

Resolution No. 10986

A RESOLUTION and PROPOSITION to amend Art. XVI of City Charter, by adding thereto a new section relating to the employment of married persons; and providing for the submission of such proposed amendment to the qualified electors of the City for their ratification or rejection at the general municipal election to be held therein on the 8th day of March, 1932.

JAN 4 1932 IND. POSTPONED

INTRODUCED:	BY:
DEC 9 1931	Webster
REFERRED:	TO:
DEC 9 1931	JUDICIARY
REPORTED:	
JAN 4 1932	COMMITTEE OF WHOLE
REPORTED:	
PASSED:	SIGNED:
FILED:	
ENGROSSED:	FIRST PUBLICATION:
	BY:
VOL. _____	
FOLIO _____	
COMPALED BY:	
	FILE NO.

Postponed

LETTER ATTACHED

RESOLUTION NO. 10986

PROPOSITION NO. _____

A RESOLUTION and PROPOSITION to amend Article XVI of the City Charter, by adding thereto a new section relating to the employment of married persons; and providing for the submission of such proposed amendment to the qualified electors of the City for their ratification or rejection at the general municipal election to be held therein on the 8th day of March, 1932.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE:

That Article XVI of the City Charter be amended by adding thereto a new section, to be numbered 36 and to read as follows:

Section 36. It is contrary to the public policy of the City of Seattle to employ in the classified civil service any married person whose spouse is employed for salary or wages. No such person shall be eligible to examination or certification for, or appointment to, or retention in, any office, position or place of employment in the classified civil service. The term "employed for salary or wages," in respect to any particular time in issue, shall include not only permanent, regular or uninterrupted employment, but also seasonal, occasional, part-time or from time to time employment, where the aggregate compensation received for the six (6) months next preceding such time amounts to a reasonable living wage for such semi-annual period. The marriage of any incumbent of any office, position or place of employment in the classified civil service shall, when the spouse of such incumbent is, or shall become, so employed for salary or wages, ipso facto create a vacancy in such office, position or place of employment. (All offices, positions

and places of employment in the classified civil service now occupied by any married persons whose spouses are employed for salary or wages are hereby declared to be vacant: Provided, however, that in any individual case where the enforcement of this section will work undue hardship on the family of such incumbent, the Civil Service Commission may, with the consent of the department head where the incumbent may be employed and after hearing in any such individual case and upon such determination, issue a permit to such incumbent authorizing his or her retention in the classified civil service for a period of six (6) months or less, and such permit may be renewed from time to time in the same manner as issued for additional periods of six (6) months or less.

The Civil Service Commission shall enforce the provisions of this section in accordance with the authority granted it by Section 14 of this Article, and the penalty for violation of the provisions of this section shall be that prescribed by Section 30 of this Article. Any determination by the Civil Service Commission hereunder, including the determination of what constitutes "employment for salary or wages," as defined herein, shall be final and conclusive and not subject to review or reversal by the courts and shall be subject to review by the Civil Service Commission only after the expiration of six (6) months from any previous determination by the Commission.

The duties of the Comptroller and Treasurer under Section 28 of this Article shall be applicable hereto and the violation hereof shall constitute an offense under Sections 29 and 30 of this Article and subject the offender to the penalties thereby provided.

This section is self-executing, but the City Council may by ordinance make further provisions for its enforcement.

AND BE IT FURTHER RESOLVED that such proposed amendment be submitted to the qualified electors of the City of Seattle for their ratification or rejection at the general municipal election to be held in said City on the 8th day of March, 1932.

Passed the City Council the ____ day of _____, 193____, and signed by me in open session in authentication of its passage, the ____ day of _____, 193____.

President of the City Council.

Filed the ____ day of _____, 193____.

City Comptroller and ex-officio City Clerk.

By _____
Deputy Clerk.

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THE CITY OF SEATTLE
LAW DEPARTMENT

A. C. VAN SOELEN, CORPORATION COUNSEL

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LAW CLERKS

WM. D. COVINGTON
VEIDA S. MORROW
JOHN A. LOGAN
C. V. HOARD

CLAIM AGENT

J. H. DENNIS

December 9th,
1931.

