote of the following strategy of the "Farmer-Labor Reconstruction League":

There was one state institution in particular which we were determined to capture and hold, come what may. That was the Oklahoma Agricultural and Mechanical College [now Oklahoma State University, Stillwater]. A pitifully small number of its graduates returned to the shops and farms from which they had come. Instead, this institution of learning had been turning out, to the vast disgust of our farmers and miners, a pedigreed collection of potential life-insurance, lightning-rod, patent-fence-gate, and oil-burner salesmen, prepared to bite the paternal hands that fed them. Older heads among our crowd figured that it might be a good idea to give the youngsters some idea of the economic time of day.⁶

In 1923, Governor Walton took control of the Board of Agriculture. George Wilson, who had been active in the socialist-leaning movement, was appointed the new president of Oklahoma A&M. There followed mass resignations and firings, with new appointments from Farmer-Labor Reconstruction League supporters. The outcry was so great that Wilson was removed only two months after he became president, and those fired were reinstated.⁷

To overcome the severe instability created by gubernatorial politics and ideological conflicts, State Question 300 creating Article XIII-A of the Constitution was passed in 1941 establishing a nine-member "co-ordinating board of control" over the governing boards of the various institutions. The members of the Oklahoma State Regents for Higher Education (OSRHE) serve nine-year staggered terms and are appointed by the Governor with the advice and consent of the state Senate. Members are "removable only for cause."

The 1941 constitutional amendment established an "Oklahoma State System of Higher Education" consisting of all institutions supported by state appropriations. The OSRHE's responsibilities were set forth to include:

- Prescribing educational standards for each institution.

- Determining functions and courses of study at each institution
- Granting degrees at each institution
- Recommending to the Legislature budget allocation of appropriated funds
- Recommending to the Legislature fees to be charged by the institutions

To further overcome political favoritism in the appropriations process, the new constitutional provision required that higher education appropriations be made to the OSRHE in a lump sum, with the agency responsible for actual allocation of funds among the institutions. In other states, these powers of the coordinating board often remain with specific institutional governing boards.⁸

As best we can tell from available references, there was no attempt by then Governor "Red" Phillips to solve the problem of coordinating the state system of higher education by centralizing authority in the Governor's office. Both Governor and Legislature were willing to turn this function over to an appointive constitutional board. At that time, Oklahoma Governors were limited to single four-year terms, so that there was no way that a Governor could take control of OSRHE through the normal sequence of appointments. (Since 1966, Governors have been able to serve two terms.) The voters, too, must have been tired of the previous system of higher education governance, for they approved State Question 300 by a 61 percent margin.

The Governor, however, did remain in partial control of governing boards of individual institutions through the ability to appoint and dismiss board members. This problem was alleviated for a significant share of the institutions when the three most significant boards were given further constitutional status, although the Governor continued to control the appointment process with advice and consent of the state Senate. Members could only be removed for cause.

In 1944 the Constitution was amended creating a nine-member Board of Regents for A&M Colleges as an independent body separate from its former status as identical to the Board of Agriculture (Art. VI, Sec. 31). The President of the State Board of Agriculture continues to be a member, and the other eight (a majority of whom must be farmers) are appointed for eight-year staggered terms. Also in 1944 a seven-member Board

of Regents for the University of Oklahoma was created, with members serving seven-year terms (Art XIII, Sec. 8). Four years later, an amendment was approved creating a constitutional Board of Regents of Oklahoma Colleges for the six teachers' colleges, consisting of eight members serving nine-year terms plus the State Superintendent of Public Instruction. In 1955, attempts to amend the Constitution to create two more constitutional boards failed. These proposed boards would have overseen the Oklahoma College for Women (now the University of Science and Arts of Oklahoma) and the Oklahoma Military Academy (now Rogers State University).

Not only did the creation of the three constitutional operating boards in 1944 and 1948 further diminish the Governor's power over the governing boards, but it was believed that constitutional status would give them more power relative to the OSRHE. At the very least, it can be said that the Legislature could not abolish the three constitutional boards of regents. It is clear, however, that Legislative control over the jurisdiction of the constitutional governing boards is substantial. In 1992, for example, the Legislature shifted jurisdiction of Cameron University at Lawton from the Board of Regents for A&M Colleges to the Board of Regents for the University of Oklahoma. In the late 1990s, the higher education facility at Claremore was shifted from a statutory board to one constitutional board (the Board of Regents for Oklahoma Colleges) and then to another constitutional board (the Board of Regents for the University of Oklahoma).

Technology Transfer

A 1997 report on technology transfer prepared for the state's Oklahoma Center for the Advancement of Science and Technology (OCAST) defined technology transfer as the "practices of Oklahoma research institutions in the commercialization of *new* technologies and inventions emerging from their programs." The report focused on "issues of intellectual property protection (e.g. patents and copyrights), the physical and legal movement of invention to the private sector via licensing or other arrangements, and the development of these early stage technologies into successful new products."⁹ This system of technology transfer is in stark contrast to the old, conventional approach to much university research, with basic and applied efforts being undertaken by salaried professors, and with

results available to all who are willing and able to sift through scientific journals and reports.

This new, proactive, and entrepreneurial approach to state university research in Oklahoma encountered constitutional roadblocks that were the legacy of the anti-business sentiment pervasive in the drafting of the 1907 document. In particular, the Constitution contained a provision apparently prohibiting universities from sharing laboratory equipment with private companies, and certainly blocked participation in ownership. Art. X, Sec. 15 of the 1907 Constitution stated:

The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation . . . ; nor shall the State become an owner or stockholder in, or make donation by gift, subscription to stock, by tax or otherwise, to any company, association, or corporation.

The severe anti-business (and perhaps even pro-socialist) bias of the original Oklahoma Constitution is illustrated by the permissive language of Art. II, Sec. 31.

The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited, except that the State shall not engage in agriculture for any other than education and scientific purposes and for the support of its penal, charitable, and educational institutions.

Thus while the framers of the state's Constitution were opposed to any state assistance to a business firm, they were quite willing to allow the state government to engage in any business for public purpose except farming and ranching.

In 1988, Art. X, Sec. 15, was amended to permit the recently-established OCAST to make grants and loans to firms, and to even take an equity position in firms "involved with research or patents from projects involving Oklahoma colleges or universities." This liberalization applied only to OCAST and not to the state's universities. Finally, in 1998, State Questions 680 and 681 were passed, amending Art. X to facilitate and motivate state higher education institutions' full participation in technology transfer and its fruits. S.Q. 680 permits higher education facilities to be used for research and development that has "potential economic value for a business enterprise." In addition,

S.Q. 681 permits institutions and their employees personally to "have an ownership interest in technology" resulting from campus-based research and development.

While it is too early to identify major economic development impacts from the change in higher education's constitutional environment, the potential is clearly present. No longer need higher education administrators worry about constitutional violations if there is profit from research.

Two-Year Colleges and the Property Tax

The constitutional creation of area vocational-technical school districts as units of local government with access to the local property tax base will be discussed below. At this point we note that the statutes provide that state two-year colleges may also be designated by the OSRHE to be area vocational-technical school districts (70 O.S. 1991, Sec.4411). The three two-year state colleges in Oklahoma City and Tulsa have been so designated, and as a result are able to use local property tax revenues to partially cover operating and capital costs. The nine other two-year colleges in the state system of higher education do not have this designation and rely almost exclusively on state appropriations and tuition revenue.

School Land Revenues

In the Morrill Act of 1862, the U.S. Congress required each state to establish a college emphasizing the agricultural and mechanical arts. Federal lands were given to the states, the revenue from which was to help fund the colleges. When Oklahoma Territory was established, land grants involving Section 13 in each township were reserved to generate revenue for higher education institutions. Art. XI, Sec. 5 of the Constitution of 1907 reproduced the policy of territorial days. A subsequent section will review the allocation of revenues from Sections 16 and 36 to the state's common schools. The federal government provided an initial grant of \$5 million to the new state to compensate for the fact that there were no school lands in Indian Territory. Total school land trust assets generating revenues for higher education and common schools are now in the neighborhood of \$1.5 billion, about two-thirds of which is in the form of bonds and equities, with the remainder in land and mineral assets.¹⁰

The higher education school land policy under the Constitution, still in effect, allocates one-third of the school land funds to the University of Oklahoma and Northern Oklahoma College, one-third to Oklahoma State University and Langston University, and one-third to the original six state teachers colleges. The total revenue from this source amounted to about \$14 million in the 1998 fiscal year.¹¹ In order to ameliorate the unfairness in funding among state higher education institutions caused by the school land funds, the Oklahoma State Regents for Higher Education allocate Section 13 "offset" funds from the main higher education appropriation.

In State Question 684, to be voted upon in the next general election, the people will consider amending the Constitution's Art. XI, Sec. 5 to permit the higher education and common school beneficiaries of school land funds to access revenues from capital gains as well as revenues from regular rent, dividends, and interest. The proposed amendment deletes from the Constitution the requirement that the trust fund created by the school lands policy "shall never be diminished, but may be added to."

Vocational Education

Oklahoma's original Constitution included the following provision: "The Legislature shall provide for the teaching of the elements of agriculture, horticulture, stock feeding, and domestic science in the common schools of the State." (Art. XIII, Sec. 7.) This provision, still in effect, reflected the dominant position of agriculture in the structure of the state's economy in 1907 and the agrarian-Populist spirit of the times.

In spite of the above constitutional rhetoric, vocational-technical education in Oklahoma has been largely a response to initiatives by the federal government. The Smith-Hughes Act of 1917 provided federal funds for vocational education in agriculture, trades and industry, and home economics. Cooperative funding from state and local jurisdictions was required. Federal assistance was later expanded to include practical nurse training, distributive education, and technical training.¹² The programs were implemented in public high schools and, at the state level, were managed by an administrative component of the State Department of Education.

The federal Vocational Education Act of 1963 mandated the creation of area vocational-technical schools. By having unified facilities serving the students from a number of school districts, this approach achieves substantial economies of scale in the use of specialized equipment and teachers. Oklahoma education leaders determined that this should lead to the creation of a separate state agency to manage vocational-technical education, and that local vocational-technical school districts should be created with access to local property tax revenues for operations and capital. The result was the 1966 passage of State Question 434, adding Art. X, Sec. 9B.

The 1966 amendment granted to newly-created area vocational-technical school districts access to a 5 mill levy for operations, and the ability to issue bonds for capital up to an amount equal to 5 percent of net valuation of taxable property in the district. Simple majority voter approval was required for both the operating and the capital levies; the operating levy was to remain in place until a citizens' vote to rescind. The amendment also contained the following language transforming the new section of the Oklahoma Constitution into a quasi-statute: "The Legislature may alter, amend, delete, or add to the provisions of this section by law."

Subject to the above language, the Oklahoma Legislature did change this section of the Constitution "by law." In 1984, vocational-technical districts were granted access to another 5 mills of property tax revenue if the voters approve an "incentive levy." In 1993, the Legislature made it clear that there is no need for annual voter approval of this incentive levy; in 1991 wording was added clarifying how to handle the taxing power of colleges which are also vocational-technical districts in cases in which there is an overlap with the boundaries of an area vocational-technical school.

