

MULTNOMAH COUNTY CHARTER, Vol.2, Bk. 1  
-Hypothesis of Establishing Dept. of  
Court Administration and Dept. of  
Records and Elections

1/18



HYPOTHESES



A REPORT ON THE  
HYPOTHESIS OF ESTABLISHING  
A DEPARTMENT OF COURT ADMINISTRATION  
AND  
A DEPARTMENT OF RECORDS AND ELECTIONS



Each member of the Home Rule Charter Committee is in possession of a preliminary report on the organization, composition, and responsibilities of the County Clerk, the District Court Clerk, the Constable, and the Sheriff's Civil Division. These reports each contain functional charts describing in very brief over-simplified language the functional responsibilities of each of these departments as they relate to the support of the courts. This is a report on the analysis of functions of the four departments comprising the nucleus of the proposed Department of Court Administration. This hypothesis, as proposed by the Circuit Court Judges Committee, is the subject of this report.

The functional statements contained on pages 5 and 6 of this report consist of a composite of the functions performed by these four departments. A critical review of these functions will reveal duplication of effort, duplication of function, duplication of manpower requirements, duplication of equipment, and a general hodge-podge of activity most confusing to the public. The heads of the various departments are elected officials, theoretically responsible to the people of the county. With the exception of a budgetary responsibility to the Board of County Commissioners, these heads are, in fact, responsible to only themselves.

A critical review of the functions as outlined will reveal similar functions in all areas. As an example, the Constable assigns service and execution to the field unit for papers of the District Court while the Sheriff assigns service and execution to deputies for papers of all courts. The filing of the suits before the courts are handled by four different divisions depending upon the court in which the suit is being filed. There are 11 separate functional statements in the four departments having to do with the collection of monies, cashing, and accounting.

Pages 7 and 8 again contain the total of the functional statements relating to court support. The circles and arrows are illustrative of those functions now being performed that should come under the direct supervision of a court administrator. This consists of a grouping of the miscellaneous duties of an administrative nature.

Pages 9 and 10 illustrate those functions now carried out by two departments in filing of cases before the courts and in docketing. These functions can all be consolidated into one Division of Filing and Docketing. This hypothesis supposes that any attorney filing a case before any court would conduct his business at one single location at all times regardless of the nature of the case. By the same token, all docketing could be performed at a central location for all of the courts, and through coordination by the individual court clerks, this Division could as well set the calendar for all courts.



Pages 11 and 12 illustrate the functions of the service of process and the execution of court orders. At present each of the four departments now has some part of this overall function. We currently have the Constable serving papers for the District Court and the Sheriff serving papers for the Circuit Court, with the District Court Clerk supplying and executing the writs of attachment and executions and the County Clerk placing liens against properties and issuing execution after trial as well as issuing bench warrants at the direction of the courts. This hypothesis supposes that one division of process service could serve all of the courts.

Pages 13 and 14 illustrate the multiple functions of cashiering and accounting carried on by the four departments. At the present time there are cash registers all over the Courthouse, and all too often the public is faced with the problem of travelling from cashier's cage to cashier's cage looking for someone who will take his money. This hypothesis supposes that one central cashier would accept, account, and make proper distribution of all money received for all purposes with the accounting being accomplished by simply pushing the right key on a cash register.

A proposed functional organization of a Department of Court Administration is contained on page 15. It will be noted that the County Clerk's functions as Recorder of Conveyances and Custodian of Public Records has not been included in this organization for the reason that these functions are not properly a part of court administration. These functions should be considered as components of another division of county government.

There are several questions that remain unanswered. While this organization is theoretically sound and the functions of the four departments have been combined into one for better administration and service to the courts, no effort has been made to establish this organization's position in the overall organizational hierarchy of county government, for the remainder of the county's organization has not yet been determined. If the Committee, after fully testing the hypothesis of combining all court support into a single Department of Court Administration, should determine that a provision should be placed in the charter for the establishment of this department, they should then be obliged to make provisions for the following questions: What are the qualifications of the Court Administrator? Should the Court Administrator be appointed or elected? What should be the Court Administrator's position in the organizational hierarchy? Should he report to a county executive with liaison and coordinating responsibilities with the judges? Should he report directly to the judges and be divorced from supervision of the county executive? If appointed, by whom? If elected, partisan or non-partisan?



This hypothesis should be tested fully by members of the Sub-committee on Court Support and by the Home Rule Charter Committee. It might further be referred to the judges for their comment, to the Bar Association for their study and comment, and to the present elected officials of the proposed abolished departments for their perusal and comment. A review by these people will point up weaknesses, both from the standpoint of management and the standpoint of politics, and bring forth legal questions that should be referred to our general counsel.



CONSTABLE

OFFICE

Maintains records.  
Collects fees.  
Assigns service and execution to Field Unit.

FIELD

Serves summons, orders, writs, or processes.  
Executes all decrees of District and Justice Courts.

SHERIFF

OFFICE

Receives summons and processes.  
Collects fees.  
Assigns service and execution to deputies.  
Conducts Sheriff's sales.  
Collects liquor license fees.  
Handles cash accounts of Sheriff's Department.

FIELD

Serves summons, orders, writs, or processes.  
Executes decrees of any court.

DISTRICT COURT CLERK

CIVIL

Files all small claims and other litigations maintaining records from outset to completion.

Supplies and executes writs of attachment and execution.

Maintains docket of proceedings on civil matters.

Performs cashiering and accounting of funds received by District Court Clerk.

Maintains calendar of District Court civil proceedings.

CRIMINAL

Files all papers and documents for misdemeanors and felony cases as well as traffic citations coming before the District Court.

Supplies and executes writs of execution.

Maintains docket of proceedings on misdemeanors, felonies, and traffic citations.

