

MULTNOMAH COUNTY CHARTER, Vol. 2, Bk. 1
-Court Support

XII

COURT
SUPPORT

HOME RULE CHARTER COMMITTEE
of
MULTNOMAH COUNTY

George Birnie
William L. Brunner
Mrs. A. T. Damskov
Martin A. Fitzgerald
Alden Krieg
Sylvia Nemer
John W. Sonderer
Stanley N. Swan

Room 384 Multnomah County Courthouse
1021 S. W. Fourth Avenue
Portland, Oregon 97204

MINUTES

Meeting of Sub-Committee on Court Support

March 26, 1965

The Sub-Committee on Court Support met at 5:00 p.m. on Friday, March 26, 1965, in Room 384, Multnomah County Courthouse. The following members were present:

George Birnie - Chairman
Neva Elliott
Alden Krieg

The Sub-Committee on Court Support made a comprehensive examination of the duties and functions of the district court clerk, the county clerk as they relate to clerical support of the circuit court, the constable, and the sheriff as his duties relate to service and execution of papers of the courts. The conclusion was reached that all of these functions relating to service to the courts should be combined into a department of court administration under an appointed court administrator with qualifications. It was further concluded, however, that a firm recommendation as to the organizational placement of this department of court administration could not be made to the committee as a whole until such time as the composition and powers of the governing body and the executive structure of county government has been determined.

The Sub-Committee on Court Support concluded that they were ready to make their recommendations for the creation of a department of court administration to the committee as a whole and this recommendation would be made at the next regular meeting of the Home Rule Charter Committee to be held on Thursday, April 1, 1965 at 5:00 p.m.


W. J. MERRELL
Executive Secretary

D. V. McCALLUM, Chairman
C. B. STEPHENSON, Vice-Chairman
NEVA ELLIOTT, Secretary

George Birnie
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W. C. MERRILL
Executive Secretary
227-8411 ext. 333

HOME RULE CHARTER COMMITTEE
of
MULTNOMAH COUNTY

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MINUTES

MEETING OF SUB-COMMITTEE ON COURT SUPPORT

February 26, 1965

The Sub-Committee on Court Support met at 5 o'clock p.m. on Friday, February 26, 1965, in Room 384, Multnomah County Courthouse. The following members were present:

George Birnie - Chairman
Neva Elliott
Alden Krieg

The sub-committee heard from David Saari, Court Administrator, an explanation of his functions and duties as they relate to the circuit court judges committee. The hypothesis of a Department of Court Administration was discussed with the Executive Secretary instructed to explore the legal ramifications, if any, with legal counsel.

The meeting adjourned at 6:30 p.m.


W. C. MERRILL
Executive Secretary

WCM:md

D. V. McCALLUM, Chairman
C. B. STEPHENSON, Vice-Chairman
NEVA ELLIOTT, Secretary

W. C. MERRELL
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227-8411 ext. 339

HOME RULE CHARTER COMMITTEE
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MINUTES

Meeting of Sub-Committee on Court Support
February 19, 1965

The Sub-Committee on Court Support met at 3:30 p.m. on Friday, February 19, 1965. The following members were present:

George Birnie - Chairman
Alden Krieg

The sub-committee reviewed the current county functions of the County Clerk, the District Court Clerk, the Constable, the Sheriff's Civil Division, and the Hypothesis of the Development of a Department of Court Administration.

The sub-committee concluded that the hypothesis was a good place to start, and set its next meeting for 4:00 p.m. on Friday, February 26, 1965 with instructions to the Executive Secretary to invite David Saari, the present Court Administrator, to testify before the sub-committee.


W. C. MERRELL
Executive Secretary

WCM:md

December 9, 1964

JUDGE BRYSON'S REMARKS TO THE HOME RULE CHARTER COMMITTEE

Mr. Stephenson, acting Chairman, and members of this committee. Judge Redding has asked me to appear here today on behalf of the Circuit Court Judiciary. While I do not know fully the problems of the committee, I do know you have a constitutional provision from the State of Oregon which provides for home rule. I know that the legislature a number of years ago adopted an act which provides a certain procedure for this to be done, and I know that Lane County and Washington County specifically have done it. That is about all I know about the background of your problems, although I can envisage that it is not a small problem.