Libraries

Oklahoma's public libraries are very much a local government function—both in terms of control and in terms of finance. In the fiscal year ending June 30, 1997, 88 percent of the income of local public libraries and library systems was derived from local sources.¹³ The early development of free public libraries in Oklahoma was facilitated by Andrew Carnegie's gifts. In

addition, a state library extension service was created in the 1920s to provide books for rural communities and farms.¹⁴

The state's citizens recognized the importance of public libraries in 1960 when they approved, by the thinnest of margins, a new Sec. 10A of Art. X of the Constitution granting local libraries direct access to the property tax. The 1960 amendment permitted a vote on a tax levy of no more than 2 mills for multi-county systems in counties with less than 250,000 population and for city-county library systems in Tulsa and Oklahoma Counties. Once approved by the people, the tax was to remain in effect until rescinded in an election. In 1976, the Constitution was amended further, raising the library tax cap to 4 mills and permitting counties in excess of 100,000 population to establish city-county systems, with multi-county systems in smaller areas. An additional amendment in 1994 raised the constitutional cap for the library tax to 6 mills in counties with more than 150,000 population.

Elementary and Secondary Education

In terms of expenditure of funds and employment of personnel, Oklahoma's system of elementary and secondary schools is the largest single category of state and local government expenditures. Sometimes called the "common schools", the system was mandated by Congress in the Oklahoma Enabling Act of 1906 that set forth conditions which had to be met in order for statehood to be achieved. Article I, Sec. 5 of the 1907 Constitution repeated verbatim the provision from the Enabling Act.

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; and said schools shall always be conducted in English: Provided, That nothing herein shall preclude the teaching of other languages in said public schools: And Provided Further, That this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children.

The last prescription dealing with segregated schools was removed in 1977 as a result of State Question 526. Additional constitutional requirements

appear in Article XIII establishing the organizational structure of common schools. These deal with the provision of education for the deaf, mute or blind; compulsory school attendance; the creation of an independent committee appointed by the Governor to choose textbooks to be provided by the state; and the creation of the State Board of Education. The elected office of the Superintendent of Public Instruction was established in Article V of the Constitution, creating an executive department. Just as important as the provisions in Article XIII are arrangements for financing common schools appearing in Article X (Revenue and Taxation) and Article XI (State and School Lands).

The Superintendent of Public Instruction and the State Board of Education

The position of Superintendent of Public Instruction is created in Art. VI, Sec. 1.A, of the Constitution. Elected in a statewide vote for a term of four years, the Superintendent must be at least 31 years of age and have been a qualified elector in Oklahoma for at least ten years. The Superintendent may be elected to unlimited successive terms. Until 1942, the Constitution required that this office (as well as others) be filled by a male.

The Superintendent is the chief administrator of the state's system of public schools and is required by the Constitution to serve as President of the State Board of Education. The structure of the State Board of Education is not spelled out in the Constitution and is left to the statutes. The Constitution places the Superintendent on the State Board of Equalization, a group of state officials who attempt to ensure property tax equalization across counties (Art. X, Sec. 21) and who certify the amount available for legislative appropriation (Art. X, Sec. 23). The Superintendent is also a member of the Board of Regents of Oklahoma Colleges (Art. XIII-B, Sec. 1) and one of the Commissioners of the Land Office (Art. VI, Sec. 32).

Racial Segregation

Article XIII, Sec.3, of the 1907 Constitution further clarified the nature of Oklahoma's segregated public schools. The "colored children" for whom separate schools were to be maintained were defined as "children of African descent." All other children were to be considered "white children." Thus the Oklahoma

Constitution required *de jure* segregated schools. Higher education institutions were also segregated with African Americans admitted only to the “Colored Agricultural and Normal University” at Langston. Two ground-breaking cases before the U.S. Supreme Court in the late 1940s put an end to Oklahoma’s system of segregated higher education. At the elementary and secondary level, the practice was abolished nationally as a result of the U.S. Supreme Court’s *Brown v. Board of Education* decision in 1954.

By the mid-to-late 1960s, the state’s schools were well on their way to being desegregated, and the job was reported as complete by the mid-1970s.¹⁵ The system of segregated public schools had lasted for more than half a century. Beyond the fundamental character of a two-tiered Jim Crow society, a few key features of Oklahoma’s segregated public school system may be noted.

Geographic Distribution. During the period of segregated public schools, black children accounted for around 7-8 percent of total state enrollment. In 1955, when total black enrollment was nearly 34,000, about one-third of the black children were in Tulsa and Oklahoma Counties, and a third were in another ten counties. The remaining third was spread, in varying densities, across the state’s remaining 65 counties.¹⁶

Buildings. In the early years, there was apparently great difficulty in obtaining capital funds for the black schools in counties that had a relatively small property tax base per student. In his 1940 biennial report, the State Superintendent of Public Instruction pointed with alarm to the inability of the “separate schools” to get the needed matching funds to get federal construction money from the Work Projects Administration.¹⁷

Pay Discrimination. Black teachers were typically paid less than their white counterparts with equal qualifications. This practice ceased after 1947 when an Oklahoma City black teacher was successful in charging a violation of the U.S. Constitution’s 14th amendment.¹⁸

Costly Segregation. Where the African American population was relatively sparse, the separate schools could often not be large enough to obtain economies of scale. This meant high unit costs. In the 1954-55 school year (the last for which segregated data are published), the expenditures per student in average daily attendance (ADA) net of capital outlays and interest payments were \$216 for white students and \$242 for black students. One of the state’s poorer

counties, Pushmataha, illustrates the cost differential due to density. In that county in 1954-55, operating expenditures per ADA were \$230 for white and \$475 for black students. The county’s “separate” school system included 54 students, two principals, and four teachers.¹⁹

School Year

At the time the Constitution was adopted in 1907, communities often had difficulty financing schools. Schools were often not able to keep operating during what is today considered to be a normal school year. The 1907 Constitution required that schools be open at least three months each year (Art. XIII, Sec. 4). A 1912 effort to amend the Constitution to require a five-month school term failed. The three-month requirement remains in the Constitution.

Textbooks

Art. XIII, Sec. 6, of the 1907 Constitution stated that “The Legislature shall provide for a uniform system of textbooks for the common schools of the state.” In the 1930s and 1940s, a statutory Textbook Commission of public school educators was appointed by the Governor to choose approved textbooks. These appointees were “removable at the pleasure” of the Governor (Sess. Laws 1933, Ch. 84). However, textbooks were not free to all students. In 1941, for example, the Legislature required county commissioners to provide textbooks to pupils who were financially unable to purchase copies (Sess. Laws 1941, Ch. 28).

A 1946 amendment to the Constitution requires the state to provide free textbooks. The amendment also creates a selection committee composed of “active educators” to prepare “official multiple textbook lists.” Local school districts are required to create committees of active educators to choose the specific texts to be adopted (Art. XIII, Sec. 6).

School Lands

Similar to the land grant resources available to higher education, revenues from Sections 16 and 36 in each township were set aside for support of common schools in Oklahoma Territory. The 1907 Constitution continued this policy—as supplemented with the

previously mentioned \$5 million grant from the federal government to make up for the fact that there were no public lands in Indian Territory. During the 1998 fiscal year, Oklahoma schools in all 77 counties received \$38 million in school land earnings.²⁰ These funds accounted for 1.5 percent of general fund revenues to the state's school districts.²¹

Teachers' Retirement

The Constitution permits the Legislature to establish a system to provide retirement benefits to teachers and employees of public schools and state institutions of higher education (Art. 5, Sec. 62). The initiative petition creating this provision was approved in July, 1942, and the Teachers' Retirement System of Oklahoma was established the following year. The Constitution offers no constraints on the operation of the system other than the requirement that benefit levels should be equal and uniform "within the same classification according to duration of service and remuneration received during such service."

The Property Tax

The property tax as constrained by the Constitution is utilized to provide annual revenues for school district operations and to provide funds to service bonds issued by districts for buildings and equipment. Constraints on property taxes for schools are specified in the Constitution. The effectiveness of the property tax as a revenue-generator for schools is also affected by various tax administration policies, one of the most important of which is the treatment of public service property.

Property Tax Revenues for Operations. The specific or maximum rates at which property taxes may be levied for school districts is determined in the Constitution (Art. X, Secs. 9, 19). This includes a mandatory 4 mill levy; 5 mills by the County Excise Board; 15 mills by the local school board; a 10 mill support levy and a 5 mill emergency levy by the school district, both of which must be approved annually by a majority of district voters; and a 5 mill district building fund levy which must also be approved by a majority.

The optional millages are typically approved, so that throughout Oklahoma, school districts have access to a total rate of 44 mills each year. In those counties

whose voters have approved the exemption of household goods from the personal property tax, the actual millage rate is slightly higher. The 1992 constitutional amendment permitting such exemption provided that its implementation should be revenue neutral, i.e. other property tax rates have to be raised sufficiently to offset the exemption.

Property Tax Revenues for Capital. The Constitution also permits districts to issue general obligation bonds for capital projects, with the amount of the bonds limited to 10 percent of the value of taxable property in the district, and terms of the bonds not to exceed 25 years (Art. 10, Sec. 26). A property tax of sufficient millage is levied for a sinking fund of adequate size to service the bonded indebtedness.

Centrally Assessed Property. Article X, Sec. 21 of the Oklahoma Constitution requires that the State Board of Equalization "shall assess all railroad and public service property." In practice, this prevented local county assessors from over-assessing the public utility and transportation firms, much of whose revenues derive from customers in other counties and states. In practice, also, the firms centrally-assessed were assigned higher assessment ratios than other property owners, i.e. they were required to pay higher effective property tax rates.

The practice of higher tax rates for centrally assessed property has been very important for public schools because the property tax is by far the principal source of their locally-generated revenues. Today, however, both federal transportation law and new competitive forces in the deregulated utility industries, are making it more difficult if not impossible to levy above-average property tax rates on centrally-assessed firms.²² In response, the state excise board has reduced these taxes to forestall litigation based on equal protection issues.

Major Themes and Anomalies

As we look at the evolution of Oklahoma's Constitution as it affects education, we observe several important themes. The themes include racial segregation, the commitment to vocational education, and extreme distaste for the property tax. There are also anomalies or inconsistencies in which the Constitution treats local school districts' fiscal requirements in a much more restrictive manner than it treats other local taxing

entities, in the centralized choice of textbooks, and in which higher education institutions are treated differently with respect to governance and finance.

