

Oregon Local Public Issues:

# County Home Rule

## An Option for Oregon Counties

What is county home rule? How many Oregon counties have home rule? What are the advantages and disadvantages of home rule? Will home rule lower taxes? How does a county get home rule?

Questions such as these are important to all of us. How county government is organized has a direct effect on our lives. County decisions about taxes and public services may differ depending on how county government is organized.

### What is Home Rule?

“Home rule” is a term that refers to the basic legal relationship between local and state governments. Under home rule, the citizens of a local government determine for themselves how their local government should be organized and what functions it should perform. Without “home rule” local government functions and organization are set by state law: the state legislature is, in effect, the policy-making and legislative authority for every local government.

All Oregon counties have a certain amount of “home rule” by virtue of a law passed in 1973, House Bill 3009, which is now codified in sections 203.030 to 203.065 of the Oregon Revised Statutes. This law delegated to the governing body of each county, or to the voters of each county by exercise of the initiative and referendum, the power to legislate generally on matters of county concern. The county legislative powers apply only outside of incorporated cities unless city councils agree to come under it.

Oregon counties may attain an even fuller degree of “home rule” by adopting a county charter by vote of the people of the county. Charter home rule was made possible by amendment to the Oregon constitution approved by a statewide vote in 1958. Depending upon the terms of a particular charter, counties with charter authority may have broader local legislative authority (especially with respect to financial measures) than “general law”

counties without home rule charters. County charters also may provide for county reorganization—creating, abolishing, or consolidating county offices and departments and otherwise establishing the organization of the county government.

### Why Home Rule?

The purpose of home rule is to permit and encourage local solution of local problems and to authorize innovation without the need for specific state enabling legislation.

### What Counties Have Charters?

Five Oregon counties have approved charters and are operating under home rule in 1975. Lane and Washington were first to adopt home rule charters in the November 1962 general election. Hood River approved a charter in November 1964, and Multnomah followed in the May 1966 primary election. Benton County voters adopted a charter in November 1972.

During the first 15 years that charter rule was available, county charters were proposed by officially appointed committees in 18 of Oregon’s 36 counties: Benton, Clatsop, Columbia, Crook, Deschutes, Hood River, Jackson, Lane, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, and Yamhill. In addition, charters were presented to the voters directly by initiative petition in Douglas County (twice) and in Deschutes and Tillamook counties (once each, after prior rejection of charters proposed by official committees). Seven of the 19 counties that have voted on charters have done so twice.

### What Do Home Rule Charters Provide?

A charter is much like a constitution for the county; it outlines the basic organization and may grant broad powers or define the powers of the government.

A charter prescribes the organization of the county government. It specifies the officers to be elected or appointed, as well as their qualifications and tenure. Designated officers must perform the duties assigned by the charter. They must also perform the duties of general state concern that are required of county government by the laws and the constitution of the state.

Reorganization or restructuring of county government has been the principal result of home rule in the five Oregon counties that have adopted charters. The organization is different in each county, but there are many similarities.

The number of charter-designated departments in each county varies from six to eight. In each case, there are fewer departments and divisions than formerly. Functions and services have been regrouped and consolidated.

All five charter counties have departments of public works or transportation, public safety or law enforcement, and records and elections. Two have departments of finance, two have similar departments with slightly different names, and one (Lane) has a department of management services, which handles budgeting, accounting and treasury management, along with property management, motor pool, and other central services. Likewise, two have health departments and two have similar departments under different names, while Lane has a department of health and social services.

Lane and Benton have three full-time commissioners. The other three counties have five commissioners. They serve full-time in Multnomah County and part-time in Hood River and Washington counties.

Multnomah County has an elected chief executive who serves both as chairman of the board of county commissioners and as administrative head of the county government. The Washington County charter established an appointive position of county administrator, while the Hood River charter provides that the county commissioner receiving the highest number of votes at the biennial election serves as county executive. Neither the Lane nor Benton charters provide directly for county administrators, although Lane has created such a position by county ordinance.

All five counties reduced the number of elective department heads as a consequence of charter adoption. All general law (non-charter) counties have elective sheriffs, assessors, clerks, treasurers, and surveyors, and a few have additional elective offices. In the charter counties, only the sheriff and assessor remain as elective department heads in Lane and Benton, only the sheriff in Washington

and Hood River, and only the auditor in Multnomah.

In addition to provisions for reorganization, most charters have included a general grant of powers to deal with matters of county concern.

The scope of the general grant of power in a county charter has been established through court test<sup>1</sup> to be similar to that in a city charter. The leading city home rule case<sup>2</sup> can be applied, therefore, in determining the scope of county powers under the general grant. This means, in general, that in case of conflict between a state law and a county charter or ordinance, the test to determine which prevails is whether the subject matter is of general concern to the state as a whole, or at least a matter of more than local concern to each of the counties subject to the state law. This is only a general guide, however, and there will still be many questions about the relative jurisdictions of state and county governments in particular cases. As the court said in the leading city home rule case:

“The real test is not whether the state or the city has an interest in the matter, for usually they both have, but whether the state’s interest or that of the city is paramount.”

There are also questions that have not been completely resolved regarding applicability of county home rule powers inside cities.

