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ADMINISTRATIVE STRUCTURE

Studies in County Government

ILLUSTRATIVE PROVISIONS FOR HOME-RULE CHARTERS FOR OREGON COUNTIES: ADMINISTRATION

Efforts to improve county government in Oregon, like similar efforts regarding county government elsewhere in the United States, have been concerned in large part with improving the administration of county affairs. The constitutional authorization for home rule for Oregon counties reflects this emphasis. The authorization contains the following requirement:

"A county charter shall prescribe the organization of the county government and shall provide directly, or by its authority, for the number, election or appointment, qualifications, tenure, compensation, powers and duties of such officers as the county deems necessary. Such officers shall among them exercise all the powers and perform all the duties, as distributed by the county charter or by its authority, now or hereafter, by the Constitution or laws of this state, granted to or imposed upon any county officer."

Continuation of Existing Administrative Structure

This requirement allows a county to change its administrative structure upon assuming home rule. But the requirement does not make such a change mandatory. A county may desire home rule solely for the purpose of expanding its powers and not for the purpose of changing its governmental structure. In that event, the constitutional requirement concerning organization can be met by simply prescribing that the organization of the government of the county and the names, manner of designation, qualifications for office, terms of office, compensation, and functions of the administrative officers of the county shall be the same as the state law prescribes.

To this end the charter of the county may provide:

Section _____. ADMINISTRATIVE OFFICERS AND RELATIONSHIPS. The administrative officers of the county and--

- (1) the names of their offices,
- (2) their number,
- (3) the modes of designating them to fill the offices,
- (4) their qualifications for the offices,
- (5) their terms of office,
- (6) their compensation as county officers, and
- (7) their powers and duties as such

shall be the same as are now or hereafter prescribed by the constitution and laws of the state.

Such a provision would cause the administrative structure of a home-rule county to change from time to time on the basis of changes in pertinent provisions in the state law, maintaining that structure in "dynamic conformity" with state law. If it were desired instead that the administrative structure of the county be the structure prescribed by state law at the time the section took effect, irrespective of future changes in state law, that "static conformity" could be effected simply by deleting the phrase "or hereafter" from the section.

Changing the County Administrative Structure

In assuming home rule a county may, on the other hand, change its administrative structure. The administrative structure of the Oregon county that operates under general law includes a three-member governing body, usually called the county court but in a few counties called the board of county commissioners; a number of elective administrative officers; boards, commissions, officers, and employees appointed by the governing body; and employees appointed by the elective officers. This administrative structure has received criticisms typical of the criticisms leveled against American county government generally:

1. The structure has in effect been said to be headless, with elective officers operating independently of each other.
2. The county court or board of county commissioners has been regarded as lacking adequate power and responsibility for effecting needed administrative direction and co-ordination.
3. Many elective county offices require, as a practical matter, technical competence on the part of their incumbents. Election, it has been charged, is less satisfactory than appointment as a method of choosing persons on the basis of technical competence.

To meet shortcomings such as these it has been urged many times, both in Oregon and throughout the United States, that administrative power and responsibility in county government be centralized in the county governing body or someone responsible to it and that many county administrative offices which are now elective be made appointive. In other states many counties, some operating under home-rule charters and some under general state laws, have accordingly established chief administrative offices under various names and have changed some administrative offices from elective into appointive positions. In Oregon the trend toward more appointive administrative offices is reflected in the fact that county school superintendents are now appointed rather than elected¹ and that in all counties other than Multnomah County the elective office of

1. ORS 334.120 (1959). See also ORS 333.160 (1959).

coroner has been made an appointive office and renamed.¹

Available Administrative Plans

Under home rule an Oregon county may determine its own administrative structure and may allocate in its own way the functions of the county, including the functions that the constitution and laws of the state prescribe for the officers of the county. Developments in American county government suggest a number of administrative plans for Oregon counties that desire home rule. If the people of a county desire to retain the existing governmental structure of their county, but desire, following the example of many counties, to strengthen that structure by providing the county governing body a chief administrative officer to help it discharge its administrative responsibilities, they may strengthen the government of the county in this way. To this end a new administrative office may be established and filled by appointment by the governing body, or an already existing administrative office may be so expanded and given additional responsibilities that in effect it becomes the principal administrative office in the county. If the people of the county desire an administrative arrangement in which administrative power and responsibility are centralized in an elected chief executive, corresponding to the mayor in a "strong mayor" city, they may adopt that plan. Under ~~that~~ plan a chief administrative officer may be provided to assist the elected chief executive with his administrative responsibilities. If the people desire a county manager, such as has been provided for by charter or general state law in some counties in a number of states, the home-rule amendment makes it possible to establish the office of county manager in the county. If the people of the county desire some other administrative arrangement as a means of improving the government of the county, the home-rule amendment allows them a wide choice among other arrangements.