The Economic Costs of Segregated Education Systems

Contemporary analyses of the determinants of state economic growth emphasize the critical role of education and workforce development. In this context, Oklahoma's half-century practice of constitution-based segregated education seems out-of-sync. Throughout the state's early history, the white majority exhibited strong preference for racially-segregated public schools and for a system of higher education with only one institution accepting blacks. Arguments over whether Oklahoma was a "southern" or a "western" state are likely to be settled quickly when reference is made to the 1907 Constitution and the very first statutes (Jim Crow) that were approved by the first session of the Oklahoma Legislature.²³

The economic and human resource development implications of this practice were undoubtedly negative. This was especially true in rural areas with relatively sparse black populations. However, the effects were probably not as negative in Oklahoma as they were in the deep South from which Jim Crow practices were imported. With a statewide black population share of only 7-8 percent, the negative development effects of segregated public schools in Oklahoma were never as great as in the Southeastern states. Moreover, perhaps because Oklahoma power structure was never dominated by a planter class, Oklahoma's treatment of its "separate" schools was apparently not as neglectful as in the old South, particularly with respect to per student spending.²⁴ The fact that Oklahoma did not treat its black schools as brutally as was the case in Mississippi or Alabama was irrelevant, however, to black leaders who observed substantial differences within Oklahoma.²⁵

African American students also faced challenges in Oklahoma's segregated system of higher education. Langston had limited resources and lacked advanced and professional programs. After 1935, blacks studying specialized fields not offered in Langston were provided a subsidy by the state for tuition and mileage to study elsewhere. The 1940 biennial report of the State Department of Education stated that such subsi-

dies were paid to 252 students in the amount of \$4,999.85 to cover claims of \$13,237.68 and noted "All of the unpaid claims referred to are on file, but cannot be paid unless the Legislature makes an appropriation therefor."²⁶

Commitment to Vocational Education

Oklahoma has always been enthusiastic about practical education. In designing systems of local support for public education, the Constitution deals magnanimously with vocational-technical education districts and has been less generous with common schools. The vo-tech districts can access up to 15 mills of property tax revenue, while the common schools have access to only 44 mills to meet a vastly more extensive set of educational responsibilities. Indeed, Oklahomans' willingness to burden themselves via the property tax for vocational-technical education is anomalous with a general propensity to resist property taxes. This helps explain why the common schools rely much more heavily on transfers from the state government than is the case with the vo-tech districts. There is a tendency for Oklahomans to emphasize a level of pride in their vo-tech system that is often absent from their outlook toward public schools. The high status of Oklahoma's vo-tech system is reinforced by evaluations outside the state; the Kiplinger organization recently rated the system the best in the nation.²⁷

Hatred of the Property Tax and Centralized Funding for Education

Oklahoma's discomfort with the property tax was embodied in its 1907 Constitution's limits on millage rates and on borrowing to be serviced by that tax. This distaste is evident in a series of amendments throughout the state's history extending to three state questions approved in 1996 (State Questions 675, 676, and 677). The result is a state/local tax structure that is quite different from that of the typical state. In the 1996 fiscal year, Oklahoma's property tax generated 15.5 percent of all state and local government tax revenues; the national average property tax share was 30.4 percent.²⁸ The same pattern is observed with respect to public schools, alone. In fiscal 1992, the Oklahoma property tax generated 21.1 percent of total school revenues; nationally, the property tax share was 37.3 percent.²⁹

Because the property tax is virtually the only local tax source available to school districts, adequate funding for elementary and secondary education has depended upon the state government supplying an ever-increasing share of school revenue. Attempts to amend the Constitution to raise more local property tax revenue for common schools have generally failed, and public school supporters have naturally turned to the state for needed funds. The state's share of public school funding has grown from 41 percent in 1958-59 to 60 percent in 1979-80 and to 70 percent in 1997-98.³⁰ Moreover, the stimulus for school supporters to seek more local property tax revenue is further weakened by the application of Oklahoma's state aid formula which equalizes weighted per pupil operating budgets.

Oklahoma's financing of community colleges is anomalous in the context of systems throughout the nation. With the exception of modest property tax revenues flowing to the three community colleges in Tulsa and Oklahoma City by virtue of their being classed as vo-tech districts, virtually 100 percent of the tax-based funding of the other nine state 2-year colleges flows through state government. This is in marked contrast with the funding of community colleges nationwide. In 1992-93, for example, 17.8 percent of community college funding was from local sources.³¹

Inconsistencies in the Framework for Local Fiscal Support of Education

The Constitutional requirement that several of the millage levies must be approved annually by the voters in a school district adds uncertainty to the budget process and absorbs district funds for the administration of the elections. Such annual votes are not required by other local taxing jurisdictions, including libraries, solid waste management districts, emergency medical service districts, health departments, and area vocational-technical schools.

While the annual school millage levies require approval of only a simple majority, it takes 60 percent approval for a school bond issue. Public school supporters note with envy the vocational-technical schools' ability to raise money for facilities with only a simple majority approving a bond issue. It is possible that communities will find it increasingly difficult to gain support for school facilities as the voting public be-

comes increasingly older. Moreover, state funds for equalization funding across districts with varying levels of assessed valuation per pupil are applied very effectively with respect to operating expenses, but have little impact with respect to capital expenditures. The well-to-do districts are better able to finance facilities than are the poor districts.

There is also a question as to the desirability of the 10-percent-of-assessed-valuation maximum for borrowing. Some would argue against such ceilings on the grounds that the bond market is sufficiently sophisticated to judge how much a district can afford to borrow.

Central Control and Textbook Choice

Today's education reforms for elementary and secondary education promote site-based management, parental choice, and greater local control. Yet the Constitution requires the use of a governor-appointed State Textbook Committee to choose limited lists of approved text books which the state will provide to local districts. Public attention has recently been focused on this process as a result of the Textbook Committee's requirement that science books include a disclaimer suggesting doubt about the theory of evolution.

Anomalies in the Constitutional Structure of Higher Education

For those wishing to reform and modernize the Oklahoma Constitution, the Oklahoma State Regents for Higher Education presents a cautionary tale. On the one hand, there is much to be said for streamlining the executive branch of state government and putting the Governor in a position of power and responsibility. However, as discussed above, the history of Oklahoma's public system of higher education prior to 1941 suggests that such an approach might not work well. In fact, the Governor, the Legislature, and the people apparently recognized this when they established the OSRHE as a constitutional coordinating board of control. It must be admitted, however, that some will challenge the logic of supporting centralization of administrative control in human services, transportation, public safety, etc., while opposing such change in higher education.

The Oklahoma Constitution contains a couple of inconsistencies in its higher education provisions that are largely due to the failure to change provisions which were quite sensible at the time they were implemented. The 1907 version's allocation of school land (Section 13) revenues to a set of institutions in place at that time does not fit with the current structure of the state system of higher education. A more consistent treatment would have that money flowing to OSRHE to be allocated to the various institutions in a manner similar to how the single legislative appropriation is handled.

The provisions relating to the governance of Oklahoma State University and the other institutions under the aegis of the "Board of Regents for the Oklahoma Agricultural and Mechanical College and all Agricultural and Mechanical Schools and Colleges" are found in Article VI (Executive Branch) because Langston and OSU were originally governed by the State Board of Agriculture (an executive branch agency). Other constitutional provisions relating to higher education governance are found in Article XIII (Education). Language is out-of-date; OSU is no longer "Oklahoma A&M". Moreover, the contemporary structure of the state's economy is incongruous with the requirement that a majority of that nine-member board be farmers in addition to membership by the President of the State Board of Agriculture.

Challenges for Constitutional Reform

It is always easy to take a document like the Oklahoma Constitution and find archaic language that sounds peculiar in the contemporary context or that just does not jibe with current reality. Several of these provisions relating to education have already been mentioned, including the allocation of Section 13 revenue to institutions of higher education; provisions relating to the teaching of agriculture, horticulture, stock feeding and domestic science; and the setting of the minimum school year at three months.

Two issues merit special attention in a discussion of the Constitution and education reform. The first involves the possible need for a more centralized administrative structure than currently exists with the tripartite system of common schools, vocational-technical districts, and higher education. The second

relates to the role of the property tax in funding common schools.

Education and Centralized Coordination

Early in his administration, Governor Frank Keating appointed a Commission on Government Performance whose purpose was to "look at all of state government, analyze how it works, and how we can make it better."³² This 1995 report's observation on education reflects the results of a mixture of constitutional and statutory provisions.

Education in Oklahoma is managed separately by a number of officials and boards:

- Common education by the elected Superintendent of Public Schools and a six-member State Board of Education
- Vo-tech education by the Director of the State Department of Vocational and Technical education and a 13-member board
- Higher education by the Chancellor of the State Regents for Higher Education, four constitutional boards, and 16 other boards involving 154 trustees. It is a costly way of doing business. All three educational tiers maintain large central administrative offices, which employ over 1,000 staff members to provide a variety of duplicative administrative and operational functions.

Given this preamble, the Commission's proposal included a strong Secretary of Education, consolidation of administrative functions, and reducing the number of higher education governing boards.

In the five years since the Commission's report, there has been increasing comment worldwide and especially in the United States of a "new economy" driven by rapid technological change, rising productivity, and world trade—requiring that successful nations and regions have highly educated work forces.³³ Constitutional change may be needed to implement a "seamless" system of education in Oklahoma which can respond more effectively to emerging educational challenges.

Financing Common Schools

The constitutional millage-levy caps on property taxes for school operating and maintenance functions have been a principal cause of the ever-increasing share of school finance provided by the state government. Now at 70 percent, this state share may be difficult to increase in the future as state government faces increasing pressures for expenditures on other functions. Moreover, because of a constitutional constraint effectively requiring a vote of the people on any tax increase, brought about by the passage of State Question 640 in 1992, the state now finds it difficult to recalibrate its tax structure in the face of changing economic circumstances and structure. Supporters of adequate public school funding may again push for increased millage-levy caps because of the increasing difficulty of obtaining more state aid.

A desirable effect of the increased state share of public school funding has been the ability to use state aid to equalize educational opportunity across school districts—some of which are not well-endowed with a property tax base. However, this equalization applies to state aid for operations only—not for capital investment. Districts with high assessed valuation of property per student approve bonds to build and rehabilitate first-rate physical plants.

Poor districts are unable to afford such capital investment. Again, supporters of schools may push for increased bonding capacity for the districts by raising the bonding limit above 10 percent of assessed valuation, and may also push for reducing the required approval for such bonds from 60 percent to a simple majority. Neither of these measures, however, would have the effect of equalizing bonding capacity across rich and poor school districts.

Endnotes

¹James A. Howard, II (1981) "Charles Nathaniel Haskell, Governor of Oklahoma 1907-1911," in LeRoy H. Fischer, ed., *Oklahoma's Governors, 1907-1929: Turbulent Politics*, Oklahoma City: Oklahoma Historical Society, 32.

²Dan S. Hobbs (1992) "Coordination of Oklahoma's State System of Higher Education," in James H. Boggs, ed., *Governance*, Stillwater: Oklahoma State University Centennial Histories Series, 22.

³The current names of these institutions are: University of Central Oklahoma, East Central State University, Northeastern State University, Northwestern State University, Southeastern Oklahoma State University, and Southwestern Oklahoma State University.

⁴The Brookings Institution (1935) *Report on a Survey of Organization and Administration of Oklahoma*, Oklahoma City: Harlow Publishing Corporation, 43-44.

⁵Hobbs, p. 25.

⁶Oscar Ameringer (1983) *If You Don't Weaken*, Norman: University of Oklahoma Press, 379. Originally published in 1940.

⁷LeRoy H. Fischer, "OSU Presidents 1890-1990," in Boggs, pp. 222-229.

⁸Oklahoma State Regents for Higher Education (1993) *Oklahoma Governance*, 23-24.

⁹Louis G. Tornatzky and Paul G. Waugaman (1997) *An Analysis of the University-Industry Technology Transfer System of Oklahoma*, Oklahoma Center for the Advancement of Science and Technology (Jan. 8) 9.

¹⁰Oklahoma Commissioners of the Land Office, *Managing for the Future, 1998 Supplement to the 1997 Annual Report*, no date.

¹¹Oklahoma Commissioners of the Land Office, p. 3.

¹²State Board of Education of Oklahoma (1960) *The Twenty-Eighth Biennial Report of the State Department of Education of Oklahoma*, 65-116.

¹³Oklahoma Department of Libraries (1999) *Statistics of Oklahoma Public and Institutional Libraries*, July 1, 1996-June 30, 1997, 13.