The next question in my mind was what I should tell you about the courts that would be of any value to you as committee members. I read the constitutional provision, and I see that it has an exception at the end which says that this committee will not do anything that would affect the courts.

I don't know how much the committee understands about the courts. I know my own wife and my children who go to school do not understand the courts themselves, and from time to time ask me questions. I will assume you know nothing about the courts.

In Multnomah County we have 15 Circuit Court Judges which constitute the general trial bench, and of these 15 judges the statutes provide that two will be assigned to the Court of Domestic Relations and will be known as the Court of Domestic Relations, one will be known as the Department of Probate, and the remainder are called General Trial Judges. We hear all cases, criminal or civil, regardless of size from murder on down to the slightest infraction including appeals from the Municipal Court and appeals from the District Court. We have tried to bring about a good administration of the work of the Circuit Court.

We have in this county four district court judges. The Circuit Court is serviced by the County Clerk, Mr. Si Cohn, and his office. We have in our courtrooms a baliff whom the court appoints, and with the cooperation of the commissioners, this has been upgraded so that we don't have the oldtime sleeping baliff which some people think about as far as the court is concerned. Most of the courts have a baliff secretary, and she must qualify under a new rule recently adopted between the courts and the commissioners as a minimum legal secretary. We also have a court reporter. The court reporters are getting harder to find. I mention these because they are some of the problems which I think would work into your committee's problems and thinking when you get down to your county government as it affects the courts.

Then we have the clerk. Now the clerk is a civil service individual, and he is chosen through the rules of civil service and by Si Cohn's office. He has certain responsibilities which he must report to the County Clerk. He has other responsibilities. He is in court all day keeping a record of all the exhibits that come in, swearing the witnesses, and generally helping in the courtroom. Of late, we have had young men that are attending law school who serve as the clerks. The most that I could tell you in such a short time (then you will have to ask questions, now or at a later date) is where could this committee be of assistance to the Circuit Court generally so that you could bring about more effective use of your courts with the people of the County of Multnomah.

Since I am appearing here as an expert, and expert witnesses come under different rules, you cannot put much weight to an expert's testimony if you don't know something about the expert. So I am going to tell you with a little pride in the fact that out of thirty years of practice of the law, I did a lot of trial work in the first seventeen through the District Courts here and the Circuit Courts here and the Circuits of the state. In later years I got into the business field and I was meeting with Boards of Directors and businessmen more than I was with lawyers and constituents, and I learned the way a businessman runs a business meeting. I know that they conduct their business in a very businesslike manner, and they have some very good arguments there too. When I first attended the meetings of the Circuit Court judges a little over three years ago, (we meet once a month under the rules of our court) we did a lot of good discussion of the problems of the court, but we had no business administration to carry out what we said or what we thought or what needed to be done to do more work in the length of time that we have in order to save the taxpayers money. We would meet and maybe pass a resolution or motion, but nothing was ever done. There was no continuity of the administrative end of the court. Frankly, I was amazed at the way in which the judges ran the business end of the courts. But, of course, they would get through with the meeting which would last from one and one-half to two hours during a day when they were trying cases, they would go back and get on the bench and then be working hard on the bench, and they didn't have the personnel to take care of the business on the side.

A year ago last October, I went down to be on a law panel before a group at Los Angeles. That morning I went up to the Superior Court of Los Angeles County where they have 126 Superior Court Judges which is tantamount to our Circuit Court Judge, and I talked to the presiding judge and he in turn introduced me to a Mr. Gallis who was known as a Court Administrator. I learned a considerable amount. I came away with my arms full of packages which they had reduced to writing of how they had done this, because they seem to have the finances to carry things through down there after they get an idea. I came back with the idea that I thought we should have a court administrator.