It is clear that the constitutional provision was intended to decrease the dependence of counties on state legislative grants of authority. Experience with city charters suggests that problems on definition of “county concerns” can be solved.

### How Does A County Get Home Rule?

In order to acquire a charter, a county must follow certain specific procedures required by state laws set out in ORS203.710 to 203.810. These laws provide two ways to prepare and place a charter before the voters for approval or rejection. One way is through an “officially appointed” committee; the other way is through an initiative petition.

In using the initiative powers reserved by the constitution to the voters of each county, any voter or group of voters may draft a charter and have it placed on the ballot through petitions. These petitions must be signed by voters equal in number to at least 6 percent of the total number of votes cast in the county for the office of Governor in the previous general election.

The other, more common approach—the “officially appointed” committee—may start in either

<sup>1</sup> *Schmidt v. Masters* 7 Or. App. 421 (1971).

<sup>2</sup> *Heinig v. Milwaukie* 231 Or. 473 (1962).

of two ways. It may begin with a resolution adopted by the county's governing body, or with an appointment-requesting petition signed by a sufficient number of voters. The number of petition signers for this purpose must equal at least 5 percent of the total number of votes cast in the county for the position of Supreme Court Justice receiving the greatest number of votes in the last election. The resolution or petition must be filed with and verified by the county clerk.

The charter committee must be appointed within 60 days. Four members are appointed by the county governing body. State legislators representing the county appoint four more members. These eight members choose one more member to make a total of nine. All members must be legal voters of the county. No one authorized to participate in the appointment to a charter committee may serve on the committee.

The charter committee may employ staff or contract needed services subject to the limits of authorized funds. The county must provide at least 1¢ per registered voter or \$500, whichever is greater, to support the activities of the committee. The committee may conduct interviews and make investigations deemed necessary to draft a charter. At least one public hearing must be held before a charter is submitted to the voters. The proposed charter must be filed with the county clerk and made available for public study and discussions at least 90 days before the primary or general election at which the vote is to be taken.

To be approved, a proposed charter must receive a majority vote at a primary or general election.

### **Will Home Rule Lower Taxes?**

Home rule may or may not lead to lower county taxes. What happens to taxes depends on decisions made at local, state, and national levels; but what happens to locally levied taxes, especially property taxes, depends in the final analysis on decisions made by budget committees and voters at the local level.

Without home rule, county budget committees are essentially limited to reducing property taxes through cuts in expenditures. Sometimes this action may increase efficiency, but usually it means a reduction in the amount or quality of county services.

County reorganization may create opportunities to employ more highly qualified personnel and to introduce new administrative methods and processes that will increase efficiency—that is, produce more county services for each dollar used. This may not reduce taxes, but the reorganization may

help to slow increases in budgets and local levies.

### **What are the Potential Advantages of Home Rule?**

Home rule increases local flexibility and local authority in providing public services. It increases the options available to public officials in responding to tighter limits on property taxes, regardless of whether they are invoked at the state or the local level. It increases chances for lowering property taxes without critical cuts in county services. Generally, home rule may greatly expand opportunities to deal with local problems—in ways more acceptable to local residents than the ways prescribed by state law.

Counties operating under general law presently have most of the flexibility and local autonomy enjoyed by charter counties. However, adopting a charter protects the basic "home rule" powers against possible restrictions that might be enacted by the state legislature in the future.

### **What are the Potential Disadvantages of Home Rule?**

Adopting a county home rule charter involves a risk. If the charter is poorly written, the resulting organization may be more cumbersome and the powers more restrictive than those of "general law" counties. This points out the importance of obtaining competent assistance in writing the charter and in getting effective citizen participation in the charter drafting process.

### **What are Some Problems and Issues in Drafting a Charter?**

Drafters of a charter will have to consider a variety of issues. Some of these are:

What functions should county government perform and what should be the county administrative structure? The number and functions of the county departments in the charter should depend on the nature and extent of the activities citizens want county government to perform. Different counties with different needs and constraints may organize differently.

Which county officials should be elected and which appointed?

Should the charter drafters submit a charter that best fits the needs of the county, or one which is likely to provide the least opposition? Opposition and compromises are to be expected, but experience suggests that much thought should be given to ways of avoiding charters with "built-in" compromises that may spoil chances of success when the new government is launched.

Should the elected commissioners serve full-time or part-time?

Should commissioners' compensation be set in the charters or left to be reviewed and established annually?

### Where Can a Charter Committee Find Help?

Charter-writing provides an opportunity for lay people to pool their knowledge, beliefs, and goals with the training, experience, and observations of technical experts and professional people from such fields as law, public administration, political science, and economics. Sharing practical ideas and technical information is important. It can do much to assure an understandable, acceptable, and enduring documentary base for county government.

A committee undertaking to write a charter can get help by obtaining and studying charters that have been approved for other counties.

The Association of Oregon Counties has prepared a "pilot charter" as a guide. It is available from the Association of Oregon Counties, P.O. Box 2051, Salem, Oregon 97308.

Much assistance has been provided to charter committees by the Bureau of Governmental Research and Service headquartered at the University of Oregon in Eugene.

Charter committees will find useful the County Resource Atlas, containing background information on each county and the educational materials on local government available from the Oregon State University Extension Service. Extension offices are located at each county seat in the state.

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