¹⁴Edwin C. McReynolds, Alice Marriott, and Estelle Faulconer, *Oklahoma, the Story of its Past and Present*, rev. ed., Norman: University of Oklahoma Press, 305.

¹⁵David R. Morgan, Robert E. England, and George G. Humphreys (1991) *Oklahoma Politics and Policies*. Lincoln: University of Nebraska Press, 27.

¹⁶State Board of Education of Oklahoma (1956) *Twenty-Sixth Biennial Report*, Oklahoma City, OK, 340-348.

¹⁷State Board of Education, Oklahoma (1940) *Eighteenth Biennial Report of the State Superintendent of Public Instruction*, Oklahoma City, 6-7.

¹⁸Jimmie Lewis Franklin (1982) *Journey Toward Hope, A History of Blacks in Oklahoma*, Norman: University of Oklahoma Press, 65.

¹⁹State Board of Education of Oklahoma, 1956, pp. 283, 341.

²⁰Oklahoma Commissioners of the Land Office, p. 13.

²¹Oklahoma State Department of Education (1999) *1997-98 Annual Report*, 5.

²²See Alexander Holmes, et al. (1995) *Emerging Issues in Public Service Property Taxation in Oklahoma*, Oklahoma City: Oklahoma 2000, Inc.

²³Danney Goble (1994) "The Southern Influence on Oklahoma," in Davis D. Joyce, ed., *"An Oklahoma I Had Never Seen Before"*, Norman: University of Oklahoma Press, 280-301.

²⁴See, for example, The Brookings Institution, p. 40, and Gunnar Myrdal (1969) *An American Dilemma*, New York: Harper & Row Publishers, Harper Torchbooks, Vol. I, 339.

²⁵Kaye M. Teall, ed. (1971) *Black History in Oklahoma—A Resource Book*, Oklahoma City: Oklahoma City Public Schools, 267-68.

²⁶State Superintendent of Public Instruction (1940) *The Eighteenth Biennial Report of the State Superintendent of Public Instruction*, 129.

²⁷Oklahoma Department of Commerce (1999) *Folio*, 8(3) 1.

²⁸U.S. Bureau of the Census, Government Finances, <http://www.census.gov/govs/estimate/96>.

²⁹U.S. Bureau of the Census (1996) *Government Finances: 1991-92*, Washington, D.C.: U.S. Government Printing Office, 45, 82 (Fiscal 1992 is the latest year for which detailed local government financial data are available).

³⁰Oklahoma State Department of Education (1999) *1997-98 Annual Report*, 4-5; State Board of Education of Oklahoma (1960) *Twenty-eighth Biennial Report of the State Department of Education of Oklahoma*, 332-34.

³¹Kent A. Phillippe (1995) *National Profile of Community Colleges*, Washington, DC: American Association of Community Colleges, 66.

³²Oklahoma Governor's Commission on Government Performance (1995) *A Government as Good as Our People*, Oklahoma City (December) 2.

³³See, for example, Richard W. Judy and Carol D'Amico (1997) *Workforce 2020*, Indianapolis: Hudson Institute.

BUSINESS REGULATORY AUTHORITY IN OKLAHOMA'S CONSTITUTION AND ECONOMIC DEVELOPMENT

The Constitution of the State of Oklahoma¹, which dates from statehood, in many respects appears outmoded because of its detailed provisions for dealing with business abuses of an earlier era. Article IX, which addresses the regulation of the state's businesses, as viewed by the drafters', seems especially outdated.

Archaic descriptions of the state's economic enterprises, however, may or may not be a legitimate basis for change. If the only effect from language in the constitution addressing an earlier economic era is some unnecessary verbiage, that alone may not merit initiating the process of constitutional revision. However, if the constitutional provisions limit the effective, competitive growth of the state's businesses, especially in light of the rapid technical change driving economic growth in today's economy, these provisions are substantive.²

Many persons reviewing the Constitution of the State of Oklahoma have observed that it embodies a distrust of big government and big business³ at the time of statehood, which is probably characterized best by concerns for the practices of railroads. These provisions limiting big business are set forth in Article IX, about which earlier reviewers wrote:

Contemporaries of the original constitutional convention remarked that the document fairly bristled with hostility toward business and its presumably wicked designs. More recently, constitutional authorities have labeled this article of Oklahoma's constitution the worst single piece of any state's constitution.⁴

This distrust of big government and big business created an internal conflict in the constitution, however, when it was necessary to empower state government to regulate big business.

Balancing Regulation and Economic Growth

State regulation of business is important for the well being of the state's citizens, but economic development is also. However, determining the substantive deterrence of the regulatory actions enabled by Article IX of Oklahoma's constitution that could hinder economic development unnecessarily is difficult, if not impossible. The constitution sets forth regulatory authorities and policies, and in some cases with relatively detailed specificity.⁵ Assessing the economic importance of the various provisions is important; however, tracing the effects from the constitution, through the statutes, through the regulations, and then to the affected businesses and members of the public, is impractical, if not infeasible. However, in all likelihood how the state's regulatory authorities apply these provisions is surely more important to the state's businesses and general public than their existence in the constitution.

Today, the constitutional regulatory provisions set forth limitations on certain of the state's businesses for the protection of the public. Unnecessarily onerous regulations are potential, if not actual, inhibitors of actions that will further the economic growth of the private sector of the state. Their removal, however, may expose the state's public to undesirable abuses and business practices. Effecting a balance in the best interest of the state, without a clear standard, is a challenge to anyone considering revisions to Article IX of the Oklahoma Constitution.

Elements Of Article IX—Corporations

Article IX describes the industries subject to regulation, provides the creation of a regulatory commission with specific powers, and sets forth specific prohibitions on business behavior and citizen protections.

Regulated Industries

Article IX defines rather specifically the types of companies subject to state regulation, that is:

Every railroad, oil pipeline, car, express, telephone or telegraph corporation or association organized to do a transportation or transmission business...,⁶

but it goes far beyond a statement of constitutional principles concerning prescribed practices of the regulated companies. For example, it specifies that every railroad shall receive and transport each other's cars without delay or discrimination,⁷ and telephone and telegraph lines shall receive and transmit each other's messages without delay or discrimination.⁸ It specifies that railway companies shall "...provide and maintain adequate, comfortable, and clean depots, and depot buildings,"⁹ and it compels railroads to interlock or protect at-grade crossings.¹⁰

The Oklahoma Corporation Commission

The constitution provides for the creation of the Oklahoma Corporation Commission (OCC) as the vehicle of regulation. It states the following:

A Corporation Commission is hereby created, to be composed of three persons, who shall be elected by the people at a general election for State officers, and their terms of office shall be six years.¹¹

This provision is an especially important constitutional provision inasmuch as it defines the roles of the commissioners as statewide representatives¹² and specifies that they are to be elected rather than appointed.¹³ The constitution provides for the qualifications of the commissioners, a special oath of office administered to the commissioners, including a provision that he or she has no interest in the regulated companies, and their power and duties.¹⁴ The constitution also specifically extends to the Commission certain powers, such as the powers of record of a court.¹⁵ The constitution is both broad and specific regarding the duties and authority of the Commission. For example, it states generally that:

The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination....¹⁶

The constitution sets forth in some detail, however, the investigative powers of the Commission in fulfilling its regulatory duties. For example, Section 18 states that

the Commission shall have the right ...at all times...to inspect the books of all transportation and transmission companies doing business in this state, and to require...special reports and statements, under oath, concerning their business.¹⁷

The constitution also specifies that actions of the Commission may be appealed directly to the Supreme Court of the State of Oklahoma.¹⁸

The constitution created an important state regulatory agency in the OCC, with members elected by a statewide vote of the people, rather than by appointment by the governor, subject to legislative confirmation. This is an important provision because expanding the power of one group of state officials necessarily limits the power of others. For example, in studying Article IX, Robert Stone concluded that it "...provides for a weak governor who cannot control even his own executive branch."¹⁹ Because of its implications, there is probably no other provision in Article IX that is more important to the state than this one.

Specific Protections

Article IX contains provisions for specific protection of members of the public, such as customers and employees; however, many of these protections are subject to amendment by the legislature.²⁰ For example, the constitution specifies treatment for some labor disputes. It states:

Every license issued or charter granted to a mining or public service corporation, foreign

or domestic, shall contain a stipulation that such corporation will submit any difference it may have with employees in reference to labor, to arbitration, as shall be provided by law.²¹

The constitution also specifically prohibits geographical price discrimination among customers. For example, it states that

...no person, firm, association, or corporation engaged in the production, manufacture, distribution, or sale of any commodity of general use, shall, for the purpose of creating a monopoly or destroying competition in trade, discriminate between different persons, associations, or corporations, or different sections, communities or cities...by selling such commodities at a lower rate in one section, community, or city than in another....²²

It also specifically prohibits price discrimination by transportation companies, i.e.,

No transportation or transmission company shall charge or receive any greater compensation, in the aggregate, for transporting the same class of passengers or property...over a shorter than a longer distance....²³

It also specifically limits the interlocking ownership of banks and trust companies.²⁴

Regulation in Neighboring States

The states of Arkansas, Colorado, Kansas, Missouri, New Mexico, and Texas are not only states with some similarities because of proximity, but they also are regional competitors for markets for Oklahoma's businesses. Furthermore, they compete for access to regional resources including the labor force. Consequently, reviewing the broad regulatory structure in these states serves as a comparative standard as well as revealing the actions of Oklahoma's competitors.

Broadly, one could say the purpose of state regulation is to control pricing and supply and assure safety in delivered services in the regulated industries in the state. The detailed Oklahoma constitutional provisions notwithstanding, this appears to be the objective of both the OCC and the neighboring regulatory agencies. In practice, the Oklahoma Corporation Commis-

sion operates in a manner that is similar in methods and purposes to the methods and purposes of similar regulatory agencies in the surrounding states. Not surprisingly, given similar threats of abuse by natural monopolies²⁵ in pricing and supply decisions, and the common experiences with federal regulatory precedence, the regulatory practices in the various states are quite similar.

Structure

The Oklahoma Corporation Commission is similar in structure to regulatory agencies in the neighboring states. The Arkansas Corporation Commission, the Colorado Public Utilities Commission, and the Kansas Corporation Commission also have three members. Although Texas is a special case, with two commissions established at different times with separate regulatory jurisdictions, both the Railroad Commission of Texas and the Public Utility Commission of Texas have three members. Only the Missouri Public Service Commission and the New Mexico Public Regulation Commission differ, each having five members.

Selection

There is a distinction between Oklahoma and her neighboring states in the manner of selecting members of the commissions that regulate the utilities in the state. Oklahoma, as set forth in the constitution, elects its commissioners to serve as representatives of the entire state's populace. Arkansas, Colorado, Missouri, Kansas and Texas (for its Public Utility Commission), have commission members appointed by the governor of the state, subject to legislative confirmation.

Texas and New Mexico also have elected commissioners. Texans elect statewide members of the Railroad Commission. New Mexico elects the five members of its Public Regulation Commission as representatives from separate districts within the state.

Industries Regulated

From an economic standpoint there are two significant types of regulation by the Oklahoma Corporation Commission and the commissions in neighboring states. First, there is price and service regulation of the public utilities. Second, there is regulation of the levels of oil and gas production.