The Chief Administrative Officer

Perhaps the main innovation in local governmental administration in the United States during the last 20 years has been the establishment in an increasing number of cities and counties of an administrative post whose incumbent is known as the chief administrative officer. The post is in part a device for relieving policy-makers of administrative detail, in order that they may devote more attention to the formulation of basic policy. The post is also a device for improving the co-ordination of administrative functions by centralizing considerable administrative responsibility in a person chosen for the post because of his administrative competence. The post further serves to bring into the administration of county affairs trained, professional administrators.

The office of chief administrative officer is sometimes established

1. See ORS 146.410, 146.420, and 204.005 (1959).

by charter, sometimes by ordinance, and sometimes by less formal action. If the people of a county desire to establish the office of chief administrative officer by charter, they may so establish it in general terms, leaving details to be worked out by the county governing body, or they may prescribe details in the charter provision that establishes the office. The office may be established in explicit but general terms reading as follows:

Section _____. CHIEF ADMINISTRATIVE OFFICER. The office of chief administrative officer--

- (1) is hereby created,
- (2) shall from time to time be filled by appointment by the county governing body at a salary fixed by it, and
- (3) shall have such functions as the governing body prescribes.

In a county that retains its basic statutory administrative structure through a charter provision such as the first one set forth above, provision for a chief administrative officer may be made in general terms simply by supplementing the charter provision with the following authorization:

The governing body of the county may, however,--

- (1) by ordinance establish additional administrative offices,
- (2) fill the offices by appointment, and
- (3) assign to the offices whichever of its administrative functions it deems advisable.

Without explicitly mentioning a chief administrative officer, this supplementary authorization makes it possible for such an officer to be appointed and for much administrative power and responsibility to be centralized in him. He would be responsible, of course, to the governing body, for the proper and efficient conduct of his office.

The supplementary authorization just set forth contemplates establishment of the office of chief administrative officer by ordinance. The suggested ordinance set forth below and patterned on an ordinance suggested for a California county,¹ illustrates the details appropriate for such an ordinance or for a charter provision that establishes the office of chief administrative officer in detailed terms. The suggested ordinance indicates the functions typical of the office--although these functions vary considerably from county to county and from city to city.

Section _____. CHIEF ADMINISTRATIVE OFFICER.

- (1) There is hereby created the office of chief administrative officer, to be filled by appointment by the county council, at a salary to be set by the council.

1. An Ordinance Creating a Department of Administrative Management . . . , in Louis J. Kroeger and Associates, Charter and Administrative Surveys of the County of Monterey, California, pp. 7-8 (1951).

- (2) The chief administrative officer shall be a person having demonstrated administrative and executive ability as shown by at least five years of experience in private or public employment in a responsible administrative or executive position requiring the planning and execution of work programs or administrative operations, the budgeting and control of expenditures, and the co-ordination of varied activities.
- (3) The chief administrative officer shall serve at the pleasure of the council, except that he may be removed from his position only after ten days' notice and, if he so requests, only after a public hearing at a regularly called meeting of the council.
- (4) The chief administrative officer shall generally advise, assist, act as agent for, and be responsible to, the council for the proper and efficient administration of such affairs of the county as the council places in his charge; and he shall enforce ordinances, orders, and regulations as directed by the council.
- (5) In order to serve the council effectively, the chief administrative officer shall, under the direction of the council,--
 - (a) recommend an annual county budget and exercise continuous budgetary control,
 - (b) require reports of departmental activities,
 - (c) recommend improved or standardized forms and procedures,
 - (d) recommend desirable rearrangements of departments and functions,
 - (e) conduct continuous research in administrative practices,
 - (f) represent the county in its intergovernmental relationships,
 - (g) recommend a long-term plan of capital improvements, with accompanying financial plans,
 - (h) direct such central administrative services as the council finds desirable to render centrally such as--
 - (i) the maintenance and operation of buildings and grounds,
 - (ii) the maintenance and control of transportation, and
 - (iii) central office-appliance and clerical pools, including seasonal help assigned to offices,
 - (i) direct the purchase of property, equipment and supplies,
 - (j) direct the establishment and enforcement of personnel policies and practices, and
 - (k) recommend policies for the orderly conduct of county business.
- (6) The chief administrative officer, with the approval of the

county council, may transfer to his office functions and employes of existing offices necessary to the discharge of his duties under this section.