COUNTY CLERK

LICENSING DIVISION

1. Issues marriage licenses.
2. Issues dog licenses.

CASHIERING DIVISION

1. Receives, accounts, and makes proper distribution of money received by the clerk.

ACCOUNTING DIVISION

1. Maintains records of money received and disposition made.
2. Audits cashiers.



CLERK OF THE COURTS  
(FUNCTIONAL)

CIRCUIT COURT DIVISION

1. Files all suits in Circuit Court and all papers from outset to completion.
2. Collects alimony support and disbursements to claimants.
3. Dockets cases and places liens against property. Issues execution after trial.
4. Collects judgments from Circuit Court.
5. Issues bench warrant on direction of the court.

PROBATE COURT DIVISION

1. Files unprobated wills, estates, guardianships, will contests, conservatorships, and determinations of inheritance taxes.
2. Files adoptions and change of name.
3. Ascertains docketing.

COURT CLERK DIVISION

1. Court administrator serves Presiding Judge and judge's committee on administrative problem study.
2. Calendar Clerk.
3. Docketing.
4. Deputy Clerks of individual courts.

COURT FILES DIVISION

1. Files all records of cases coming before circuit court and probate court.

TRANSCRIPT DIVISION

1. Prepares transcripts of court records for appeals to higher courts.

RECORDER  
(FUNCTIONAL)

RECORDER DIVISION

1. Maintains Receiving Book.
2. Records data regarding documents received.

RECEPTION DIVISION

1. Maintains control records of documents received.
2. Operates mailing unit of recorder function.

PHOTOCOPY DIVISION

1. Makes reproductions of documents for recording into public records.
2. Assigns book and page numbers to recorded documents.

INDEXING DIVISION

1. Maintains index to all recorded documents.



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2. Calendar Clerk.
3. Docketing.
4. Deputy Clerks of individual courts.

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(FUNCTIONAL)

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RECEPTION DIVISION

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2. Operates mailing unit of recorder division.

PHOTOCOPY DIVISION

1. Makes reproductions of documents for recording into public records.
2. Assigns box and page numbers to recorded documents.

INDEXING DIVISION

1. Maintains index to all recorded documents.

Director of Court Administration

1. Serves presiding judges and judges Committee (v)
2. Filing of Court Records
3. Transcripts of Court Records
4. Deputy Clerks of Ind. Courts



CONSTABLE

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Maintains records.  
Collects fees.  
Assigns service and execution to Field Unit.

FIELD

Serves summons, orders, writs, or processes.  
Executes all decrees of District and Justice Courts.

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5. Issues bench warrant on direction of the court.

PROBATE COURT DIVISION

1. Files unprobated wills, estates, guardianships, will contests, conservatorships, and determinations of inheritance taxes.
2. Files adoptions and change of name.
3. Ascertains docketing.

1. [REDACTED]
2. Calendar Clerk.
3. Docketing.
4. [REDACTED]

REORDER  
(FUNCTIONAL)

RECORDER DIVISION

1. Maintains Receiving Book.
2. Records data regarding documents received.

RECEPTION DIVISION

1. Maintains control records of documents received.
2. Operates mailing unit recorder function.

PHOTOCOPY DIVISION

1. Makes reproductions of documents for recording into public records.
2. Assigns box and page number to recorded documents.

INDEXING DIVISION

1. Maintains index to all recorded documents.

## Filing and Docketing

1. Receive all cases for filing before all courts
2. Set calendar for all courts
3. Perform docketing for all courts



CONSTABLE

OFFICE

Maintains records.  
Assigns service and execution to Field Unit.

FIELD

Serves summons, orders, writs, or processes.  
Executes all decrees of District and Justice Courts.

SHERIFF

OFFICE

Receives summons and processes.  
Assigns service and execution to deputies.  
Conducts Sheriff's sales.  
Handles cash accounts of Sheriff's Department.

FIELD

Serves summons, orders, writs, or processes.  
Executes decrees of any court.

DISTRICT COURT CLERK

CIVIL

Supplies and executes writs of attachment and execution.

Performs cashiering and accounting of funds received by District Court Clerk.

CRIMINAL

Supplies and executes writs of attachment and execution.

COUNTY CLERK

LICENSING DIVISION

1. Issues marriage licenses.
2. Issues dog licenses.

CASHIERING DIVISION

1. Receives, accounts, and makes proper distribution of money received by the clerk.

ACCOUNTING DIVISION

1. Maintains records of money received and disposition made.
2. Audits cashiers.



CLERK OF THE COURTS  
(FUNCTIONAL)

CIRCUIT COURT DIVISION

2. Collects alimony support and disbursements to claimants.

and places liens against property. Issues execution after trial.

4. Collects judgments from the Court.

5. Issues bench warrant on direction of the court.

RECORDER  
(FUNCTIONAL)

RECORDER DIVISION

1. Maintains Receiving Book.
2. Records data regarding documents received.

RECEPTION DIVISION

1. Maintains control records of documents received.
2. Operates mailing unit of Recorder Division.

PHOTOCOPY DIVISION

1. Makes reproductions of documents for recording into public records.
2. Assigns book and page numbers to recorded documents.

INDEXING DIVISION

1. Maintains index to all recorded documents.

*Civil Process Service - all courts*

1. *Save process for all courts*
2. *Perform executions for all courts*
3. *Under direction of Court Administrator*



CONSTABLE

collects fees.

SHERIFF

collects fees.

collects liquor license

handles cash accounts  
of Sheriff's Department.

DISTRICT COURT CLERK

CIVIL

Performs cashiering and ac-  
counting of funds received  
by District Court Clerk.

COUNTY CLERK

LICENSING DIVISION

1. Issues marriage licenses.
2. Issues dog licenses.

CASHIERING DIVISION

1. Receives, accounts, and makes proper distribution of money received by the clerk.

ACCOUNTING DIVISION

1. Maintains records of money received and disposition made.
2. Audits cashiers.



CLERK OF THE COURTS  
(FUNCTIONAL)

CIRCUIT COURT DIVISION

1. Collects alimony support and dis-burses to claim-

4. Collects judgements from Circuit Court.

RECORDER  
(FUNCTIONAL)

RECORDER DIVISION

1. Maintains Receiving Book.
2. Records data regarding documents received.

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1. Maintains control records of documents received.
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INDEXING DIVISION

1. Maintains index to all recorded documents.

## Cashiering Function

1. One central cashier for all functions
2. Include all accounting for all functions.
3. Under Court Administrator or Treasurer?