Utility Regulation. For the most part, utility regulation is the regulation of prices and services, and the regulated industries in neighboring states are similar to those regulated in Oklahoma. These are the industries that are commonly identified as utilities, usually because of economies of scale in transportation, transmission and distribution, and they have historically been subject to price regulation throughout the United States at the state level.

In practice, there is no significant disparity between Oklahoma and its neighboring states in the selection of industries that are the subject of utility regulation. For example, the transportation, telephone, electric and gas utilities are regulated in each of these neighboring states with typical utility regulation where a commission sets an allowed rate of return for a company, determines the rates that it can charge, and sets service requirements.²⁶

There are *some* differences among the neighboring states concerning the regulated industries, nevertheless. For example, Missouri, Arkansas, Kansas and Colorado regulate private water companies. Missouri also regulates manufactured housing.

Setting the distinctive, detailed Oklahoma constitutional provisions aside, in practice the Oklahoma Corporation Commission, in regulating the state's utilities, functions much like similar regulatory bodies in the surrounding states. There is no reason to believe that the slight differences in the industries subject to state regulation subjects the Oklahoma companies to any competitive disadvantage.

Oil and Gas Production. From an economic perspective, the regulation of oil and gas production is a distinct form of regulation. However, the Oklahoma Constitution does not address this role of the Corporation Commission in Article IX or in any other part of the constitution.

The state regulation of oil and gas production activities is designed to manage potential conflicts in drilling and production decisions. Because of the commonality of the oil and gas resource and the unpredictability of recovery, state regulation is designed to conserve the resource, to produce it at a responsible rate, and to prevent disorderly production decisions. Not only can the OCC adjudicate differences among producing interests, property owners and leaseholders, but it also can provide an efficient and orderly development of the state's resources.

The regulation of oil and gas production by the OCC is similar to the practices in neighboring states. For example, the Texas Railroad Commission and the Kansas Corporation Commission perform similar functions in these states. Since this form of regulation is not defined in the Oklahoma constitution, its presence illustrates the adequacy of dealing with business regulatory issues through statutes, rather than through constitutional provisions.

Competitive Considerations

From an economic perspective, the state regulation of Oklahoma businesses, as provided for in Article IX, is important because the relevant provisions were designed by the drafters to protect the state's citizens from abusive business practices. However, at the same time, regulations inevitably impact the affected companies and probably increase their cost of doing business. Consequently, the significance of regulation to the state is related to both the needed protection of its citizens and regulation's effects upon the state's businesses and their ability to compete.

Nationally, the transportation, telephone, natural gas and electricity industries are all moving through various stages of deregulation, from pricing and supply that have been tightly controlled to markets that are open to entry from new firms and to aggressive competition among participants. In all of these industries, competition is increasingly intense and markets are evolving into regional markets geographically. If the state's regulatory policies discourage the expansion of incumbent firms or discourage the location of firms, either as entrants into these industries or as customers, this will inhibit the economic growth of Oklahoma.

The Oklahoma Constitution gives detailed regulatory authority to the OCC, but given that Oklahoma regulatory practices are similar to those in neighboring states, there is no change in Article IX of the constitution that is clearly called for to make Oklahoma businesses more competitive. Although changes may be necessary to *keep* Oklahoma regionally competitive, it appears that, if necessary, Oklahoma state government can achieve this objective through statutory changes by the legislature or through modifications in regulatory rules and practices of the Corporation Commission.

Conclusions

The Constitution of the State of Oklahoma exemplifies a distrust of big government by the drafters which appears to be exceeded only by their distrust of big business. As a consequence, Article IX contains very specific provisions empowering the Oklahoma Corporation Commission and placing limits on the activities of businesses in the state. Although the specificity of provisions has led to a wordy constitution that reveals its irrelevance in today's economy, the regulatory practices in place are consistent with those in neighboring states. On its face, there is no compelling argument that streamlining the constitution, in and of itself, will further the competitiveness of Oklahoma's businesses in today's regional markets.

If there is a general revision of the State Constitution, however, there is at least one issue concerning Article IX that merits public debate. That is whether or not the members of the Corporation Commission should be elected on a statewide ballot or appointed by the governor with legislative confirmation. Election of regulators makes them more responsive to the voters and certainly aware of the needs of the public, but it also exposes them more directly to the influence of campaign contributors. However, statewide election removes the commissioners from responsibility to the governor and to the legislative influence that comes through confirmation. This distances the OCC members from the legislature and the governor's office, a factor that is both an attribute and a potential detriment. It creates a business regulatory body that is somewhat independent from other state political influences. However, it also creates the possibility that economic development policies of state government will suffer from less effective coordination in an increasingly competitive world. It also perpetuates a governmental structure in which it is difficult to hold any sector of state government directly responsible for the economic growth policies

Endnotes

¹See, for example, West Group (1999) *Constitution of the State of Oklahoma: As Amended to February 15, 1999*.

²The Oklahoma Academy for State Goals is presently sponsoring a general study of the Constitution of the State of

Oklahoma, partly out of concern for the relationship between the constitution and state economic growth.

³See, for example, Robert L. Stone (1992) "Article Nine of the Constitution of the State of Oklahoma of 1907 and Comparative Constitutional Law," *The Oklahoma City Law Review*, 17(1)98.

⁴The Constitution Revision Study Commission (1991) "The Constitution of the State of Oklahoma: Recommendations for Revision," *Oklahoma City Law Review*, 16 (3) 595.

⁵Article IX of Oklahoma's constitution sets forth in some detail governmental protections of the public from abusive business practices.

⁶Section 2, Article IX, Constitution of the State of Oklahoma.

⁷Section 3, *op. cit.*

⁸Section 5, *op. cit.* As a further example of detailed operating instructions, the constitution (Article IX, Section 13) specifically defines the persons eligible to receive free railroad passes.

⁹Section 26, *op. cit.* Given the present state of rail passenger traffic in Oklahoma, this provision highlights the outdated nature of the state constitution.

¹⁰Section 27, *op. cit.*

¹¹Section 15, *op. cit.*

¹²In some states the members of regulatory bodies, such as those in a utility commission, represent geographical districts.

¹³Many states follow the federal model, with appointment by the chief executive, subject to confirmation by the legislature.

¹⁴Section 18, *op. cit.* This section also sets forth in some detail the duties of the Corporation Commission and goes far beyond the specification required by a constitution designed as a general policy statement. For example,

Before the Commission shall prescribe or fix any rate, charge or classification of traffic, and before it shall make any order, rule, regulation, or requirement directed against any one or more companies by name, the company affected...shall first be given, by the Commission, at least ten days' notice of the time and place, when and where the contemplated action in the premises will be considered and disposed of, and shall be afforded a reasonable opportunity to introduce evidence and to be heard thereon, to the end that justice may be done, and shall have process to enforce the attendance of witnesses....

This section goes on (and on...) to specify the frequency and location of the publication of a contemplated general order, rule or regulation.

¹⁵Section 19, *op. cit.*, gives the Commission powers to administer oaths, compel attendance of witnesses, production

of papers, punish for contempt, and enforce compliance with its lawful orders.

¹⁶Section 18, *op. cit.*

¹⁷Section 18, *op. cit.*

¹⁸Section 20, *op. cit.*

¹⁹Stone, *op. cit.*, p.94.

²⁰Section 35, *op. cit.*, This section provides for the Legislature to amend Sections 18 through 34, inclusive, of Article IX of the constitution.

²¹Section 42, *op. cit.*

²²Section 45, *op. cit.* As in antitrust provisions regarding geographic price discrimination, the constitution recognizes the need to adjust regional price differences for quality, grade, quantity and transportation costs.

²³Section 30, *op. cit.*

²⁴Section 41, *op. cit.*

²⁵A natural monopoly is an industry in which the economics of production and transportation or transmission lead to a single supplier with lower costs than any group of multiple suppliers. A public utility that is given a public franchise to operate as a monopoly within certain market areas, is consequently subject to price regulation and an obligation to provide service to customers in the franchised territory.

²⁶The price and service characteristics of natural gas distribution companies are regulated by municipalities in Texas. The regulation of intrastate transmission, as well as appeals from the regulatory decisions at the municipal level, are handled by the Railroad Commission. Telephone and electricity regulation are responsibilities of the Texas Public Utility Commission.

STATE QUESTION 640: FISCAL EFFECTS AND ECONOMIC GROWTH

Oklahoma voters approved State Question 640, amending Article 5, Section 33, of the Oklahoma Constitution in March, 1992. This amendment requires majority approval by voters of all revenue bills that pass either the Oklahoma House of Representatives or Senate with less than a three-quarters majority. In spite of its relatively recent vintage, SQ 640 is in the spotlight once again as part of the current debate over the need for constitutional reform. Simply stated, the issue is whether this amendment should be retained. This depends, in part, on the fiscal and economic effects of the measure. The purpose of this study is to examine how the adoption of SQ 640 has changed the sources and uses of government funds and how these changes are likely to affect the state's prospects for economic growth.

Sources of Funds

In the long run, SQ 640 will affect the sources of state government funds in four principal ways; by (1) reducing the total tax burden, (2) changing the relative importance of specific taxes, (3) increasing income from fees, and (4) increasing government borrowing.

Reduction of the Tax Burden

The initiative for SQ 640 was launched at the end of a decade during which the Oklahoma legislature passed a series of tax increases that added nearly \$1.3 billion to state revenues. Although most of this revenue was needed to offset the erosion in the state's tax base in the aftermath of the oil bust, the majority of state voters did not see it that way. The prevailing view in the electorate appeared to be that the state's tax burden (taxes as a share of income) had increased too much, too fast, and that a measure making it more difficult to secure future tax increases would lead to a lower tax burden as state income continued to grow. Many also expected that a lower tax burden, per se, would increase the rate of growth of state income.

We will examine the relationship between the tax burden and economic growth later in this article. The question at issue now is whether SQ 640 is likely to reduce the burden of state taxes. It *will* do so, we believe, for two primary reasons: first, SQ 640 will limit legislated tax increases, and, second, this limit will result in tax collections that grow more slowly than income.

Although state tax limits are commonly believed to be a sure way to constrain tax growth, there is evidence that tax limits adopted in other states have not been very effective in reducing state tax burdens (Bails, 1982; Kenyon and Benker, 1984; Abrams and Dougan, 1986; U.S. Advisory Commission on Intergovernmental Relations, 1987; Howard, 1989; Bails, 1990; Shadbegian, 1996). We do not expect this outcome, however, for Oklahoma.

SQ 640 should limit the frequency and size of legislated tax increases for at least three reasons. First, SQ 640 contains no loopholes; in many states with limits, tax increases are permitted to make up for a loss of income from the federal government or to avoid increasing the burden on local governments. Second, it will be extremely difficult to bypass the electorate by securing three-fourths majority approval of new tax legislation in the Oklahoma legislature. Oklahoma's Republican legislators are traditionally anti-tax and they are likely to make up more than a fourth of future legislatures. Third, the margin of passage of SQ 640 was substantial - 56 percent to 44 percent - and it is unlikely to shrink quickly for future tax increase proposals (except for some limited types of tax increases explored below) in a state with such strong populist leanings.

We also expect that the reduced frequency and extent of legislated tax increases will gradually erode the state's tax base. As noted in an earlier study of SQ 640 (Murry, et al, 1996), Oklahoma's current tax system derives about 60 percent of its tax revenues from income-inelastic taxes - taxes that grow less rapidly than income grows. Since SQ 640 effectively locks the state into its current tax structure, the state's

heavy dependence on income-inelastic taxes will cause state tax revenues to grow more slowly over time than state income grows.

