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No. 8276

This opinion is issued in response to a question from Chuck Smith, Director of the Debt Management Division of the Oregon State Treasury, concerning Article XI-K of the Oregon Constitution, which authorizes the state to guarantee general obligation bonds issued by school districts, education service districts and community college districts (school bonds).

QUESTION PRESENTED

Does the limitation in Article XI-K of one-half of one percent of the true cash value of all taxable property in Oregon apply to (a) the amount of school bonds that the state may guarantee, or (b) the amount of debt that the state itself may incur to honor its guaranty, or both?

ANSWER GIVEN

The limitation applies only to the amount of debt that the state may incur in honoring its guaranty of school bonds.

DISCUSSION

I. Methodology for Interpreting Constitutional Provisions

Before addressing the question that we have been asked, we briefly describe our method of analysis for interpreting constitutional provisions approved by the voters, the objective of which “is to discern the intent of the voters.” See *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993).

Article XI-K of the Oregon Constitution was approved by the voters as referred Ballot Measure 54 (1998). In interpreting a constitutional provision adopted by referral, the Oregon Supreme Court applies the same method of analysis that it applies to initiated constitutional amendments. *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61, 11 P3d 228 (2000). Thus, the court applies the same method of analysis that it applies to the construction of a statute. See *Roseburg*, 316 Or at 378; *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551,

560 n 8, 871 P2d 106 (1994); *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 612 n 4, 859 P2d 1143 (1993).

We follow the same methodology. We first look at the text and context of the provision to determine the intent of the voters, with the text being the best evidence of their intent. *PGE*, 317 Or at 610. In interpreting the text, we consider statutory and judicially developed rules of construction “that bear directly on how to read the text,” such as “not to insert what has been omitted, or to omit what has been inserted,” and to give words of common usage their plain, natural and ordinary meaning. *Id.* at 611; ORS 174.010. An analysis of the text includes relevant case law interpreting that text. *Stranahan*, 331 Or at 61 (2000). The context of a constitutional provision adopted by ballot measure includes related ballot measures before the voters at the same election, related constitutional provisions that were in place when the provision at issue was adopted, and case law interpreting such provisions. *Id.*, at 62 n 15; *Ecumenical Ministries*, 318 Or at 560 n 8; *SAIF Corporation v. Walker*, 330 Or 102, 108, 996 P2d 979 (2000). If the voters' intent is clear from the text and context, the analysis ends there. The Oregon Supreme Court, however, is unlikely to conclude analysis of an initiated measure at the first level of review. *Stranahan*, 331 Or at 64.

The second level of review is an examination of the history of the provision. The history of a referred constitutional provision includes information available to the voters at the time the measure was adopted that discloses the public's understanding of the measure. *Ecumenical Ministries*, 318 Or at 560 n 8. Sources of such information include the ballot title, explanatory statement and arguments for and against the measure included in the Voters' Pamphlet as well as contemporaneous news reports and editorials on the measure. *Id.* The extent to which these sources of information will be considered depends on their objectivity, as well as their disclosure of public understanding. *Stranahan*, 331 Or at 65 (citing *LaGrande/Astoria v. PERB*, 284 Or 173, 184 n 8, 586 P2d 765 (1978)).

II. Interpretation of Article XI-K

With the above principles in mind, we now turn to Article XI-K of the Oregon Constitution. Article XI-K provides in relevant part:

Section 1. To secure lower interest costs on the general obligation bonds of school districts * * *, the State of Oregon may guarantee the general obligation bonded indebtedness of those districts as provided in sections 2 to 6 of this Article and laws enacted pursuant to this Article.

Section 2. In the manner provided by law and notwithstanding the limitations contained in sections 7 and 8, Article XI of this Constitution, *the credit of the State of Oregon may be loaned and indebtedness incurred*, in an amount not to exceed, at any one time, one-half of one percent of the true cash value of all taxable property in the state, *to provide funds as necessary to satisfy the state guaranty* of the bonded general obligation indebtedness of school districts * * * that qualify * * * to issue general obligation bonds that are guaranteed by the full faith and credit of this state. The state may guarantee the general obligation debt of qualified school districts * * * and may guarantee

general obligation bonded indebtedness incurred to refund the school district * * *
general obligation bonded indebtedness.