- (7) The chief administrative officer may--
 - (a) employ assistants,
 - (b) utilize and co-ordinate the personnel of other county offices, and
 - (c) utilize the services of such outside expert facilities and services as the council authorizes.
- (8) This section is not intended to vest in the chief administrative officer any duty now imposed by law on any other officer in the county, it being the intention of the council only to establish an office to which the council may delegate certain of its duties, to be performed at its direction.

These details may raise the question, How does the office of chief administrative officer of a county differ from the office of county manager? While the office of chief administrative officer varies from county to county and city to city, in general it may be said that the office does not involve as much centralization of administrative power and responsibility as does the office of county or city manager. More particularly, perhaps the main differentiation between the two offices is that the manager quite universally appoints the subordinate administrative officers and employes of the government of which he is administrative head, while the chief administrative officer commonly lacks formal power of appointment.

Council-Manager or Commission-Manager Government

One innovation in county government in the United States is an administrative arrangement usually known as council-manager or commission-manager government. Some counties with this administrative arrangement operate under general law, without charters. A few of the counties with managers have charters.

Council-manager or commission-manager government for a county generally includes the following main features:

1. The people of the county periodically elect a governing body.
2. The governing body, the most important and most powerful agency of the county, is the main policy-making agency of the county and bears the ultimate responsibility for seeing that the policies of the county are carried out and that the affairs of the county are properly administered. Because the functions of this governing body are primarily policy-making rather than administrative, notwithstanding its ultimate administrative responsibility, it is appropriate in the manager plan for that body to be larger than the common three-member or five-member county governing body.

3. To discharge its administrative responsibility the governing body chooses a county manager. It may discharge him whenever it desires and replace him with another.
4. The county manager, who is responsible to the governing body of the county for carrying out the policies of the county and for proper administration of the affairs of the county, has full charge of the employment and supervision of the administrative personnel of the county.
5. This administrative personnel is responsible directly to the manager for proper conduct of the affairs of the county. This personnel serves the county so long as it discharges its responsibilities to the satisfaction of the manager, but his power to employ and discharge the personnel may be qualified by whatever system of personal administration the governing body establishes for the county.

The council-manager plan of county government may be established by charter provisions reading as follows:

Section _____. COUNTY MANAGER.

- (1) The administration of the affairs of the county shall be subject to the general supervision of the county manager.
- (2) The county council shall appoint the manager solely on the basis of his executive and administrative qualifications, without regard to partisan political considerations. At the time he is appointed to the office he need not be a resident of the county or the state, but upon assuming the office, and throughout his tenure of the office, he shall reside in the county.
- (3) The manager's term of office shall be indefinite in duration. Either he or the council may terminate it at any time.
- (4) The manager shall--
 - (a) devote his entire working time to his duties as manager;
 - (b) attend all meetings of the council unless disabled from attending or excused from attending by the council or its president in advance;
 - (c) keep the council advised of the governmental activities and needs of the county;
 - (d) make reports annually, or more frequently if requested by the council, of the functions of the county departments and of other governmental affairs of the county;
 - (e) prepare and submit to the county council and the county budget committee the annual budget estimates and such additional information pertinent to the budget as the committee finds expedient to the

- discharge of its functions;
- (f) see that all ordinances of the county and the terms of all franchises, leases, contracts, permits, and privileges granted by the county are observed;
 - (g) have general supervision over all property of the county; and
 - (h) except as this charter provides to the contrary, and subject to the requirements of the county's system of personnel administration, appoint and, when he deems that the interests of the county require it, remove any appointive county officer or employe, and have general supervision and control over county officers and employes, and their activities as such, with power to transfer any employe from one department to another.

The manager may have no control, however, over the council or any judicial officer in his judicial capacity.