COURT ADMINISTRATOR

1. Serves presiding judge and judges committee on administrative problem study.
2. Serves District Court on administrative problems.
3. Coordinates clerks of individual courts.

FILES & TRANSCRIPTS

1. Files all records of cases before the court.
2. Prepares transcripts of court records for appeals to higher courts.

FILING & DOCKETING

1. Receives all cases for filing before all courts.
2. Dockets all cases for all courts.
3. Prepares calendar for all courts.

PROCESS SERVICE

1. Receives summons and processes.
2. Supplies and executes writs of attachment.
3. Places liens against property.
4. Issues bench warrants on direction.
5. Serves summons, orders, writs, or processes.
6. Executes decrees of all courts.

ACCOUNTING & CASHIERING

1. Collects and accounts all fees, fines, judgments, etc.
2. Collects alimony support and disburses to claimants.
3. Administers cash accounts.



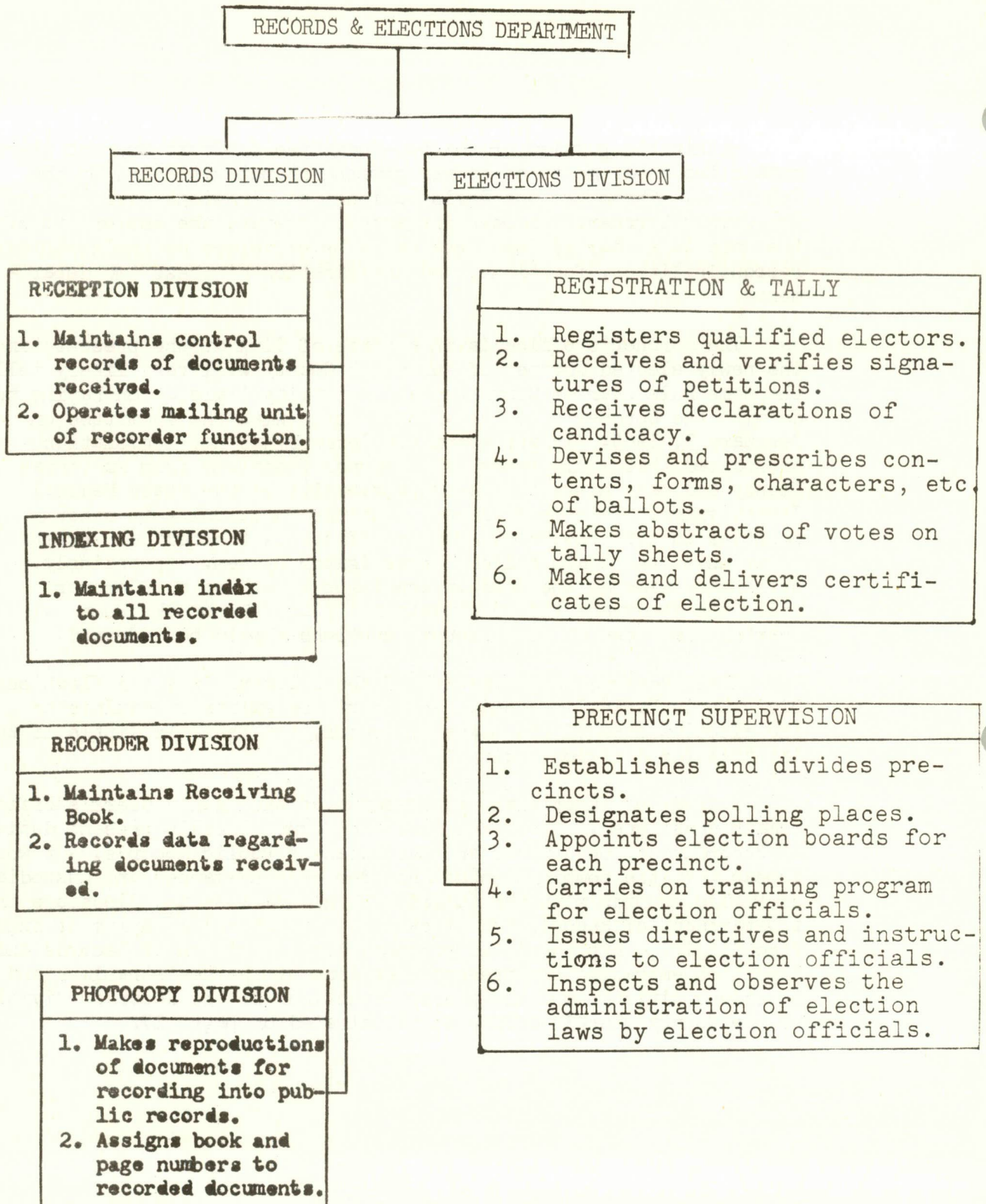
Within the purview of the Sub-Committee on Court Support there remain two departments of county government not yet heard by the Committee. These are the Registrations and Elections Division and the County Coroner. In both instances, however, the membership of the Home Rule Charter Committee has a brief report on the statutory responsibilities, functions, and organization of these two departments.

The Coroner's office is in a state of flux at the present time. The newly elected Coroner of Multnomah County will very likely tell the Home Rule Charter Committee about pending legislation having to do with the Coroner's office when he meets with the Committee on February 3, 1965. In any event the Coroner has had legislation introduced that would remove the Coroner functions from Multnomah County and make his duties a responsibility of the State Medical Investigator. This is different than the functioning in other counties in that the County Health Officer is the medical investigator under the State Medical Investigator System. Accordingly, until such time as the legislature takes action on the Coroner bill, the study and the organizational placement by the Home Rule Charter Committee of the Coroner functions should be deferred.

The functional organization of the Registrations and Elections Division is basically sound. This division exists to administer the election laws of the State of Oregon, and there is little if any latitude for decision making.