* * * * *

Section 4. The State of Oregon may issue bonds if and *as necessary to provide funding to satisfy the state’s guaranty obligations* undertaken pursuant to this Article. In addition, notwithstanding anything to the contrary in Article VIII of this Constitution, the state may borrow available moneys from the Common School Fund if such borrowing is *reasonably necessary to satisfy the state’s guaranty obligations* undertaken pursuant to this Article. The State of Oregon also may issue bonds if and as necessary to provide funding to repay the borrowed moneys, and any interest thereon, to the Common School Fund. * * *

(Emphasis added.) Article XI-K, section 1, authorizes the state to guarantee school bonds as provided in the remainder of the Article. The first sentence of section 2 authorizes the state to loan its credit and incur indebtedness “to provide funds as necessary to satisfy the state guaranty,” notwithstanding the limitations in Article XI, sections 7 and 8.¹ This authority is limited, however, to one-half of one percent of the true cash value of all taxable property in the state. The last sentence of section 2 authorizes the state to guarantee the general obligation bonds of school districts. Unlike the first sentence, this authority appears to be unlimited. Section 4 authorizes the state both to issue bonds and to borrow from the Common School Fund if necessary to provide funds “to satisfy the state’s guaranty.” Section 5 provides that any state bonds issued pursuant to Article XI-K are direct obligations of the state. Finally, section 6 provides that Article XI-K “shall supersede all conflicting constitutional provisions.”

a. Text and Context

From the text of Article XI-K, section 2, we know two things – first, that the state is authorized to lend its credit and to incur indebtedness “to provide funds as necessary to satisfy the state guaranty” of school bonds and, second, that the amount of this credit and indebtedness is limited to “an amount not to exceed, at any one time, one-half of one percent of the true cash value of all taxable property in the state.”²

We are asked whether the credit and indebtedness that is so limited refers only to the amount of bonds or other debt that the state may incur to honor its guaranty or whether it also refers to the amount of school bonds that the state may guarantee. To answer this question, we must interpret the phrase “the credit of the State of Oregon may be loaned and indebtedness incurred * * * to provide funds as necessary to satisfy the state guaranty [of school bonds].”

In guaranteeing school bonds, the state undertakes to pay on those bonds if the school district that issued them fails to do so. *See* 38A CJS Guaranty § 2. As a practical matter, the state guarantees school bonds by providing a backup source of payment for the school bonds that is a general obligation, or “full faith and credit” obligation, of the state. But provision of this guaranty does not “provide funds” to the school district; rather, it facilitates the district’s ability to raise its own funds. The only time it would be “necessary” for the state “to provide funds * * * to satisfy the state guaranty” would be if a school district were unable to make payment on the bonds. As guarantor, the state would then be obliged to step in and make the payment. From

a plain reading of the text of Article XI-K, section 2, therefore, it would appear that the limitation applies only to the amount of debt that the state itself may incur in providing funds to pay a school district's bonds thereby satisfying the state's guaranty of those bonds.

The context of the remainder of Article XI-K supports this interpretation. Specifically, section 4 authorizes the state to issue bonds "as necessary to provide funding to satisfy the state's guaranty." This is virtually identical to the language used in section 2. Thus, section 4 expressly authorizes the state to issue bonds as one form of the indebtedness that the state may incur under section 2 to satisfy its guaranty of school bonds.

Under this interpretation, the limitation in Section 2 applies only to the amount of debt that the state incurs to honor its guaranty, and there is no limitation on the amount of school bonds that the state may guarantee. This interpretation is viable, however, only if the phrase "the credit of the State of Oregon may be loaned and indebtedness incurred" may be interpreted to connote a single action, i.e., the state lends its credit as an integral part of incurring the indebtedness. Otherwise, we would be omitting the words "the credit of the State of Oregon may be loaned" from section 2, which we may not do in interpreting a constitutional provision. *See* ORS 174.010.