Mr. V. C. Webster,
City Councilman,
Seattle, Washington.

Dear Sir:-

Pursuant to your request, which you have orally supplemented in detail, we have prepared, and herewith transmit, draft of proposed charter amendment prohibiting the employment or retention in employment in the classified civil service of any married person whose spouse is employed for salary or wages. The term "employed for salary or wages" is defined in the proposed amendment on the basis of a "reasonable living wage" for certain semi-annual periods,-- a somewhat indefinite criterion,-- and the determination of the same is conclusively left to the Civil Service Commission.

As orally requested, we have prepared the proposed amendment in form similar to the proposed amendment (Comptroller's File No. 132755) seeking to bar married women from city employ.

Yours very truly,

A. C. VAN SOELEN,
Corporation Counsel,

By

John E. Sanders
JOHN E. SANDERS,
Assistant.

JES:G
Enc. (1)

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CLAIM AGENT
J. H. DENNIS

December 28, 1931

Re: Validity of proposed Charter amendment
prohibiting employment of married persons
whose spouses are gainfully employed.

Mr. John E. Carroll,
Chairman, Judiciary Committee,
City Council,
Seattle, Washington.

Dear Sir:

Your committee has requested to be advised concerning the legality of the proposed Charter amendment contemplated by Resolution No. 10986, declaring it to be contrary to the public policy of the City "to employ in the classified civil service any married person whose spouse is employed for salary or wages", provided that in individual cases of "undue hardship" the Civil Service Commission may upon a hearing permit retention; otherwise the proposed amendment affects incumbents of civil service positions as well as prospective applicants.

The question concerns constitutionality of the proposed amendment generally, and special reference is made to its effect on the alleged "contractual" rights of incumbents of positions in the Police Department from whose salary certain pension funds are deducted and who may under certain conditions be the beneficiaries of pensions pursuant to state law. (Sec. 9579, et seq. Rem. Comp. Stat.) It is suggested in this regard that the proposed charter amendment may conflict with Art. I, Secs. 3 and 23, of the State Constitution, providing respectively that "No person shall be deprived of 'life, liberty or property' without due process of law", and that "No * * * law impairing the obligations of contracts shall ever be passed.", and/or with Art. XIV, Sec. 1, and Art. I, Sec. 10 of the Constitution of the United States, containing similar provisions.

The application of said constitutional provisions depends on whether there is any contractual relation between the municipality and the employe by reason of civil service and/or whether municipal employment is a "privilege" or "vested right" within the contemplation of said constitutional provisions.

The theory that the relationship between the municipality as an employer and its employes is contractual (in the absence of an express contract) has been repudiated by practically every court (see extensive note of cases in 54 A. L. R. beginning at page 943, including a decision of the highest court in the land--

Mr. John E. Carroll ... 2

12-28-31

Pennie v. Reis, 132 U. S. 464, 33 L. ed. 426). The cited case involved the direct contention that such a relationship existed because a police officer contributed out of his salary certain sums per month pursuant to a state law providing pensions under certain conditions to police officers, their widows, dependents, etc.; which contention the court repudiated.

Under Art. XI, Sec. 10 of the State Constitution, cities containing a population of 20,000 inhabitants or more are permitted to frame and to amend charters for their own government, consistent with and subject to the Constitution and laws of this State. The people of Seattle have accordingly adopted a civil service article regulating public employment. It is equally within their power to abolish civil service in whole or in part by charter amendment, the effect of which might be to abolish the tenure of any or all civil service employes. This illustration demonstrates the fallacy of the argument that employment under civil service is a "privilege" or "vested right" protected by the constitutions of the state and nation against charter amendment.

Furthermore, our Supreme Court, in the case of Jahn v. Seattle, 120 Wash. 403, has said that the municipalities of this state "have the right to say that public work shall be done in any manner, at any price, and upon any terms which they see fit to lay down." and that they may prescribe the terms and conditions upon which they will allow it to be proceeded with, and that the courts will not attempt to say what class of people shall perform that work. This is the basis upon which rests the City's right to exclude aliens and non-residents from, and to establish a minimum wage on, public work. If there were a "vested right" to perform public work, it would be a "privilege" within the Constitution which the City could not so deny. There is a unanimity of judicial decisions repudiating the theory of any "vested right" in public employment under civil service.