A group of functional requirements of the County Clerk's office remain unassigned. These comprise the County Clerk's present duties of Recorder of Conveyances and Custodian of Public Records. It would appear that the combination of Recorder of Conveyances and Custodian of Public Records with the duties of Registrations and Elections into a Department of Records and Elections is a natural grouping of functions. Accordingly, a hypothesis is proposed for a Division of Records and Elections embracing the present functions of the Registrations and Elections Division and the present functions of the Recorder Division of the County Clerk's office as illustrated on page 17.







## CONCLUSION

Six departments of county government have been assigned to the Sub-Committee on Court Support. An outline of functional responsibilities of four of these six reveals that there are many areas of duplication yet all have similar goals - support of the courts.

This report is a hypothesis stating that the functions of five departments of county government could better be accomplished by the establishment of two: (1) A Department of Court Administration and (2) A Department of Records and Elections.

The functional organization contained in this report is not a recommendation for adoption. It is not a conclusion to be defended. It is nothing more than an idea, a possible solution, to be tested thoroughly and critically. It is, nonetheless, a point of departure.



REPORT  
OF THE  
SUB-COMMITTEE ON COURT SUPPORT  
TO THE  
HOME RULE CHARTER COMMITTEE  
OF  
MULTNOMAH COUNTY, OREGON

George Birnie - Chairman  
Neva Elliott  
Alden Krieg



#### SUMMARY AND RECOMMENDATIONS.

The Sub-Committee on Court Support receives its name on the basis of the assumption that a number of departments of Multnomah County exist solely for the purpose of aiding in the administration of justice, and to this extent are but adjuncts of the judicial system. Although the circuit court and the district court of Multnomah County are actually departments of the State of Oregon and not of Multnomah County, the system of government assisting the courts in the exercise of their function is county government and includes duties which have been prescribed by statute for performance by the sheriff, the constable, the county clerk, and the clerk of the district court.

This sub-committee held a number of meetings to determine whether the ends of good government would be served by changing in any way the present allocation of services supporting court functions. The committee heard from several witnesses, including the county clerk, the clerk of the district court, the constable, the sheriff, Saari, the present court administrator, and was advised from time to time by Orval Etter, general counsel for the Home Rule Charter Committee. From the testimony given and from the studies made by this sub-committee, it recommends:

1. That the duties imposed by law upon the county clerk, the sheriff, the constable, and the clerk of the district court connected with the judicial process and the administration of justice should be removed from their jurisdiction and placed under the jurisdiction of a new department to be called "Department of Judicial Administration."

2. The chief officer of the Department of Judicial Administration shall be appointed by the Board of County Commissioners or such other appointive authority as is later determined by the Home Rule Charter Committee.



3. Since all present duties of the constable and the clerk of the district court are to be allocated to the Department of Judicial Administration, these offices shall be abolished.

4. The duties of the county ~~court~~<sup>CLERK</sup> unrelated to the administration of justice, such as the recording of instruments, the custodian of instruments, and the issuance of licenses, shall be transferred to some other department of county government.

5. The office of sheriff shall be continued but stripped of its court related duties.

In the deliberations of this sub-committee, economy of government was one of the considerations but not the principal or controlling factor. The primary consideration was the grouping of duties under one department where such duties related only to such department. It is thought that by this intelligent application and grouping of duties and responsibilities that good government would be best served and that economy would naturally follow.



## THE COUNTY CLERK

The office of the county clerk was established by the Constitution of the State of Oregon partly to serve the courts. At the time of its establishment the duties of the county clerk were relatively simple. From the constitutional office serving two judges in Multnomah County, the office grew to the present complex of serving fifteen circuit court judges who handle 47,000 cases and proceedings annually. A circuit court has been established into departments, including departments for probate matters and for domestic relations.

When the district court was later established by statute, the county clerk was the clerk of this inferior court. Later legislation created the office of the district court clerk to serve the district court alone.

The office of the county clerk now employs 81 persons and has a budget for 1964-65 in excess of 1/2 million dollars. It is headed by an elected county clerk who is paid a salary of \$12,500 a year.

The duties of the county clerk fall essentially into two categories. The first are the clerical responsibilities in support of the circuit court, and the second are the custodial responsibilities pertaining to public records and the performing of other functions. This report is concerned only with the clerical responsibilities to support the circuit court. To perform his duties the county clerk has divided his department into five divisions, and the following is a chart showing the functions of each of the divisions as it relates to the county clerk in his capacity of the clerk of the court.



## CLERK OF THE COURTS (FUNCTIONAL)

### CIRCUIT COURT DIVISION

1. Receive for filing all pleadings, orders and decrees connected with circuit court litigation.
2. Receive money for payment to proper parties to litigation in satisfaction of judgments, orders and decrees.
3. Maintain records and files of legal proceedings.
4. Issue subpoenas, certified copies of instruments in his custody, issue on order of the court citations, writs of attachment, executions, and other instruments.

### PROBATE COURT DIVISION

1. Receive for filing petitions for probate of wills, and for the appointment of administrators, guardians, and conservators.
2. Receive for filing petitions for adoptions, change of name, organization of and annexation to special districts and other proceedings.
3. Supervising under the direction of the probate court in compliance with the statutes pertaining to the estates of deceased persons and of wards.

### COURT CLERK DIVISION

1. Through the office of a court administrator serve the presiding judge and the other judges and the committee of judges on administrative problems involved in judicial proceedings.
2. Through a calendar clerk organizes litigation and sets cases for trial.
3. Attendance at daily court functions through the deputy clerks.