Clearly, when the state guarantees a school district's bonds, the state is lending its credit to the school district. But the state is also lending its credit whenever it issues bonds under Article XI-K to provide funds to satisfy that guaranty. Section 5 of Article XI-K states that such bonds are a direct obligation of the state, which means that the state pledges its full faith and "credit." *See* ORS 328.351(6)(b) (state bonds issued to meet guaranty under Article XI-K shall recite that "full faith, credit and resources of the state are pledged" for payment of state bond). The authorization to lend the credit of the state is a part of the full faith and credit obligation that is authorized as the form of indebtedness that may be incurred under Article XI-K.

Each time the voters have previously amended the Oregon Constitution to authorize the state to incur indebtedness, i.e., to provide funds, the wording of the provision states that "the credit of the State of Oregon may be loaned and indebtedness incurred." *See* Or Const Arts XI-A to XI-J. The exclusive purpose of each of these constitutional provisions is to provide funds through the state's incurring a general obligation debt; unlike Article XI-K, none of these provisions has any anticipation that the state will lend its credit apart from the state itself actually raising funds. *See, e.g.,* Or Const Art XI-A (to create Oregon War Veterans' Fund), Art XI-E (to provide funds for forest rehabilitation), Art XI-F(2) (to create World War II Veterans' Compensation Fund), Art XI-I(2) (to provide funds to be advanced by contract, grant, loan or otherwise for financing multifamily housing for elderly and disabled); *see also Sprague v. Straub*, 240 Or 272, 277, 400 P2d 229, 401 P2d 29 (1965) (describing the purpose of Articles XI-F(1) and XI-G as "to loan the State's general credit to bonds" issued by State Board of Higher Education). Thus, the voters have consistently approved constitutional amendments with the phrase "the credit of the State of Oregon may be loaned and indebtedness incurred" to authorize the state to incur general obligation indebtedness, the repayment of which is supported by the full faith and credit of the state. In light of this consistent terminology, we conclude that this same phrase in Article XI-K, section 2, may reasonably be read as authorizing the state to

incur general obligation indebtedness to honor its guaranty of school bonds and that it is the amount of this indebtedness alone which is subject to the one-half of one percent limitation.

Because we interpret Article XI-K as authorizing the state to guarantee school bonds without limit, it would be possible for the amount of defaulted school bonds guaranteed by the state to exceed the amount of bonds that the state could issue to satisfy that guaranty. This possibility does not affect our interpretation of Article XI-K because the guaranty is not mandatory but permitted in the discretion of the state. Article XI-K, section 1, makes the state's guaranty subject to laws enacted pursuant to Article XI-K. ORS 328.331(2)(g) authorizes the State Treasurer by rule to establish reasonable limitations on the total aggregate outstanding amount of all school bonds the state may guarantee. We believe that this statute gives the Treasurer the discretion to determine actuarially the amount of school bonds that the state could safely guarantee in light of the possibility of default and the possibility that the state might be required to provide funds to satisfy its guaranty.

An argument could be made that the language of Article XI-K, section 2, limits both the amount of credit that the state may lend and the amount of indebtedness that the state may incur. Such an interpretation has three problems. First, it requires an assumption that lending the state's credit by itself would somehow "provide funds." Although the state's guaranty may assist in making funds available to school districts at lower interest rates, that guaranty does not itself provide any funds. Second, it makes meaningless the words "as necessary to satisfy the state guaranty of the [school bonds]." Lending the state's credit alone does not "satisfy" the state guaranty; the state lends its credit initially when it makes the guaranty. It is only "necessary" for the state to "satisfy" that guaranty when the state is required to provide funds to pay the debt service on the school bonds of districts that have failed to make a scheduled payment. Third, it renders superfluous the last sentence of section 2, which authorizes the state to actually guarantee the school bonds. We think it highly unlikely that a court would accept such a construction of the text of Article XI-K, section 2.

Thus, we interpret the text and context of Article XI-K, section 2, as authorizing the state to lend its credit, without limit, to guarantee school bonds. In addition, the state may incur debt (and, in the course of so doing, lend its credit), in an amount not to exceed one-half of one percent of the true cash value of all taxable property in the state, to provide funds as necessary to satisfy the state's guaranty.

b. History

Nevertheless, because the limitation in Article XI-K, section 2 is arguably susceptible to an alternative interpretation of the voters' intent, we move to the second level of analysis, the history of Article XI-K. Because Article XI-K was adopted by referendum, "the people's understanding and intended meaning of the provision in question" are critical to its interpretation. *Stranahan*, 331 Or at 57.³ In reviewing sources of information available to the voters at the time of the November 1998 election, we focus first on the Voters' Pamphlet.