Now the only way we could get a court administrator, of course, was for the County Commissioners to appropriate the money and approve it. This was done with the cooperation of Mr. Cohn, and I want to say this: as far as Mr. Si Cohn personally is concerned, he has been most cooperative with the courts. That has been my experience. There have been things which he and I disagree on at times, but he has been a cooperative individual.

We finally began last July or August - we now have a court administrator. He is an attorney who was with the League of Oregon Cities, and we have him taking care of the business of the courts. Now when we have a meeting and we decide to do something, he follows it through and sees that the business is done. He takes care of our court reporter problems. He sees that he or his office (his office is under Mr. Si Cohn and has about five or six employees) take care of the docket which brings up the cases before the court from the presiding court to see what they will be tried on a particular day or not. He is now going back through our minutes and he is correlating and putting them in writing. Our meetings are really beginning to contribute something, but we cannot do this without a court administrator taking care of the business end of it.

There has been since 1930 a large movement in the United States regarding court reorganization. I am on a committee of the judicial counsel of all the state judges which is called Court Reorganization and Unification. It is a plan which has passed in several states now whereby you only have one type of trial judges and an Appellate Court on top of that. That seems to be the trend, but this thing of the courts only working so many hours a day and taking it easy the rest of the time and only turning out so much work is a thing of the past. I very quickly found that you do not come to the Circuit Court today to retire - you come to work. But you have to have the business end along with it.

The man who began all this process that is going on today regarding reorganization, modernization, and unification of the courts is named Dean Roscoe Pound. I think if I would just read a few words to you to tell you what we have in mind regarding the courts, where you might be of assistance to us, it might be of help. He says, "It is but little less important to organize thoroughly the incidental, nonjudicial business of the court and all its branches. Legislation should not lay down details for this side of the administration of justice, but it would be a mistake for legislation to go into much detail on this subject" ----I am skipping here----"Emancipating the clerical work of the courts from politics and patronage and putting control of it where it ought to be, namely in the court itself, must be an important item in any program of improving the administration of justice. To specify by item, one system which prevails generally is a prolific source of needless expense to the court." Then he says, "Control of Clerical

Force. Decentralization of courts was carried so far in the last century that the clerks were made independent functionaries, not merely beyond effective judicial control, but independent of any administrative supervision and guided only by legislative provisions and limitations. No one was charged with supervision of this part of the work of the court. It was no ones business to look at it as a whole, seek to find out how to make it more effective and to obviate waste and expense and promote improvement. There is much unnecessary duplication of copying and recopying and general policies of records in a great majority of our courts." And I say Amen to that. I think if the average successful businessman would look today at the way we carry on much of the just clerical work, the keeping of records, the duplication of them, that they would throw up their hands. I know that businessmen today, everytime they can cut out only one form, do it because they know that it saves money for their stockholders. I think it is time that we started doing that, bringing the courts up to date from the administrative end in order to save money for the taxpayers.

I think that the court administrator is a step in the right direction. There is one thing of which I am sure Mr. Cohn and I would disagree. In some states, for instance the Commonwealth of Pennsylvania, they have what is known as a postal notary. He is a chief clerk of the courts. There are two or three states in the United States that have this. He is a clerk, but he is not part of the Clerk's office. He is a clerk merely before the courts.

