

This opinion is in response to a question presented by Timothy J. Colahan, Harney County District Attorney, concerning stock ownership by the county.

QUESTION PRESENTED

Is ownership of stock and participation in a dividend reinvestment plan by the Harney County Library, an agency of Harney County, prohibited by Article XI, section 9, of the Oregon Constitution?

ANSWER GIVEN

The stock ownership and dividend reinvestment is constitutionally prohibited.

DISCUSSION

Article XI, section 9, provides, in relevant part,

No county, city, town or other municipal corporation, by vote of its citizens, or otherwise, ***shall become a stockholder in any joint company, corporation or association whatever***, or raise money for, or loan its credit to, or in aid of, any such company, corporation or association.

(Emphasis added.)

The Oregon Supreme Court considered Article XI, section 9, in *State ex rel Sprague v. Straub*, 252 Or 507, 451 P2d 49 (1969), when asked to interpret a companion provision in Article XI, section 6, of the Oregon Constitution, which provides that "[t]he state shall not subscribe to, or be interested in the stock of any company, association or corporation." The Supreme Court said of Article XI, section 9:

[I]t would be difficult to read Section 9 as having any other meaning than an absolute prohibition against the purchase of stock by counties and municipal corporations. So construing Section 9 we are unable to think of any reason why the people would want to prohibit the purchase of stock by a county or city and yet allow the state to do so.

Id. at 517 (footnote omitted). The court went on to conclude that, like the section 9 prohibition on local governments, "Article XI, § 6 constitutes a general prohibition against the purchase of corporate stocks by the state of Oregon." *Id.* at 518.⁽¹⁾

In an Attorney General opinion that pre-dated *Sprague*, this office addressed whether a county could purchase capital stock in a private corporation. We said of Article XI, section 9:

This section and the authorities cited thereunder are decisive of your case and forbid the acquisition of the stock of the corporation in question by Umatilla county.

26 Op Atty Gen 50 (1952).

We understand from District Attorney Colahan that the present situation concerns 523 shares of Time, Inc. stock which the library received by bequest in 1972 before the library was part of Harney County. Harney County acquired the library from the City of Burns in 1978, and the stock currently is held in the name of the Harney County Library Board.⁽²⁾ The county received cash dividends until 1990, when it opted for a dividend reinvestment program under which the library received additional shares of stock. District Attorney Colahan informs us that the county has ended its participation in the dividend reinvestment plan, so we assume the county is again receiving cash dividends.

We must consider whether this manner of acquiring the stock differs from a "purchase" of stock and thus would avoid the prohibition of Article XI, section 9. There is no question that the acquisition of stock through dividend reinvestment is effectively a purchase of stock. Rather than receiving cash dividends, those dividends are used to purchase additional shares of stock, usually at a discount. Thus, the only real issue concerns the original 523 shares of stock that were bequeathed to the library and subsequently transferred to the county's ownership.

Article XI, section 9, provides that no county shall "become" a stockholder in any corporation. In interpreting the

constitution, we consider the plain, ordinary meaning of the words used, unless they have a well-established technical or legal meaning. *Coultas v. City of Sutherlin*, 318 Or 584, 588-89, 871 P2d 465 (1994); *Jones v. Hoss*, 132 Or 175, 178, 285 P 205 (1930). The dictionary definition of the word "become" includes "to come to exist or occur." Webster's Third New International Dictionary (unabridged 1993) at 195. Thus, section 9 does not prohibit merely affirmative action on a county's part in acquiring stock, but any means, whether active or passive, by which a county may "become" a stockholder. The county may not actively acquire stock, nor may it become a stockholder by passively accepting ownership of stock.

In 26 Or Atty Gen 15 (1952), we were asked whether the State Board of Higher Education could accept stock donations and whether such stock could be held by the board until a time prudent or advantageous to dispose of it. We advised that "Article XI, § 6, of the Constitution of Oregon prohibits the state board of higher education from being 'interested' in the stock of any company, association or corporation, and that the said board may not validly accept or hold any such stock, regardless of whether or not it is acquired by donation, gift, or otherwise." *Id.* at 16.⁽³⁾ We reach the same conclusion with regard to Article XI, section 9.⁽⁴⁾

Under Article XI, section 9, "[n]o county * * * shall become a stockholder." This constitutional prohibition can be interpreted only as an absolute bar to owning stock, regardless of the method of acquisition. The county became a stockholder when it acquired the library.⁽⁵⁾

We conclude that ownership of stock by Harney County, through its library, violates Article XI, section 9, of the Oregon Constitution. The county should dispose of the stocks in a manner permissible under the instrument that bequeathed the stock to the library.

The Oregon Department of Justice does not act as legal counsel to the counties of this state. They are entitled to seek and rely upon advice from their own attorneys. The legal opinions stated herein are given solely for your use and benefit.

HARDY MYERS
Attorney General

1. When subsequently analyzing the constitutionality of investments by state and local governments, this office has interpreted *Sprague* to stand for the proposition that although the language of sections 6 and 9 differs, both sections have the same purpose and meaning with respect to corporate stock -- prohibiting the purchase of stock. 35 Op Atty Gen 493, 494 (1971); 45 Or Atty Gen 27, 32 (1985).

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2. Based upon District Attorney Colahan's description of the Harney County Library as "an agency of Harney County," we assume that the Library Board is not a separate legal entity from the county and that the stock is, therefore, owned by the county.

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3. We advised the board to dispose of any stock it possessed. Noting that authority to sell or otherwise dispose of stock donated to the board in trust is dependent upon the instrument transferring title, we cautioned that the board might need to petition the appropriate court to secure authority to sell the donated stock, depending on the instrument that transferred title of such stock. 26 Op Atty Gen at 16.

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4. In 1956, Article XI, section 6, was amended to permit the state to "hold and dispose of stock, including stock already received, that is donated or bequeathed." Amendment proposed by HJR 11 (1955) and adopted by people Nov. 6, 1956. The purpose and effect of the amendment was to authorize what had previously been prohibited by that section, namely, to permit the state to receive, hold and dispose of stock received as a gift or bequest. See 32 Or Atty Gen 206, 207 (1965). We note that no similar language has been added to section 9.

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5. Whether an investment violates the provisions of section 9 depends on whether it confers upon the government an ownership interest in stock; it does not turn upon the degree of risk involved. 43 Op Atty Gen 186, 191-92 n 5 (1983). In 45 Op Atty Gen 27 (1985), we said that "the shielding of [the state] from any risk of loss in stock investment would not render their participation in a stock investment program permissible." *Id.* at 33. It is not only the financial risks that the framers of section 9 sought to prevent, but also "entangling alliances with corporations" that could result from stock ownership. *Wormington v. Pierce*, 22 Or 606, 613, 30 P 450 (1892).

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