With reference to the general question of constitutionality, argument without end might be indulged in and constitutional provisions cited which might seem in point, but the law is that the municipality as an employer has much the same rights as the private employer and may by charter, in our opinion, select its employes for appointment or retention in the manner contemplated by the resolution in question. It is a matter of common knowledge that school districts insert in contracts with teachers provisions which may be said to be in "restraint" of marriage, but such provisions have universally been sustained and the right to terminate the relationship of employer and employe upon the marriage of the teacher upheld. In the recent case of Seattle School Chapter No. 200 v. Sharples, et al, 159 Wash. 424, the right of the defendant

12-28-31

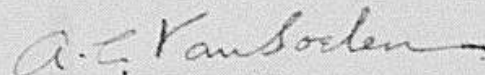
Mr. John E. Carroll ... 3

school directors to require as a condition to further public employment that teachers sign an agreement that they are not and will not become members of a labor union was sustained, notwithstanding that Sec. 7111, Rem. Comp. Stat. expressly declares such labor unions to be lawful organizations with laudable purposes. Many of the constitutional provisions to which your committee refers were relied on by the appellants in that case without avail.

We are therefore of the opinion that if the Charter amendment proposed by Resolution No. 10986, although it is more cumbersome from a legal standpoint than we prefer, is submitted to and adopted by the voters, the courts will not, as they have often said, "run a race with public opinion on questions of policy", and will hold the amendment valid in the event of litigation.

Said resolution and the report of your committee are herewith returned.

Yours very truly,


A. C. VAN SOELEN,
Corporation Counsel

ACV:ML
Encl.

To the City Council of the City of Seattle:-

Your Committee on Judiciary to which was referred Resolution No. 10986 relating to the employment by the city of married persons begs leave to report as follows:-

between members of the United States Club & certain members of the Council
The details of this resolution were decided upon at a conference held in the office of the Corporation Counsel on December 8th and the resolution was introduced at a special meeting of the City Council on December 9. Only one day, therefore, was available for the preparation of the resolution or investigation into the constitutionality of its various provisions, and it came to the City Council without any opinion ^{from the Corporation Counsel} ~~from the Corporation Counsel~~ relative thereto. A public hearing was held on December 15, since which time your committee has made an effort on its own part to examine into the constitutionality of the proposed measure. As a result of this investigation we feel it our duty to direct the attention of the City Council to ^a ~~several~~ constitutional questions which seem^s to us to be sufficiently serious to demand the most careful examination by the city's legal representative.

^{This} ~~One of these~~ questions arises from the fact that a number of ~~persons~~ ^{persons affected by this measure who are} employed in the Police Department have for some years been contributing from their pay to the Police Pension Fund. No provision is contained in the pending resolution for the repayment to them of the amounts so contributed, nor has it been made evident in what manner the repayment of these sums could legally be provided for. These payments were made under provisions of law and pursuant to an understanding which has as we see it all the elements of a contract and which did not contemplate the summary dismissal of the employees making them against their will and without a showing of misconduct or inefficiency on their part. In our opinion there is a grave question whether their dismissal under the terms of the pending resolution would not conflict with Section 3 of Article I of the Constitution of this state and with Section 1 of Article XIV of the Constitution of the United States, both of which provide that no person shall be deprived of life, liberty or property without due process of law; as well as with Section 23 of Article I of the State Constitution and Section 10 of Article I of the Constitution of the United States prohibiting the enactment of any law impairing the obligation of a contract.

~~Second question arises from consideration of Section 12 of Article IX~~

We therefore recommend that the pending resolution be referred to the Corporation Counsel for his opinion on the question above raised, as well as on the question of its legality and constitutionality in all respects.

Furthermore, members of the Council have suggested to the committee various amendments to the resolution and it is the opinion of the Committee that these proposed amendments should be submitted in writing so that their legality may be inquired into and determined before the committee or the Council is required to vote for or against their adoption.

Carroll
Chairman

Timotee

Frank Laube