- (5) The manager and such other officers as the council designates shall, without having any vote on issues before the council, be entitled--
 - (a) to sit with the council and
 - (b) to take part in council discussions.
- (6) The council shall fill any vacancy in the office of manager within four months after the vacancy begins. In the event of any such vacancy or of the manager's absence from the county or temporary disability to serve as manager, the council shall appoint a manager pro tempore. No manager pro tempore shall hold his position as such for more than four months, and no appointment of a manager pro tempore shall be renewed. A manager pro tempore shall have the powers and duties of a manager, except that he may appoint or remove a county officer or employe only with the consent of three-fourths of the members of the council.
- (7) Neither the manager's spouse nor any person related to the manager or the spouse by consanguinity or affinity within the third degree may hold any appointive office or employment in the government of the county.
- (8) No appointive officer or employe of the county may take part in securing, or contribute any money toward, the nomination or election of any candidate for a county office.
- (9) No member of the council may directly or indirectly, by suggestion or otherwise, attempt privately to influence or coerce the manager in the making of any appointment or removal of any officer or employe of the county, or attempt to exact any promise relative to any appointment from any candidate for manager, or discuss directly or indirectly with the manager

the matter of specific appointments to any city office or employment. A violation of this prohibition shall forfeit the office of the offending member of the council. Nothing in this paragraph shall be construed, however, as prohibiting the council while in open session from fully and freely discussing with or suggesting to the manager anything pertaining to county affairs or the interests of the county.

Administration Headed by a "Strong" Elected Executive

A county may desire an administrative plan in which administrative responsibility is centered, not in an appointive executive, but in an executive elected by the people of the entire county. Such a plan may be worked out by expanding the powers and duties of the county judge or chairman of the board of county commissioners. A county may establish the office of elected executive by a charter that provides for an elective head of the county government, to be chosen by popular ballot from the county at large, that makes him a member and normally the presiding officer of the governing body of the county, that places the administrative personnel of the county under his supervision, and that makes him responsible for the administration of the affairs of the county. In city government the counterpart of this administrative arrangement is known as the "strong mayor" plan of government.

This plan of administration may be effected for a county by charter provisions reading as follows:

Section _____. COUNTY COUNCIL.

- (1) The county council shall consist of the county executive and six councilmen, all elected from the county at large for four-year terms, except as this charter provides to the contrary.
- (2) At the first general November election after this charter takes effect and at the general election each fourth year thereafter the qualified voters of the county shall elect a county executive. The candidate for the office who receives the highest number of votes cast at the election for any candidate for the office shall, except as this charter provides to the contrary, hold the office--
 - (a) for the four calendar years immediately ensuing the election and
 - (b) until the time that his successor to the office qualifies for it.
- (3) At the first general November election after this charter takes effect the voters shall elect six councilmen. Each of the three candidates for positions in the council who receive the three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position

in the council--

- (a) for the four calendar years immediately ensuing the election and
- (b) until the time that his successor to the office qualifies for it.

Each of the three candidates for positions in the council who receive the next three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--

- (a) for the two calendar years immediately ensuing the election and
- (b) until the time that his successor to the office qualifies for it.

- (4) At each general election after the first the voters shall elect three councilmen. Each of the three candidates for positions in the council who receive the three highest numbers of votes cast at the election for candidates for the positions shall, except as this charter provides to the contrary, hold his position in the council--

- (a) for the four calendar years immediately ensuing the election and
 - (b) until the time that his successor to the office qualifies for it.

Section _____. COUNTY EXECUTIVE. The county executive--

- (1) shall be a member of the county council;
- (2) shall be its presiding officer while attending its meetings;
- (3) shall, within three days after the council passes an ordinance, sign it, without power of veto;
- (4) shall sign--
 - (a) all approved records of proceedings of the council and
 - (b) all bonds--
 - (i) of county officers and
 - (ii) for licenses, contracts, and proposals concerning the countywithin three days after the council has approved the bonds;
- (5) shall appoint--
 - (a) the committees that the rules of the council call for and
 - (b) such other committees as the council requests him to appoint;
- (6) shall see--
 - (a) that the officers, employes, and residents of the county comply with--
 - (i) the requirements of this charter and
 - (ii) the requirements of the ordinances of the countythat bear upon them,

- (c) that the policies of the county as determined by--
 - (i) the council or
 - (ii) the people of the county at the pollsare carried out;
- (7) shall to these ends--
 - (a) have charge of the administration of the affairs of the county and
 - (b) see that they are administered in the best interests of the county;
- and
- (8) shall, to these ends and subject to the approval of the council or to the requirements of whatever system of personal administration the council or the people of the county establish,--
 - (a) appoint all nonelective officers and employes of the county and
 - (b) remove any of them whenever in his judgment the best interests of the county require.

Section _____. OTHER OFFICERS AND EMPLOYES.