### TRANSCRIPT DIVISION

1. Prepares transcripts of court records for appeals to supreme court.

### COURT FILES DIVISION

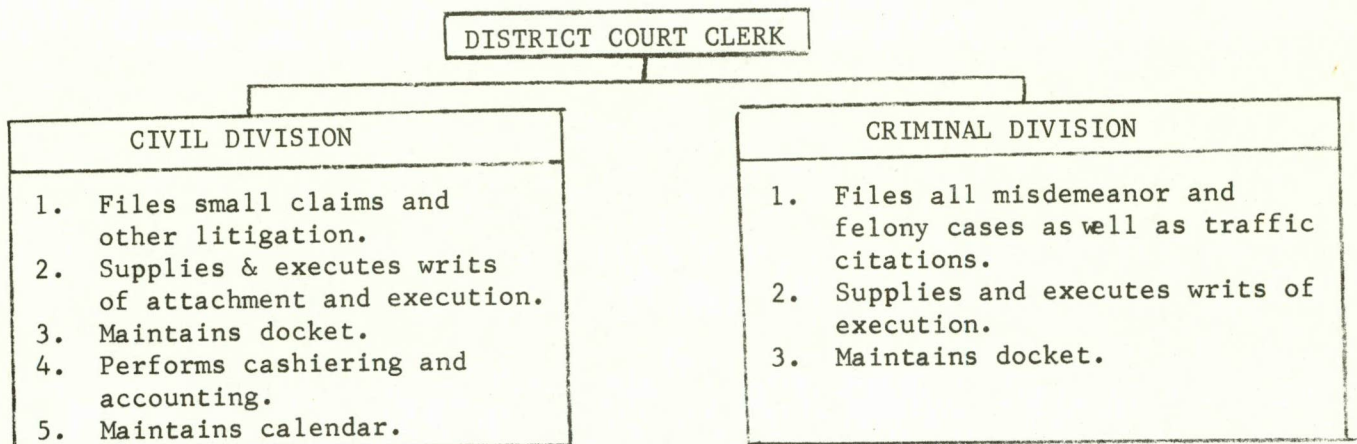
1. Files all records of cases coming before the circuit court and probate court.



## THE DISTRICT COURT CLERK

The office of the District Court Clerk employs 24 persons and has a budget for the current fiscal year in excess of \$150,000. It, too, is headed by an elected official known as the District Court Clerk who is paid a salary of \$9,500 a year.

To accomplish the duties imposed upon her by statute, the Clerk of the District Court has divided her department into two divisions as shown by the following chart.



In all of the counties having a district court, the county clerk is ex-officio clerk of such district court. Multnomah County is the only county in Oregon having a district court clerk. In all charter counties of Oregon the office of the county clerk has been abolished as an elected position.

You will notice from the foregoing that both the county clerk and the clerk of the district court have similar functions and authorities. Neither one has any measure of discretion and the office of both is almost purely ministerial; as a general matter, the work of both clerks is almost identical. For the foregoing reasons there seems to be but one conclusion of this committee - that the ends of good sense and good administration of county government will require that these two offices be combined.

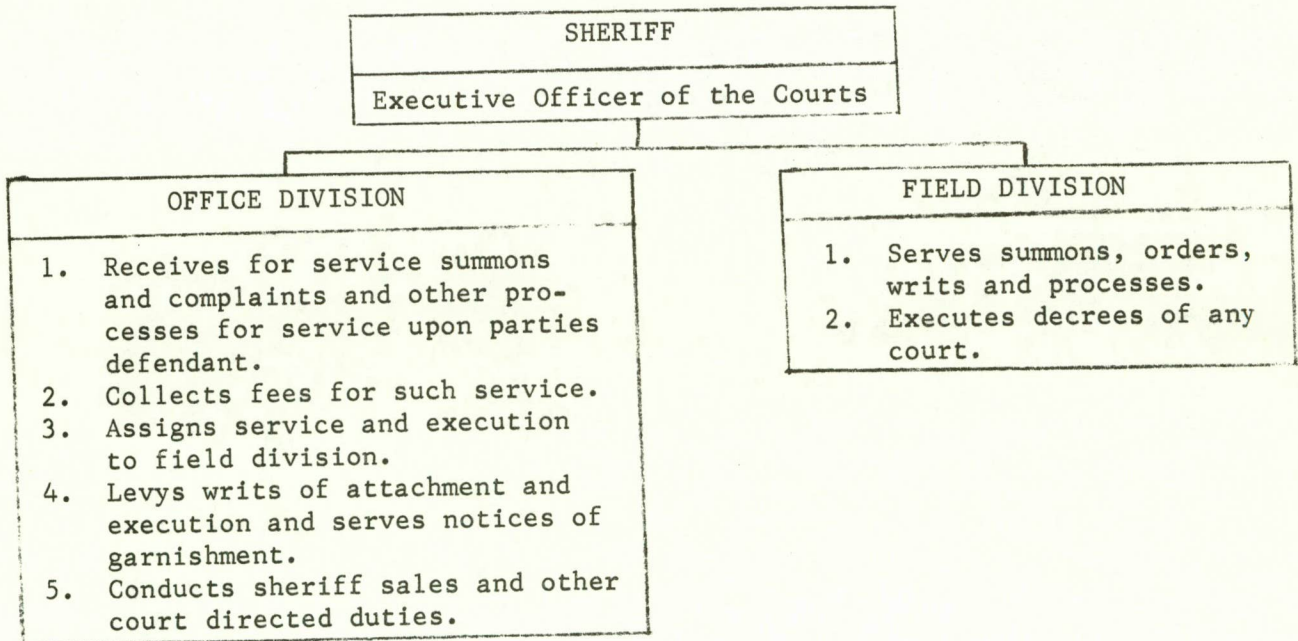


## SHERIFF

The sheriff is by statute the chief executive officer of the county, and among other duties, has a duty to "attend the terms of the Supreme, circuit or county court held within his county, and to obey its lawful orders or directions," and to "Execute the process and orders of the courts of justice or of judicial officers, when delivered to him for that purpose, according to law."

The sheriff, of course, has duties and functions other than those involved in attending the circuit court. These include a criminal division and a duty to act as tax collector of the county.