Changes in the Relative Importance of Specific Taxes

Although we expect the total tax burden to fall as a result of SQ 640, we also expect changes in the relative importance of specific taxes. There are two reasons. First, SQ 640 changes the relative probability of approval of increases in specific taxes. Second, SQ 640 reduces the Legislature's ability to deal with changes in the tax structure likely to be created by a changing economy or by changes in federal tax policy.

Changes in the Relative Probability of Approval

Although SQ 640 reduces the probability of tax increases; it does not eliminate them entirely. Given the ultimate requirement of voter approval, however, legislators will tend to favor increases in the taxes most likely to be approved by voters. These taxes will become relatively more important.

A telephone poll of a sample of Oklahoma voters conducted in 1996 indicated that, although they dislike taxes, they dislike some taxes more than others (Murry, et al, 1996, Chapter 18). The least disliked were taxes on games such as bingo – opposed by only 19 percent of respondents - and taxes on tobacco and liquor, opposed by 33 percent of respondents. Voters actually approved a higher education bond issue financed by an increase in the tobacco tax in 1993. These facts suggest to us that future increases in the so-called "sin" taxes are more probable than future increases in other taxes.

Changes Attributable to a Changing Economy

A tax becomes more important over time if revenues from the tax increase as a percentage of total tax revenues. Tax revenue is a product of the average tax rate and the tax base. A changing economy can change both the average tax rate and the tax base. Changes in the tax base induced by changes in the economy are relatively common. For example, sales tax revenues grow as the value of sales subject to the tax increases, individual income taxes grow as taxable income grows,

and severance tax revenues rise or fall depending on the prices and quantities of oil and gas produced. Induced changes in the average tax rate are less common, but possible. For example, the average rate for the individual income tax can change as income growth pushes more taxpayers into higher tax brackets.

Although these changes are "normal", they are not necessarily "desirable." The problem with SQ 640 in this context is that it effectively limits the government's ability to respond to changes in taxes induced by changes in the economy, whether they are desirable or not. If the induced changes hamper the state's growth prospects, for example, SQ 640 makes it more difficult to respond with offsetting changes in the tax code.

The five largest taxes in Oklahoma, in order of amount normally collected, are the individual income tax, the general sales tax, the motor vehicle license tax, the motor fuels excise tax, and the severance tax on oil and gas production. Together they account for over 90 percent of total state tax collections. In the absence of legislated changes, we expect the individual income tax and the motor vehicle license tax to become relatively more important sources of revenue, and the general sales tax, motor fuels excise tax, and severance tax to become relatively less important sources of revenue. Growth of the individual income tax will outpace the growth of all other state taxes - provided the legislature does not reduce its progressivity by reducing top bracket rates - because its tax base grows faster than income grows. The motor vehicle license tax will outgrow the remaining taxes because consumers devote a growing share of their income to expenditures on motor vehicles. The general sales tax will fail to keep pace with either the individual income or motor vehicle license taxes because it is levied only on tangible items and this part of the sales tax base will shrink as a percentage of total sales. The growth of electronic commerce also threatens to shrink the sales tax base. Motor fuels tax receipts will grow relatively slowly because the tax base is the *quantity* purchased, a tax base that grows much more slowly than income. The relative rate of growth of the severance tax is difficult to project because it combines the prices and quantities of crude oil and natural gas produced. We see little reason, however, to expect a reversal in the downward trend in the relative importance of this tax that has marked the last two decades.

What about the relative importance of the sin taxes? It is possible for them to become relatively more

important, given the higher probability that they will be the focus of future tax increases. Tax increases in items like tobacco and liquor, however, will reduce consumer purchases. Consumer purchases of these items are also not very responsive to increases in income. These two factors together will produce tax collections that grow relatively slowly. In fact, estimates of the limited responsiveness of purchases of these items to changes in income, alone, indicate that it would take large legislated increases in tax rates to make the sin taxes a relatively more important source of tax revenue.

Changes Attributable to Federal Government Tax Reform

Tax reform has reappeared on the federal government's policy agenda. Although there have been a large number of proposals for change submitted to Congress, most fall into two categories. The first category contains proposals to replace the income tax with some form of consumption tax, such as a national sales tax or a value-added tax. The second category contains proposals to retain the income tax, but to broaden the base (permitting lower tax rates) by eliminating various exclusions or deductions. Among those suggested for elimination are the deductibility of state and local taxes and the deductibility of interest income on state and local bonds.

The consensus among Public Finance economists is that the country is not yet ready for the radical changes that would occur if the income tax were replaced with some form of a consumption tax, but that some further broadening of the income tax base is not out of the question. If the federal income tax base is broadened, for whatever reason, the Oklahoma individual income tax base will be automatically broadened, as well, because Oklahoma's individual income tax base is essentially the same as the federal individual income tax base. This would mean an automatic increase in income taxes collected at the state level and an increase in the relative importance of the individual income tax, as well.

Increased Income from Fee Increases

Fees are an important source of revenue for state government, surpassed in size only by the individual income and general sales taxes. SQ 640 does not appear

to apply to fee increases. Thus, we expect discretionary increases in the future. Fees may or may not become a relatively more important revenue source overall - it depends on the size and frequency of discretionary fee changes and also on how fast the fee base grows relative to income. Fees will surely become a more important source of funds, however, for certain government services.

Fees for medical services, college and university education, and turnpike usage account for nearly 75 percent of all state fees collected. These will probably be the areas in which fee increases will be the most frequent, as well. Although there has been some slowing in the rate of increase in health care costs, future cost - and fee- increases seem likely. Tuition and fees are likely to increase in higher education to make up for the state's relatively low appropriations per student and the students' relatively low contribution to their own education through tuition and fees. Increases in turnpike tolls are likely as a means of financing system expansion.

Increased Income from Borrowing

Borrowing, or the issuance of debt, is a widely-used means of financing state and local government expenditures, especially expenditures for durable capital goods. The Oklahoma Constitution requires general obligation debt - debt guaranteed by the full faith and credit of the state - to be approved by a vote of the people, a requirement that has limited the use of this type of borrowing. The legislature has depended more often on the issuance of revenue debt - debt serviced by dedicated revenues, usually through a beneficial trust that it has established.

Given that debt financing is not subject to the provisions of SQ 640, it will probably become a more frequently used source of funds. Whether it will become a relatively more important source of funds depends on both the frequency and size of future debt issues. Given the requirement of voter approval for general obligation debt, however, increased borrowing will be done primarily with revenue bonds or with new types of debt that do not require voter approval. In fact, the latter has already happened. In the 1997 session of the Oklahoma Legislature, "appropriation-risk" or "moral obligation" debt was created to fund \$300 million in highway construction, and the same technique was used a year later to fund over \$300 million

for a variety of purposes. Although many believe that the issuance of such debt without voter approval violates the constitutional requirements for a balanced budget, the Oklahoma Supreme Court has ruled that it does not. This ruling has probably opened the doors to large-scale debt financing of a host of questionable capital improvement projects.

Uses of Funds

In this section, we examine how the expected changes in revenues are likely to change the quantity and quality of services provided by state government. The effect of SQ 640 on government services depends on how the measure changes the rate of growth in taxes and other revenues relative to the rates of growth in the costs of, and demand for, government services. If SQ 640 causes taxes and other revenues used to finance a government service to grow slowly relative to costs and demand, there will be a decline in services. Service quantity is likely to decline relative to service quality if fees are increased to complement slowly-growing tax revenues. In the absence of higher fees, there is likely to be a relative decline in service quality.

Expenditures for government programs constitute the "uses" of funds. Government programs differ in terms of: (1) the sources of funds likely to be available for financing their activities, (2) the cost pressures they face and prospects for cost containment, and (3) the prospective demand for their services. Thus, it is reasonable to expect that they will differ in terms of prospects for changes in service quantity and quality in the face of SQ 640.

To illustrate how these factors are likely to affect service quantity and quality, we will focus on the four largest expenditure programs - elementary and secondary education, higher education, health care, and highways. We will also examine the effect of SQ 640 on tax incentives. Tax incentives consist of the various means used by state government to reduce the tax burden for the purpose of achieving faster economic growth. An increase in a tax incentive is just like an increase in expenditures for a particular government program; both uses of revenues reduce the revenue available for other government programs. Tax incentives are simply financed differently; by reducing, rather than increasing, tax collections.

Sources of Funds for Expenditure Programs

Taxes. State funding for Elementary and Secondary Education, Higher Education, and Health Care comes primarily from the state's General Revenue Fund. State funding for highways comes largely from the state's Transportation Fund and other money earmarked for roads and highways. The General Revenue Fund depends heavily on income and sales taxes and on motor vehicle taxes and license fees. The Transportation Fund depends heavily on motor fuels taxes. Growth in the General Revenue Fund in the post-SQ 640 era will be determined primarily by how fast the income tax base - which will increase tax revenues relative to income - grows relative to the sales and motor vehicle tax bases - which will decrease tax revenues relative to income. We expect that the latter will outweigh the former and that the General Revenue Fund will not grow as fast as income grows. Prospects for the Transportation Fund are more certain; there are no factors (except discretionary tax increases) that will keep this Fund from growing more slowly than income.

As indicated, we expect a slower-growing General Revenue Fund to produce slower-growing appropriations for higher education, health care, and elementary and secondary education. The local schools have access to local property taxes, however, so the effect of SQ 640 on them depends on whether they can replace state funds with local property taxes.

It is reasonable to expect that state governments faced with slowly-growing tax revenues will be tempted to reduce the rate of increase in state aid to local governments. In fact, this possibility has resulted in several cases in which state governments are either precluded by law from reducing state aid to cope with state tax limits, or are exempt from state tax limits when providing state aid to local governments.

There are no such provisions relative to SQ 640, so the Oklahoma legislature is likely to reduce the rate of growth in state aid for local education. It is unlikely, however, that local school districts will make up the difference through higher property taxes. First, evidence from the intergovernmental grants literature indicates that local governments often cut back on local support when faced with a reduction in state support (Murnane, 1985). Second, there are constitutional constraints in Oklahoma that limit the ability of local governments to raise the local property tax. Third,

given the success in other states of movements to limit local property taxes and of legal challenges to the system of state aid to local schools, any serious attempts to increase the local property tax are likely to be met with either, or both, in Oklahoma. Thus, although an increase in the relative importance of the property tax is possible, it seems unlikely. The more probable reactions are reductions in educational expenditures per student or educational quality. We will have more to say on this below.

Fees. Higher education is in a good position to offset slower-growing General Revenue Fund support by increasing tuition and fees. Health Care and Highway programs have the same opportunity, although to a more limited degree. Several of the big-ticket health care programs, most notably Medicaid, mental health, and developmental disabilities, cannot be funded to a greater extent by fees. Fees can be raised on the toll road portion of the state highway system, but this option is not available for funding the larger non-toll road portion. There is limited opportunity for the use of fees in the elementary and secondary schools.

Borrowing. Borrowing is a source of funds that can be used to finance all four of the programs. We expect it to become a relatively more important source of funds for highway finance where capital needs are high relative to operating expenditures. Higher education and health care will probably rely more heavily on debt finance for future capital projects. Elementary and secondary education can use debt to fund capital projects, but we do not expect it to be used more heavily because most school districts are already at their borrowing limit.