There are three statements in the materials regarding Measure 54 (1998), adopted as Article XI-K, that speak to the percentage limitation. First, the ballot title summary of Measure

54 states that the Measure “[l]imits amount state can *guarantee* to _ of one percent of true cash value of taxable property in state.” (Emphasis added.) Similarly, the legislative argument in support of the ballot measure states that it “[l]imits total bonds *guaranteed* by the state.” (Emphasis added.) These two statements support an interpretation of Article XI-K, section 2, that caps the amount of school bonds that the state may guarantee. Conversely, the Measure’s explanatory statement says:

Measure 54 allows the state to pay the guaranteed indebtedness by using available state funds, borrowing from the Common School Fund or issuing state bonds. The measure further allows the state to issue bonds to reimburse moneys borrowed from the Common School Fund. The measure *limits the amount of the state bonds that may be issued* to one-half of one percent of state taxable property value.

(Emphasis added.) Hence, two of the relevant statements in the Voters’ Pamphlet tell voters that the guaranty itself is limited while the third speaks of limitation only with respect to the state’s issuance of its own bonds.

Looking beyond the Voters’ Pamphlet, we reviewed media reports regarding Measure 54. The only report containing any comment of relevance was a newspaper editorial in support of the Measure stating that a safeguard built into the Measure “limits the amount the state can *guarantee*.”⁴ Editorial, THE OREGONIAN, Sept 16, 1998, at B8 (emphasis added).

In addition to the constitutional provision that it referred to the voters, the 1997 legislature also enacted statutes to implement the bond guaranty program. Or Laws 1997, ch 614. While the statutes had been enacted at the time the voters considered Measure 54 and, hence, were available for the voters’ consideration, they did not become effective until the voters approved the Measure. Or Laws 1997, ch 614, § 10. As a general matter, the people are presumed to know the law. *Bartz v. State*, 314 Or 353, 359-60, 839 P2d 217 (1992) (citing *Dungey v. Fairview Farms, Inc.* 205 Or 615, 621, 290 P2d 181 (1955)). And, in reviewing the history of a referred measure, the Oregon Supreme Court considers the session laws in the year the legislature made the referral to the voters. *Stranahan*, 331 Or at 65. We believe that, in ascertaining voter intent, the court would look at session laws the effect of which was dependent on the very measure that the voters were asked to approve.

The 1997 statutes at issue authorize the State Treasurer to promulgate rules establishing “[r]easonable limitations on the total aggregate outstanding amount of school district general obligation bonds the state may guarantee.” Or Laws 1997, ch 614, § 4(2)(g) (now codified as ORS 328.331(2)(g)). Arguably, this authorization would conflict with the Measure referred to the voters if the Measure, approved as Article XI-K, set a limit on the amount of school bonds the state could guarantee at one-half of one percent of the true cash value of all taxable property in Oregon. This “reasonable limitations” provision makes sense only if Measure 54 sets no limit on the amount of school bonds that the state can guarantee.⁵ If voter knowledge of the 1997 statutes is presumed, the voters would likely have understood that the Measure itself did not limit the state’s guaranty.

Finally, Measure 55, another measure before the voters in the November 1998 election, which was not adopted by the voters, would have amended the constitution to authorize the state to guarantee payments that Oregonians made into a prepaid college tuition trust fund. Section one of Measure 55 states:

In the manner provided by law and notwithstanding the limitations contained in sections 7 and 8, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed, at any one time, one-half of one percent of the true cash value of all taxable property in this state to provide funds as necessary to satisfy state guarantees of minimum benefits or earnings derived from the contributions made to a prepaid tuition trust fund, which shall be created by law. The interests * * * shall be guaranteed by the full faith and credit of this state.

With respect to the percentage limitation, this provision is essentially identical to Article XI-K, section 2. The ballot title summary of Measure 55 states that the Measure “permits state to exceed constitutional debt limit to authorize indebtedness at _ of one percent of true cash value of all property in state to guarantee minimum benefits on contributions to prepaid tuition trust fund.” The explanatory statement says that the Measure limits the bonds that the state may issue, to satisfy the state’s obligations to contributors and beneficiaries and to repay any moneys borrowed from the Common School Fund, to one-half of one percent of the true cash value of all taxable property in the state.