- (1) Additional officers of the county shall be--
 - (a) a district attorney,
 - (b) a sheriff;
 - (c) a clerk,
 - (d) a recorder,
 - (e) an assessor,
 - (f) a tax collector,
 - (g) a treasurer, and
 - (h) such other officers as the county council provides for.
- (2) The employes of the county shall be the persons appointed to fill the nonofficial positions that the county council creates and authorizes to be so filled.
- (3) Subject to the approval of the council or the requirements of whatever system of personnel administration the council or the people of the county establish,--
 - (a) each employe of the county and
 - (b) each of the additional officersshall be--
 - (a) appointed to his office or position by the county executive and
 - (b) removable by the county executive,subject to the requirements of the county's system of personnel administration.
- (4) By ordinance the council may from time to time--
 - (a) combine any two or more of these offices that are nonjudicial in character and
 - (b) require the combined offices to be filled by a single nonjudicial officer.

Allocation of Functions

The county-home-rule amendment makes clear that the responsibilities of county officers under state law may under home rule be allocated among the officers of the county according to whatever plan the people of the county call for in the charter of the county. Whatever the administrative structure of a home-rule county, the county needs in its charter a provision by virtue of which some officer or agency of the county has general power to allocate functions to county administrative officers. Such a provision is needed if the charter allocates some functions in general or specific terms to particular officers. The county-home-rule amendment in the state constitution makes clear that under home rule the total officialdom of a county has just as many functions as it would have if the county were operating solely on the basis of the constitution and general laws of the state. Home rule does not, in other words, free a county of any of its functions under state law, notwithstanding the latitude that the county has under home rule to allocate those functions.

Conceivably the charter of a county could allocate in detail among the officers of the county their various functions under state law. But the allocation would take a great deal of space. In working it out it would be difficult, moreover, to avoid overlooking some of the functions. More serious, it would be quite impossible by such a detailed allocation to allocate new functions required of county officers by the state in the future. It is clear, therefore, that the problem of allocation of state-imposed county functions among the officers of a home-rule county must be solved at least in part in general terms. To this end a county charter may provide:

Section _____. ALLOCATION OF ADMINISTRATIVE FUNCTIONS. The county council--

- (1) shall allocate and
 - (2) from time to time may re-allocate
- each administrative function of an agency or officer of the county to one of the administrative offices established by or pursuant to this charter.

This suggested section makes the allocation of functions a power and responsibility of the county council, for the reason that the question of which officer shall carry on which function may with reason be regarded as a question of such basic policy that only the governing body of the county should resolve it. The allocation of some minor functions may, however, be regarded with reason as a proper administrative responsibility. It may therefore be desirable to place some of this responsibility in the hands of the county executive. The preceding illustrative section may, by being made applicable to the county executive rather than the county council, be revised to achieve this objective. In more general terms the objective can be achieved by interpolating at the beginning of the section the phrase, "except as the county council provides by general order to the contrary."

Administrative Departments

No matter where it lodges executive responsibility in its administrative structure, a county may desire that under home rule this structure include administrative departments. To this end a county may include in its charter a section reading as follows:

Section ____ . ADMINISTRATIVE DEPARTMENTS.

- (1) For purposes of efficient and economical administration of the affairs of the county the following administrative departments are hereby established:
 - (a) Department of Records.
 - (b) Financial Department.
 - (c) Tax Department.
 - (d) Department of Public Works.
 - (e) Health Department.
 - (f) Welfare Department.
 - (g) Department of Law Enforcement.
 - (h) Legal Department.
 - (i) Department of General Services.
- (2) From time to time the county governing body may by ordinance--
 - (a) establish additional administrative departments,
 - (b) abolish any such department,
 - (c) combine any two or more administrative departments of the county and require that the immediate supervision of the combined departments be the responsibility of a single person and
 - (d) separate departments thus combined.
- (3) The administrative functions now or hereafter prescribed for county officers by the constitution and laws of the state shall be allocated from time to time among the administrative departments of the county in accordance with orders by the county governing body. Each administrative department shall have such additional functions as the governing body requires.
- (4) Each administrative department shall include such offices and positions of employment as the county governing body establishes in the department, except that the department of law enforcement shall include the office of district attorney. The activities of each officer and employe in

each department shall be carried on under--

- (a) the general direction of the administrative head of the county government and
- (b) the immediate supervision of the head of the department.

Personnel

The administration of county affairs includes, of course, personnel administration concerning the officers and employees of the county. A study setting forth illustrative personnel provisions for county charters is planned as a separate study to supplement this study regarding county administration in general.

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