Net Availability of Funds. Given these possibilities for raising revenue, we expect SQ 640 to hit elementary and secondary education the hardest. They face a slowly growing General Revenue Fund, limited possibilities for funding via fee increases, and limited capacity for additional borrowing. In addition, prospects for replacing state funds with the local property tax are not encouraging. Health care fares somewhat better in terms of prospects for state funding, fees, and borrowing, but it probably faces future cutbacks in federal government support. Both higher education and highways have more opportunities available for funding future needs.

Cost Increases for Specific Programs

Cost increases occur when the factors driving up costs outweigh efforts to contain cost increases. Government programs normally experience cost increases. In fact, most of them experience costs that grow relative to costs in the private sector. This can be attributed, we think, to a combination of fundamental factors that increase costs faster in the public sector than in the private sector and to a weaker commitment to cost containment in the public sector.

There is a basic cost equation common to both sectors: cost per unit of a product (either a good or a service) = the quantity of inputs used to produce a unit *times* the price of each input used. Both sectors commonly compete in the same markets for inputs, such as labor and electricity. Thus, they pay the same input prices. Where the two sectors differ is in the quantity of inputs required per unit of product. Typically, private firms experience faster productivity increases than do government agencies. This means that the quantity of inputs used per unit of product in the private sector falls relative to the quantity used per unit of product in the public sector. Translated into cost per unit, this means costs that rise more rapidly in the public sector.

Productivity growth in the public sector is especially slow for activities that are labor-intensive, such as education and, to a lesser extent, health care. Thus, we should expect larger relative cost increases in these activities. Highway construction and maintenance should experience smaller relative cost increases because its capital-intensive nature facilitates faster productivity growth.

How much costs increase in labor-intensive activities such as education depends critically on *how much* labor is required per unit of product. This depends, in turn, on how that labor is used, on labor effort, and on labor quality. Many economists have argued that the lack of competition in this area, especially at the elementary and secondary levels, stifles the incentive to find and adopt new ways of organizing labor inputs. Others have argued that the reward structure fails to spur superior effort. Many have observed a decline in the quality of teachers, a factor that some attribute to the difficulty schools have in paying the salaries that would attract the top college graduates.

Many proponents of SQ 640 expected that the measure would constrain revenue growth enough that government officials would be forced to find and adopt ways to cut costs per unit in order to continue to serve their usual clients. It is quite possible, however, that a revenue constraint will have just the opposite effect on government administrators. They may allow a reduction in service quantity or quality in order to mobilize support for rescinding the constraint. Limited budgets may be used to increase wages of experienced workers, even though they may be relatively unproductive. Administrators may also fail to act as intended simply because there are few, if any, financial or political rewards for cost containment.

As we see it, relatively more rapid cost increases in the public sector are more or less inevitable; that is, there are powerful forces driving up costs in the public sector over which state government officials have little control. In addition, although there is some scope in the public sector for reducing inputs (especially labor) per unit of product, SQ 640 does not provide effective incentives to do so. Even if it did, government programs would be faced with the prospect of paying more than they can often afford for top talent. The "bottom line" is that costs will continue to grow relatively rapidly, especially in education.

Demand Increases for Specific Programs

Government agencies can avoid service reductions, even in the face of more binding revenue constraints and lack of effort to reduce costs per unit, if the demand for their services is growing slowly. In the long-run, the quantity of a government service demanded depends on five factors: (1) the income elasticity of demand for the service, (2) the growth in the client population, (3) the perceived importance of the service as a tool in interstate competition, (4) the expected reduction in federal government support for the service, and (5) the perceived backlog of unmet service needs. The relative importance of these factors differs by government program, but the various combinations are likely to mean growing demand for all of the programs we are examining.

The income elasticity of demand for a government service is a measure of the degree to which demand grows as a result of income growth. A service with an income-elastic demand is one for which the quantity demanded increases more rapidly than income. Esti-

mates in the literature indicate that, among the four major programs we are examining, only higher education has an income-elastic demand. All of the others have an income-inelastic demand; that is, quantity demanded that increases less rapidly than income. Higher education is also perceived to be an important tool in interstate competition.

As noted, the demand for elementary and secondary education is income-inelastic, but it is often perceived as an important tool in interstate competition, and an argument can be made that there is a significant backlog of unmet needs. This is especially true for education that meets high standards, although there is some question about how much money is needed for this purpose.

The demand for health care is also income-inelastic, but the population of high-cost patients will continue to grow, and there is a backlog of unmet needs, especially among the uninsured segment of the population. The demand for highway services is income-inelastic, but it is perceived to be a tool of interstate competition, and there also appears to be a large backlog of unmet needs in the form of roads and highways in need of repair and upgrading.

As we see it, then, although there differences in the demand factors facing each program area, all of them face a combination of factors that will ensure growing demand for their services. The factors operating on higher education may be a little stronger than the factors operating in the other program areas, but none of the program areas can expect relief on the demand side.

Implications for Service Quantity and Quality

Combining the observations made above about revenue prospects, cost determinants, and demand factors, it is difficult to escape the conclusion that SQ 640 is likely to result in reduced services in each of the major program areas. Service *quantity* will be reduced more than service *quality* in higher education because institutions are likely to cover rising costs and satisfy growing demand by supplementing slower-growing appropriations with increases in tuition and fees. This response will reduce the quantity purchased (enrollment). A similar response and outcome are expected for the Oklahoma Turnpike Authority and the University Hospitals. The former is likely to use higher tolls

on existing turnpikes to cover the costs of maintenance and upgrades and to finance new segments. The latter is likely to supplement state-provided funds with higher fees to meet increasing demand and rising costs.

The future looks different for other health care programs and for elementary and secondary education. They have limited fee-raising ability and limited prospects for cost containment. Thus, we expect some reduction in service *quality* in the face of increasing demand for services. This will probably occur in the form of increased non-price rationing, such as longer waits, for medical services. In elementary and secondary education, reduced service quality may show up in the form of poorer student performance - a result observed in recent studies by Figlio (1997) and Downes and Figlio (1999). This may occur in spite of efforts to raise standards and introduce greater choice. These efforts may be necessary to keep quality from declining even more, but their impact on cost may be insufficient to offset the declining revenue growth attributable to SQ 640.

Tax Incentives

One of the most prominent features of state tax policy in recent years has been the increased frequency of tax provisions or incentives aimed at improving the business climate and enhancing a state's ability to attract and retain business firms and jobs by reducing the tax burden on business. States have shown remarkable ingenuity in crafting tax policies designed to influence business location and investment decisions, and there is little sign that this type of competition has run its course.

As noted by Holmes in this study (Chapter 1), Oklahoma's Constitution originally forbade the use of tax incentives for business. Oklahoma has a package of incentives now, but they have been obtained relatively recently, and then only after going through the arduous process of voter approval. Changes necessary to keep up with future competition in this arena face the same hurdle.

It is difficult to determine if, and how, SQ 640 changes the prospects for additional incentives. SQ 640 reduces the likelihood that the legislature will be able to offset any revenue losses from a tax incentive by passing a compensating revenue measure. This may toughen the resolve of anti-tax legislators to propose,

and anti-tax voters to approve, new tax incentives that promise to reduce taxes. SQ 640 may also mobilize opposition to new incentives by legislators and voters who are alarmed by erosion of the tax base and perceive it as a ticket to obtaining fewer essential government services. It is this author's opinion that SQ 640 strengthens the hand of the anti-tax, pro-incentive forces more than it does the hand of the anti-incentive forces and that SQ 640 increases the likelihood of additional tax incentives.

Impact on Economic Growth

We have noted a number of potential impacts of SQ 640 on the sources and uses of government funds. Whether these impacts matter depends on how they affect the state's ability to achieve its goals. We have only one goal in mind in this study: economic growth. Although there are many important goals, this goal figures heavily in most policy debates in Oklahoma and it appears that it will be a principal focus of attention in deliberations over proposed constitutional revisions.

Reduced Tax Burden

We have argued above that SQ 640 is likely to produce a smaller tax burden; that is, a declining ratio of total state taxes to state income. The conventional wisdom is that a lower tax burden will increase state economic growth. But will it do so? That depends on how much the tax burden is reduced, and on the impact of a given reduction in the tax burden on economic growth.

Although the tax burden is likely to fall, it will do so only gradually as the state's economy grows relative to tax revenues. Moreover, the amount by which the burden will fall each year is extremely small - on the order of 0.2 percent. In fact, given what we know about the responsiveness of state taxes to income growth, our calculations indicate that it will take nearly 20 years without legislated tax increases for normal economic growth to reduce the tax burden by 10 percent - from 5.7 percent to 5.1 percent of Gross State Product.

Is this likely to be large enough to make a difference in the rate of economic growth? Although there has been a large amount of research done on this question, a definitive conclusion has proved to be

Increases in Fees

The primary impact of increases in fees will be to reduce the quantity demanded of the government services on which they are levied. Whether fee increases will harm the state's growth prospects depends on how large an impact they have on quantities demanded, and on how important the affected services are as a source of economic growth.

The biggest source of concern is the likelihood of larger tuition and fee hikes in higher education. Such increases will reduce enrollment - on the order of 0.3 percent for every 1.0 percent increase in total tuition and fees. A smaller number of enrollees means a smaller number of college graduates. Given the relatively high real rates of return to society from investments in college education, a smaller number of college graduates translates into a loss in potential state income. This loss is potentially significant; a recent estimate by this author indicates that the value added to the state's economy by the typical college graduate over his/her working lifetime is nearly \$1.2 million.

Increases in Borrowing

SQ 640 will increase the likelihood of increases in borrowing to finance government expenditures. Recent events indicate that some, perhaps a growing share, of this borrowing may be accomplished by selling moral obligation or appropriation risk bonds.

The sale of bonds, or debt finance, is an appropriate way to fund long-term projects in the sense that it distributes the cost to those most likely to benefit from the projects. Debt finance will have a positive impact on economic growth, however, only if the expenditures financed clearly provide benefits greater than costs. Voter approval and the subsequent sale of general obligation bonds do not ensure that the projects financed through debt creation will pass a benefit-cost test. The same is true of the sale of revenue bonds, and moral obligation bonds, as well. Indeed, the fact that debt financing shifts costs to the future may reduce the apparent cost to current legislators and encourage the undertaking of projects with dubious ratios of benefits to costs. Moreover, moral obligation bonds are more risky and will raise the cost of borrowing, increasing

the probability that projects will not pass a benefit-cost test.

It is impossible to tell at this point in time if additional debt be will used to finance economically-viable projects. We suspect, however, that it will have the effect of reducing the fiscal discipline required to ensure that economically sound long-run investments are made, especially if the debt is in the form of moral obligation or appropriation risk bonds.

Shortage of Funds for Elementary and Secondary Education

We have argued above that SQ 640 is likely to create a shortage of funds for elementary and secondary education relative to needs based on rising costs and growing demand. There is evidence that student performance - what students learn - is related to what they earn - that is, to the value they add to the economy. The big question, then, is will this prospective shortage of funds adversely affect what students learn?

There are two schools of thought on this issue. The "money-does-not-matter" school cites evidence that more money is no guarantee of better performance (Hanushek, 1994). A reversal of this finding implies that less money will not produce worse performance. In fact, there are those who argue that the schools will adopt reforms necessary to improve performance only if they are threatened with the receipt of less money.