Mr. Cohn's office has many duties and obligations and things to do besides just taking care of the courts. They are just part of his work. I don't feel that the jury and the impaneling of the jury and getting a proper jury together really should be any part of the Clerk's work. I just cannot see where it is not solely part of the courts work. I think it should be solely under the court administrator and under the supervision of the courts. Mr. Cohn would probably disagree with me, but that is the way I feel. That is one problem I see could be worked out with a good court administrator program. The jury is solely responsible to the courts and the jury is serving people who are litigants of the courts to bring out the right answer. I think we have made some steps. I will say this, that Mr. Cohn has certainly gone along with new ideas of our court administrator. Now we are using the Univac machine of the county for drawing the juries without any human hand so to speak touching it, and the Univac machine draws out every so many registered voters names that are on the books, and it types up the jury list, addresses the summons to the juror, addresses the envelope to the juror, stamps it, and practically puts it in the mail. We have saved, I am sure, a great number of dollars by selecting the jury in this manner. It used to be that two or three clerks during the summer months would go over to where the registration polls are kept and go through them physically picking out every juror's name, writing it down, duplicating all that with the typewriter, etc. This is all done by machine now. This is only one example.

I think many of the duties could be put together. The District Court is the lower court that has jurisdiction in civil matters only to \$1,000. It has no jurisdiction in real property matter. It has jurisdiction only in misdemeanors, is a magistrate for the preliminary hearings, and also decides as to whether or not search warrants will be issued. But someday I look to see that the trial courts will all be in one group. Several states have already done this. If that ever comes about, I see no reason why the District Court Clerk and the County Clerk shouldn't all be one office. And if you get that far, you're going to say why not put the Sheriff and the Constable together. I think it is time to modernize the courts and all of the offices that work with them. I also think there is a lot of room for improvement.

QUESTIONS ASKED BY THE HOME RULE CHARTER COMMITTEE OF
JUDGE BRYSON

Mrs. Nemer: I wonder if it would be possible for you to furnish us a list of suggestions on things that you think are changeable and feasible to change?

A. I don't think the courts can because we do not have time, but we have a judges committee, and we have a court administrator who was counsel with the League of Oregon Cities. He has a lot of administrative background and is a graduate of the University of Minnesota Law School. I would be glad to take it up with the general committee of judges, and if they so instruct me, we could ask the court administrator to do this for you.

Mrs. Nemer: That would be fine.

A. I want to say this though. It might put the court administrator in a very embarrassing position because he is still under Si Cohn and just how far he would want to go, I don't know.

Mr. Stephenson: I know you will probably tell the judges when your committee meets next of your visit here, and I would hope that the twelve who are in trial work might have some thoughts that the administrator might record for the benefit of this committee.

A. That would probably be a more reasonable way to do it.

Mr. Sonderen: Judge Bryson, did you say that the baliffs were under the state and the clerks of the court were under the County Clerk?

A. The baliffs and the court reporters are appointed by the court and serve at the discretion of the court, but they are paid by the county and that has to go into the county budget. There has never been a case, as I understand, in Oregon that has decided whether they are state employees or whether they are county, but they are paid by the county.

Mr. Sonderen: Whereas the clerks know they are employees of the county?

A. That is right.

Mr. Sonderen: These all function in the same courts in similar capacities?

A. That's right, in fact very often they are interchangeable. If the clerk has to go to the 2nd floor with some files, etc. then the baliff can step in and do the clerk's work while he is gone.

Mr. Sonderen: Is there any reason why they should not be in the same category?

A. I feel that everything attached to the courts should be in about the same category.

Mrs. Damskov: Is it your feeling that the clerks should be directly responsible to the court rather than to an elected official?

A. Well, Mr. Cohn and I understand each other on this. Last year I prepared and put into the legislature a bill which would have accomplished this. It passed the House with only six dissenting votes. I thought I had all the votes lined up to kick it through the Senate, but it got into the Senate Judiciary Committee late in the session and it didn't get out of there, so it didn't become law. But my idea is that the clerks should be solely responsible to the judge because the general law makes the court responsible for everything that goes on in that courtroom. If something is wrong, the judge gets reversed, no one else. Now I've known of instances around this courthouse, although I don't think it is true today, where some clerks disliked the judge he served with or for. I've heard of cases where the presiding judge would assign a case to Mr. Cohn's office and the clerk would just refuse to go down and get the case. The judge would be ready to go to work at 9:30 and the clerk would take it on himself to not be ready till 1:30. No this just does not make sense.