The sheriff, in support of the judicial system, has divided his office into two departments. The office division and the field division, and the duties and functions of such offices are as follows:

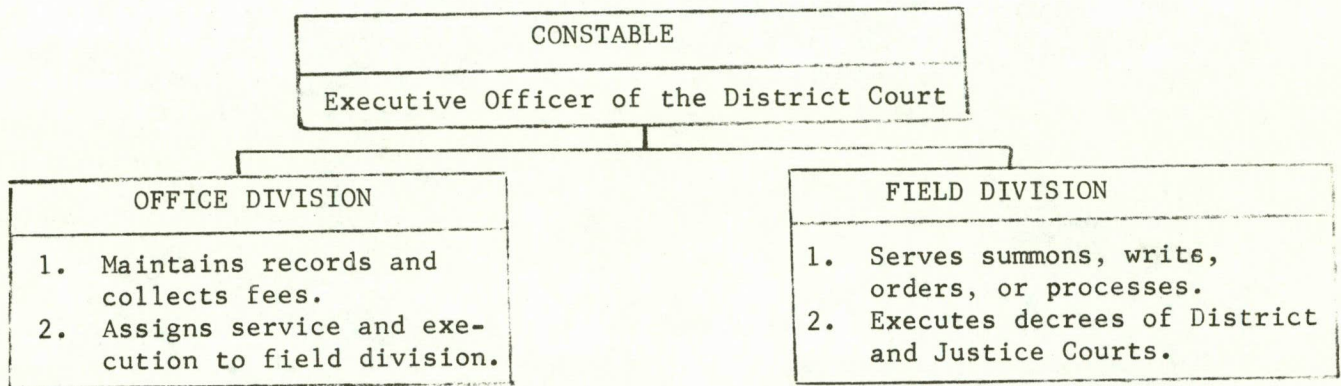




## CONSTABLE

The constable employs some 17 persons under a budget for 1964-65 in excess of \$127,000 to carry on functions similar to the court related functions of the sheriff. This office is headed by an elected official who draws a salary of \$9,500.

To accomplish the duties imposed upon him by statute, the constable has divided his office into two divisions.



Your committee learned that the constable, like the sheriff, has no policy making decisions and has no discretion in the executing of the duties of his office. All of his duties are directed by the courts. The constable's office can exist under law only in those cities having a population of 25,000 persons or more. In all the jurisdictions the duties of the constable are performed by appointed constables or by the sheriff.

As can be seen by the foregoing, the duties of the sheriff and the constable are similar. Although the sheriff has all the authority necessary for the conduct of the constable's duties, the constable does not have the authority to conduct the sheriff's duties. The constable serves papers for the district court, and the sheriff serves papers for the circuit court. The manner of such service is the same and the two departments send process service to the same areas on almost identical routes. It appears to your committee that this is a duplication of



time and equipment and that of expense. For these reasons, your sub-committee has recommended that the office of constable be abolished and that the court related duties of the sheriff be removed from his department and all given to the court administrator.



## PROPOSED DEPARTMENT OF JUDICIAL ADMINISTRATION

With a single department of judicial administration serving the clerical functions of all of the courts, this sub-committee recommends the creation of a single, central office for the conduct of the business of the courts. If this is carried out, any member of the public or any member of the Bar would have a single source for information regarding any case before the court, a single place for filing of cases, a single place for the payment of fines, fees, and judgment orders.

As can also be seen from the foregoing, the court administrator who is to be appointed to head up this office must be a person of some ability and have some knowledge of the law or business management or public administration. The actual mechanics of setting up the various departments under the administration of the court administrator is mechanical in its nature and is of no need of discussion in this report.

From the standpoint of management simplicity, the idea of organizational placement of the department of judicial administration would be in a direct supervisory line from the judges themselves. From the standpoint of political philosophy, however, this placement of the judges would combine judicial functions with the executive function contrary to the separation of powers concept of American democracy and contrary to the provisions of the Oregon Constitution.

While it is possible for the judges to form themselves into a judges' committee, as indeed the circuit court judges have already done, the constitutional provision prohibiting a county home rule charter from concerning itself with matters of judicial function would make it extremely unlikely that a charter provision telling the judges to form such a committee would be constitutional in the absence of legislative authority. Furthermore, judicial district boundaries do not necessarily follow county lines. Judges are not matters of "local concern" necessary for county legislation or charter content. It is extremely doubtful



whether a charter could compel the judges to assume the role of being their own executive officer. While there is considerable precedent in case law allowing the judges wide discretion in the use of administrative rules, we continue to have the constitutional provision, in addition to statutory requirements, that the county will furnish the administrative support to the courts through one or more executive officers who are county officials.

The recommended organizational placement of a Department of Judicial Administration (as does its very composition) depends upon the ultimate decision of the committee as a whole regarding the upper structure of the county's organization. While the Home Rule Charter Committee concluded that the powers of the governing body could not be determined until the composition of the governing body were determined, and the composition of the governing body and the executive hierarchy could not be determined until the committee knew what there was to govern, legal questions necessitate an answer to the question of the executive hierarchy before the placement of a Department of Judicial Administration can be made in the organization structure. Accordingly, the Sub-Committee on Court Support has of necessity considered the alternatives of executive structure. A discussion of the alternatives is in order at this point.

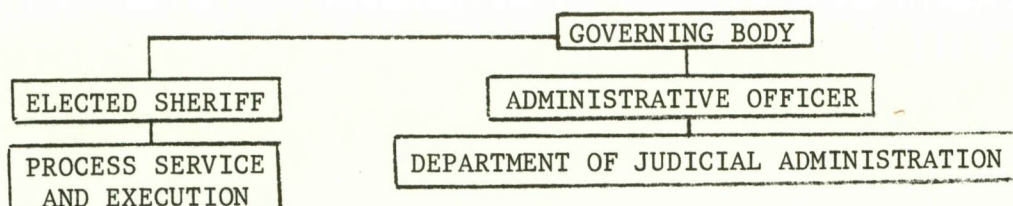
Concepts of Executive Structure. There are basically three different concepts of executive structure in municipal government, and any structural difference is no more than a variation of the basic three. These are (1) Commission concept, (2) Manager concept, and (3) Elected Executive concept.



## COMMISSION CONCEPT

The Commission concept visualizes a governing body possessing both the legislative and the executive powers of government. A variation of this concept visualizes an administrative officer. An administrative officer is an appointed official serving at the pleasure of the governing body and possessing only the authority granted him by the governing body. Authority granted can be taken away. An administrative officer will hold his position only so long as the governing body desires.