The "money-does-matter" school of thought cites evidence that money matters, especially in terms of earnings, if not performance (Card and Krueger, 1992; Loury and Garman, 1995). They argue, moreover, that the effects of reducing a budget are not symmetrical with the effects of increasing a budget. They argue that administrators will adjust to fewer dollars, for example, by concentrating expenditures on existing, but not necessarily effective, uses. In fact, Figlio (1997), and Downes and Figlio (1999) find evidence that local tax limits have reduced student performance in the form of lower scores on standardized tests, and attribute it to reactions that the money-does-not-matter school did not expect.

Loury and Garman (1995) find a strong link between standardized test scores and earnings. Their research, and Bishop's (1992), indicate that lower test

scores translate into lower college attendance. As noted above, college graduates add significant value to the state's economy, as reflected in higher lifetime earnings. Thus, fewer resources for elementary and secondary education may indirectly reduce potential state income.

These findings should *not* be interpreted as evidence that the only way to improve student performance is spend more money. In fact, the results of a recent study by Dauffenbach, et al (1999), indicate that there are many ways to improve performance through reforms that cost very little. These findings do suggest, however, that relatively fewer resources for elementary and secondary education will exact a cost in terms of potential income foregone.

Increase in Tax Incentives

We have argued above that SQ 640 is likely to increase the use of tax incentives. This seemingly paradoxical conclusion rests on the assumption that the success of SQ 640 will make additional tax cuts more likely. If this happens, there is unlikely to be a positive growth dividend; numerous researchers have concluded that tax incentives do not spur economic growth (Enrich, 1998). In fact, an increase in tax incentives may actually reduce the growth rate. In the pre-SQ 640 era, it was possible to adopt increases in taxes to offset tax revenues lost because of tax incentives. In the post-SQ 640 era, the real cost of tax incentives is not tax revenues foregone, but government services foregone. If incentives are granted at the expense of services such as education they may actually reduce economic growth.

The Net Outcome

The reader can hardly have escaped noticing the qualitative nature of much of the preceding discussion. It would be nice, and perhaps even essential for some, to know exactly *how much* of a difference SQ 640 is likely to make in terms of state economic growth. This is not currently possible and it could be determined only after extensive additional research. We believe, however, that such an effort is unnecessary to verify either the direction or general magnitude of the effect of SQ 640 on state economic growth. There is no compelling reason to believe that SQ 640 will ulti-

mately have a positive effect on state economic growth. In fact, a negative impact on economic growth is much more likely. This impact could be relatively small because many of the negative effects of SQ 640 are going to occur in small increments spread out over a long period of time. This may not be the case, however, for some potential effects - especially the effects associated with higher education enrollment and the performance of elementary and secondary students.

The economic growth case for SQ 640, then, is that its elimination would avoid potentially harmful outcomes at relatively little, or no, cost. If it were eliminated, the Legislature would gain some degrees of freedom to pass tax legislation and respond to public needs that it does not now have. Eliminating SQ 640 would not impair the right of Oklahoma voters, however, to vote pro-tax legislators out of office or to register their disapproval of tax increases through the initiative process. Coupled with the interstate competition faced by the state if its taxes get too far out of line, it is not unreasonable to believe that there will be adequate checks against legislative abuse of the power to tax in the absence of SQ 640.

References

- Abrams, Burton and William Dougan (1986) "The Effects of Constitutional Restraints on Government Spending," *Public Choice*, 49, 101-116.
- Bales, D.G. (1982) "A Critique on the Effectiveness of Tax-Expenditure Limitations," *Public Choice*, 38, 129-138.
- Bales, D.G. (1990) "The Effectiveness of Tax-Expenditure Limitations: A Re-evaluation," *American Journal of Economics and Sociology*, 49,223-238.
- Bartik, Timothy (1999) "Growing State Economies: How Taxes and Public Services Affect Private-Sector Performance," in Max B. Sawicky, Ed, *The End of Welfare?* New York: M.E. Sharpe, 95-126.
- Bishop, John (1992) "The Impact of Academic Competencies on Wages, Unemployment, and Job Performance," *Carnegie-Rochester Series on Public Policy*, 37 (December), 127-194.
- Card, David and Alan Krueger (1992) "Does School Quality Matter? Returns to Education and the Characteristics of Public Schools in the United States," *Journal of Political Economy*, 100 (February), 1-40.

-
- Downes, Thomas and David Figlio (1999) "Do Tax and Expenditure Limits Provide a Free Lunch? Evidence on the Link Between Limits and Public Sector Service Quality," *National Tax Journal*, 52, 113-128.
- Figlio, David (1997) "Did the Tax Revolt Reduce School Performance?" *Journal of Public Economics*, 65, 245-269.
- Hanushek, E.A. and Panel on the Economics of Educational Reform (1994) *Making Schools Work: Improving Performance and Controlling Costs*, Washington, D.C.: The Brookings Institution.
- Howard, M.A. (1989) "State Tax and Expenditure Limitations: There is No Story," *Public Budgeting and Finance*, 9, 83-90.
- Kenyon, D.A., and K.M. Benker (1984) "Fiscal Discipline: Lessons from the State Experience," *National Tax Journal*, 37, 437-446.
- Loury, Linda, and David Garman (1995) "College Selectivity and Earnings," *Journal of Labor Economics*, 13 (April), 289-308.
- McGuire, Therese (1992) "Review of 'Who Benefits From State and Local Economic Development Policies?'" *National Tax Journal*, 45, 457-459.
- Murnane, Richard (1985) "An Economist's Look at Federal and State Education Policies," in J. Quigley and D. Rubinfeld, Eds, *American Domestic Priorities: An Economic Appraisal*, Berkeley: University of California Press, 118-145.
- Murry, Donald, et al (1996) *In Search of Smaller Government: The Case of State Finance in Oklahoma*, Oklahoma City: Oklahoma 2000, Inc.
- Shadbegian, Ronald (1996) "Do Tax and Expenditure Limitations Affect the Size and Growth of State Government?" *Contemporary Economic Policy*, 14, 22-35.
- United States Advisory Commission on Intergovernmental Relations (1987) *Fiscal Discipline in the Federal System: National Reform and the Experience of the States*, Washington: Government Printing Office.
- Wasylenko, Michael (1997) "Taxation and Economic Development: The State of the Economic Literature," *New England Economic Review*, (March/April), 37-52.

Previous Studies

1999

Improving Oklahoma's Schools: Issues and Choices

1998

Raising Oklahoma's Personal Income: Lessons from the Fastest-Growing States

1997

Oklahoma's Per Capita Personal Income: A Comparative Analysis

1996

Telecommunications and Oklahoma Economic Development: Issues and Policies

The Regulatory Environment of Oklahoma Banks

Oklahoma's Prevailing Wage Law

State Licensing of Professions: In Whose Benefit?

Implications of Southwestern Bell v. Oklahoma Corporation Commission

Oklahoma Deregulates the For-Hire Motor Carrier Industry

State Environmental Regulation: Toward a Lower-Cost Future

Gas and Electric Deregulation and Economic Development Effects in Oklahoma

November 1996 Special Report

In Search of Smaller Government: The Case of State Finance in Oklahoma

October 1995 Special Report

Emerging Issues in Public Service Property Taxation in Oklahoma

1994

State Government Finance in Oklahoma after SQ 640

1992

Oklahoma's Special Programs for Economic Development

Oklahoma Tax Expenditures for Economic Development: Post HB 1444

Marketing and Awareness of State Financial Assistance Programs

The 1990 Clean Air Act Amendments and Their Impact on Oklahoma

1991

State Government Provision of Business Finance in Oklahoma

HB 1017: The Education Reform Act of 1990

Oklahoma's Corporate International Trade Opportunities in Eastern Europe

Choice: The Next Educational Reform

Changes in Oklahoma's Tax Base in the 1980s: Implications for Economic Development

The Oklahoma Superconducting Super Collider Proposal Effort: Lessons Learned

Medical Care for the Uninsured: Approaches to State Policy

The Cotton Industry in Oklahoma: Current Status and Future Prospects

January 1990 Special Report

Property Tax in Oklahoma: Current Issues and Recent Reforms

1990

Oklahoma Constitutional Revision 1988-1989

State Debt Management and Budgeting for Capital Needs in Oklahoma

The European Economic Community in 1992: Some Influences on the USA and Oklahoma Economies

Child Care: What Role for State Government?

Measures of Diversification

Agricultural Product Processing in Oklahoma

Public Policies Affecting the Oklahoma Coal Mining Industry

The First Session of the 42nd Oklahoma Legislature: Highlights and Economic Development Initiatives

1989

Target Industry Analysis

Migration of New College Freshmen in Oklahoma

Resources for Oklahoma Public Education: Needs and Sources

State Policy Toward Indian Tribes and Economic Development in Oklahoma

Impact of Tourism and Recreation on Oklahoma

State Policy for the Development of the Warehousing and Distribution Industry in Oklahoma

1988

Tax Exempt Bond Financing – A New Era for Oklahoma Trust Authorities

Impediments to Growth of Small Manufacturers in Oklahoma: Another Perspective

Constitutional Reform and Economic Development in Oklahoma

The Legislative Development Efforts and Economic Diversification

College Student Migration and State Economic Growth

Improving Oklahoma Higher Education: The Unfinished Agenda

Banking – An Industry in Crisis – The State Response

Retailing, Public Policy and Economic Growth

Oklahoma's 41st legislature: A Review and Analysis of the First Session

1986

Impediments to Locating Manufacturing Activities in Oklahoma: An Update

The Status of the Oil and Gas Sector

Systematic Thinking for State Tax Reform

Local Infrastructures in Oklahoma and Economic Development

The Oklahoma Ethics Commission: Toward Greater Confidence in the Public Sector

Higher Education and Economic Growth: The Quality Dimension

Tort Reform and Insurance Rates

Deregulation of the Trucking Industry: Current Issues

1985

Oklahoma State Government Reform in 1985

State Government Responses to Changing Natural Gas Markets

Right-To-Work in Oklahoma

Legislative Initiatives to Increase the Supply of Venture Capital in Oklahoma

New Tax Initiatives for Economic Development

Industrial Hazardous Waste Policy in Oklahoma

Workers' Compensation Legislation: An Introductory Evaluation

Education and Economic Development in Oklahoma: Recent Initiatives

1984

Economic Development Implications of Governmental Reform

The Council on Science and Technology

State Financing of Higher Education: How Well is Oklahoma Doing?

Oklahoma's Constitution and Economic Development Policies: Are They Compatible?

Renewed Local Tax Effort and the Continuing Property Tax Controversy

Agriculture and Oklahoma Economic Growth

State Financing of Local Water Projects Revisited

The Job Training Partnership Act in Oklahoma

1983

State Response to Declining Revenue Growth

The Human Services Budget: Problems and Issues

State Policies Affecting Local Government

Oklahoma Enterprise Zone Act: An Empty Shell

Natural Gas Market Ordering Initiatives

The Creation of a New Industry: Parimutuel Betting

State Control of Bank Structure in Oklahoma

The Interest in High Technology and Economic Growth

1982

Workers' Compensation

Hazardous Waste

Land Commission

Rail Abandonment and the Oklahoma Program to Restore Service

The Prospects for Nuclear Power in Oklahoma: The Black Fox Decision

State Government Financing of Water Resource Development in Oklahoma

Oklahoma State Merit System

The Impact of the New Federalism

Unfunded Liabilities in State and Local Government Pension Programs

Toward a Savings Account for Oklahoma State Government

Property Tax Equalization