Measure 55 immediately followed Measure 54 in the 1998 Voters’ Pamphlet. Hence, the voters reviewed two measures with virtually identical wording as to the limitations to be set on the state’s obligations. Whereas the statements regarding Measure 54, adopted as Article XI-K, provided voters with ambiguous information regarding the application of the percentage limitation, the information for Measure 55 stated more clearly that the limitation applies only to the state’s authority to issue bonds to honor its guaranty.

Oregon courts have not specifically commented on relying on the history of an unsuccessful ballot measure as history for an adopted ballot measure.⁶ But the court in *Stranahan* referred to statements circulated to the public at large as being indicative of a measure’s intended meaning. *Stranahan*, 331 Or at 65, (citing *LaGrande/Astoria v. PERB*, 284 Or 173, 184 n 8, 586 P2d 765 (1978)). That Voters’ Pamphlet materials on Measure 55 were circulated to all voters, coupled with the similarity in the wording of the two measures, arguably makes the Measure 55 materials an indicator of the voters’ understanding of the limitation in Measure 54. It is not clear that the failure of the voters to adopt Measure 55 impacts this conclusion.

In sum, we conclude that, if presented with the issue, a court would conclude that the state may lend its credit, without limit, to guarantee school bonds and that the limitation in Article XI-K, section 2, applies only to the amount of debt that the state may incur in honoring

its guaranty of school bonds. Although the history of this provision is contradictory, we believe that this interpretation is the only one that would not do violence to the actual text of Article XI-K.

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¹ Article XI, section 7, of the Oregon Constitution provides that “[t]he Legislative Assembly shall not lend the credit of the state nor in any manner create any debt or liabilities which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars * * * and every contract of indebtedness entered into or assumed by or on behalf of the state in violation of the provisions of this section shall be void and of no effect.” Article XI, section 8, provides that “[t]he State shall never assume the debts of any county, town, or other corporation whatever, unless such debts, shall have been created to repel invasion, suppress insurrection, or defend the State in war.”

² For ease of reference, we use the term “limitation” or “limit” in lieu of the constitutional phrase “in an amount not to exceed, at any one time, one-half of one percent of true cash value of all taxable property in the state.”

³ Appended to this remark by the court is a note that states: “We continue to emphasize that * * * our focus must be on the intent of the enactors of the provision at issue. See *Jones*, 132 Or at 175 [285 P 205] (court’s longstanding practice in constitutional interpretation is ‘to ascertain and give effect to the intent of the framers [of the provision at issue] and of the people who adopted it’) (emphasis added).” *Stranahan*, 331 Or at 57 n 12. The case cited in the note, *Jones v. Hoss*, required the court to interpret Article IV, section 29, of the original state constitution. The term “framers” is used to refer to those persons who framed the original constitution. We are not aware of any instances in which that term is used to describe those who drafted amendments to the constitution. Therefore, we do not believe that the *Stranahan* court, in quoting *Jones*, was stating that the court would to take into consideration the intent of the legislature in drafting a provision that it refers to the voters.

⁴ *Stranahan* speaks of “objective” materials circulated to the public at large, but cites to a pamphlet circulated by proponents of a measure as an example of such material. *Stranahan*, 331 Or at 65, (citing *LaGrande/Astoria v. PERB*, 284 Or 173, 184 n8, 586 P2d 765 (1978)). Based on this citation, a court may characterize the OREGONIAN editorial as objective material that it may consider in determining voter intent.

⁵ The 1999 legislature amended the statute so that the Treasurer’s authority to set reasonable limits on the total amount of school bonds guaranteed is now “[s]ubject to Article XI-K of the Oregon Constitution.” ORS 328.331(2)(g). This amendment is irrelevant to determining voter intent, however, since it was enacted after the voters’ approval of Measure 54.

⁶ The context for interpreting a constitutional provision adopted by the voters includes “related ballot measures submitted to the voters at the same election.” *Ecumenical Ministries*, 318 Or at 559.