Under the administrative officer plan of organization structure, there is at least one group of functions that cannot be transferred back and forth between a governing body and an administrative officer, and those are the police functions. Discussion of the police functions is quite germane to the question at hand, for the police functions by both the Constitution and the statutes of Oregon include the execution of court decrees. Accordingly, under the administrative officer concept, leaving the legislative and the executive powers of government in the hands of a board, the sheriff generally continues to be an elective official and he retains the functions of process service and execution. This has been the case in both Washington County and Lane County. Accordingly, if the Home Rule Charter Committee should decide on the administrative officer concept of government for Multnomah County, the Department of Judicial Administration could be placed organizationally under the governing body with the Division of Service and Execution being placed under an elected sheriff. The following chart indicates the relative structure under this type of government organization.

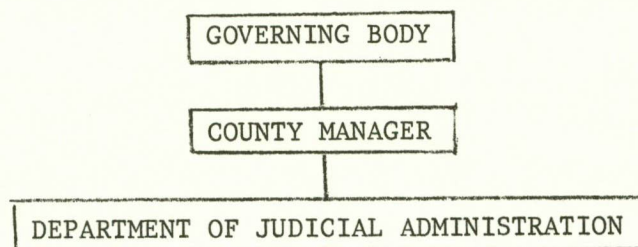




## COUNTY MANAGER CONCEPT

The County Manager concept of municipal government is an effort to strengthen the administrative officer concept by granting authority in the charter to an appointed manager and formal power of appointments. The manager, too, serves at the pleasure of the governing body. Authority not granted to the manager in the charter is reserved by the governing body. Once again, the governing body has the legislative power of the government and the executive power not specifically delegated to the manager by charter. The governing body retains executive authority in fact if not in theory. The manager serves at the pleasure of the board. The manager is rarely given all the executive powers of government and, in those areas where he is not granted the powers specifically, he holds the same position as an administrative officer.

Accordingly, the placement of the Department of Judicial Administration would depend upon the powers granted by charter to the county manager. If the county manager were not given the police powers by charter, the organizational placement of the court administration functions would be exactly the same as under the administrative officer concept. If the county manager were given the police powers of the sheriff, the organizational placement should be as indicated in the following chart.

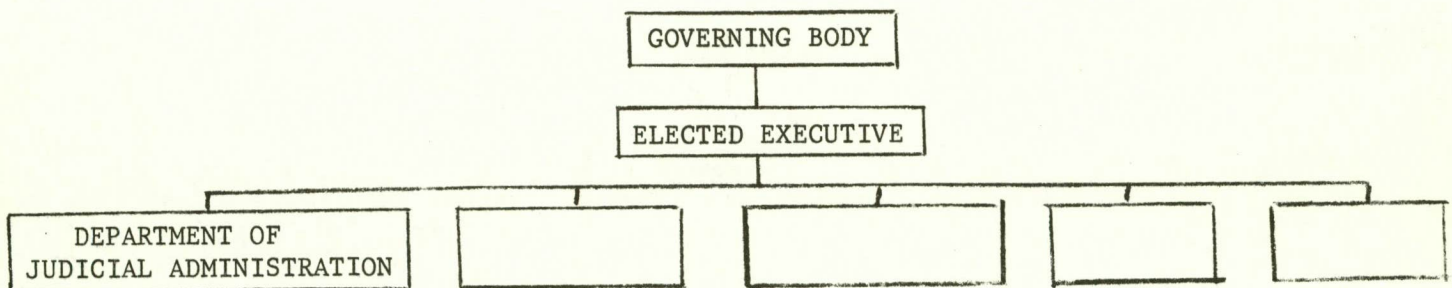




## ELECTED EXECUTIVE CONCEPT

The Elected Executive concept is sometimes called the strong mayor type of government. In this concept of municipal government, the governing body has only the legislative power of the county and is restricted to matters of policy. The executive officer of the county is elected by the people at large and is responsible only to them. He is obliged to carry out the policy of the governing body much as the governor is obliged to carry out the dictates of the legislature, but he has a voice to criticize and has the right and duty to use it. He is generally given the power to act as the executive officer in all matters including police matters.

Under this concept of government structure and organization, all legal barriers to forming a Department of Judicial Administration disappear, and the organizational placement would be as indicated in the following chart.





## POLITICAL CONCURRENCES

On December 9, 1964, the Honorable Dean Bryson, speaking for the Circuit Court Judges of Multnomah County, said, "I think it is time that we started... 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."

At the same meeting, Margaret Cawood, District Court Clerk, said, "I offer these suggestions to be part of your charter consideration:... Set up a Court Administrator for the entire county and have him perform the duties that are now done in my office for the District Court. Have him do for both the Circuit Court and the District Court. As Judge Bryson mentioned, we are getting to where all of the court activities should be closely coordinated and I think that is a necessary step." Later in the same meeting and during the question period, Mrs. Cawood said, "I think that the constable and the District Court Clerk's office could very well be consolidated. I think also that what the sheriff does in the way of civil service should be done by the constable because he serves papers, too. I think the constable is set up to serve papers, and the sheriff should be set up for the enforcement of laws. I feel it is much more to the point to have the constable's office serving papers than for the sheriff to be doing it."

In response to a direct question Mrs. Cawood said, "Yes, that (the same administrator doing the work for the circuit court and the district court) is what I had in mind. I think perhaps the court administrator should be under an elected official and not be under civil service and not have to come up through the ranks."



On January 5, 1965 James Haggerty, Constable of the Portland District, told the Home Rule Charter Committee, "... We serve a lot of civil papers through our department anyway, and I think it would probably be a proper thing to place the Civil Department of the sheriff's office under the Constable."

All of the foregoing statements are accurate as to words and as to context. While the constable was referring, of course, to combining the sheriff's civil functions into the constable's office, he was nonetheless advocating the combination of the two offices. Unfortunately, there are legal barriers to the constable assuming the powers of the sheriff, while none exist conversely.

It would appear that this recommendation for the establishment of a Department of Judicial Administration has the backing of at least two of the elected officials affected.

#### ADDITIONAL RECOMMENDATION

It is further recommended that this report be sent to the Judges' Committee for their study, comments, and recommendations to the Home Rule Charter Committee. It is additionally recommended that this report be sent to the Multnomah County Bar Association for their study, comments, and recommendations before any charter language is drafted.



2783 Alder  
Eugene, Oregon 97405  
April 22, 1965

Mr. Walter Merrell, Executive Secretary  
Home Rule Charter Committee  
Multnomah County Courthouse  
Portland, Oregon

Dear Mr. Merrell:

You have submitted, at the request of a subcommittee of the Multnomah County Home Rule Charter Committee, the question whether, since the office of county clerk is a constitutional office in Oregon, an Oregon county can by home-rule charter abolish the office. In my opinion the question must be answered in the affirmative.

The question was in effect submitted to the Attorney General of the state more than three years ago. His Opinion No. 5401, dated March 26, 1962, in effect answers the question in the affirmative. I believe the opinion is correct and soundly reasoned. A copy of it accompanies this letter.

The question arises out of the fact that Article VI, §7, of the state constitution calls for the county clerk to be elected and that Article VI, §10, requires a county charter to "prescribe the organization of the county government and \* \* \* provide directly, or by its authority, for the number, election or appointment, \* \* \* tenure, \* \* \* powers and duties of such officers as the county deems necessary." The second of the two constitutional provisions cannot have full effect unless it qualifies the first in the manner indicated by the Attorney General.

The qualification is in keeping with one of the main objectives of county home rule as envisaged in this state and elsewhere. County home rule has traditionally been regarded as affording counties power to revamp their governmental structure. To do so commonly involves abolition of existing offices.

The qualification is in keeping, moreover, with the intention of the architects of county home rule in Oregon. They intended, according to Kenneth C. Tollenaar, who was executive secretary of the Legislative Interim Committee on Local Government that in 1956 recommended home rule for Oregon counties and who was closely connected with the 1957-58 efforts to add Article VI, §10, to the state constitution, that a county operating under home rule should be free to dispense with the offices listed in Article VI, §7, including the office of county clerk.

The five county charter committees that I served as a consultant in 1961-62 all assumed that under home rule a county could abolish the office of county clerk. All county charters that have been submitted to the voters in Oregon counties since 1960 reflect this assumption. The three county charters now in effect in the state make no provision for continuation of the office of county clerk. The assumptions of the charter committees and the terms of the proposed and the adopted charters constitute a growing body of contemporaneous construction that reinforces the opinion of the Attorney General that the office of county clerk can be abolished in a county by adoption of a charter for the county. Such contemporaneous construction, "while not controlling, is persuasive," "always commands the attention of the courts," and "will be followed unless it clearly and manifestly appears to be wrong." Howell v. Bain, 167 Or. 187, 197, 156 P.2d 576 (1945); Kelly v. Multnomah County, 18 Or. 356, 22 P. 1110, 1111 (1890). See also Othus v. Koser, 119 Or. 101, 248 P. 146, 148 (1926).

Respectfully submitted,

*Orval Etter*

Orval Etter



with all laws, lawful ordinances, rules and regulations relating to safety from fire, applicable at the time of original licensing. Possibly, the answer to question will affect the validity of the certification."

In our opinion the proposed form of certificate is incorrect because it does not relate to the laws, lawful ordinances, rules and regulations governing fire safety currently in effect as of the date of the certificate. See our answer to your first question.

ROBERT Y. THORNTON,  
Attorney General,  
By Peter S. Herman, Assistant.

Article VI, § 10, Oregon Constitution, relating to county home rule, permits the creation of offices under a county charter to take the place of the offices of county clerk, treasurer and sheriff designated in Article VI, § 6, of the Constitution.

No. 5401 March 26, 1962  
Honorable Hattie B. Kremen  
District Attorney, Marion County

You have requested an opinion concerning the creation of county offices under the county home rule amendment, Article VI, § 10, Oregon Constitution, as follows:

"In your opinion does Section 10 permit the creation under the Home Rule Charter, of offices to take the place of the constitutional officers of County Clerk, County Treasurer and Sheriff, or are the offices which may be created under the County Home Rule other than those that are provided in Section 6; namely those which are covered by Section 7?"

Article VI, § 10, providing for county home rule, adopted by the people in 1953, reads as follows:

"The Legislative Assembly shall provide by law a method whereby the legal voters of any county, by majority vote of such voters voting thereon at any legally called election, may adopt, amend, revise or repeal a county charter. A county charter may provide for the exercise by the county of authority over matters of county concern. Local improvements shall be financed only by taxes, assessments or charges imposed on benefited property, unless otherwise provided by law or charter. 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 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. Except as expressly provided by general law, a county charter shall not affect the selection, tenure, compensation, powers or duties prescribed by law for judges in their judicial capacity, for justices of the peace or for district attorneys. \* \* \*

The legislature has complied with the mandate of Article VI, § 10, to provide by law for elections for voting on the adoption, amendment, revision or repeal of county home rule charters. See ORS 203.710 et seq.

Article VI, §§ 6 and 7, are earlier provisions of the Constitution relating to county officers and provide:

"Section 6. There shall be elected in each county by the qualified electors thereof at the time of holding general elections, a county clerk, treasurer and sheriff who shall severally hold their offices for the term of four years.

"Section 7. Such other county, township, precinct, and City officers as may be necessary, shall be elected, or appointed in such manner as may be prescribed by law."

In general, the rules governing the construction of statutes are applicable to interpretation of constitutions, but technical and arbitrary rules of construction should be used circumspectly so that the purposes for which the constitutional provisions were enacted will not be defeated: 16 C.J.S., Constitutional Law, § 15; 11 Am. Jur., Constitutional Law, § 49. Constitutional provisions should be construed together and recourse had to the whole instrument to ascertain the intent and meaning of particular provisions: 11 Am. Jur., Constitutional Law, § 53; Kosydar v. Collins, (1951) 201 Or. 271, 282, 270 P. (2d) 132.

An amendment, being the latest expression of the will of the people, ordinarily prevails over conflicting original provisions or earlier amendments of a constitution: 11 Am. Jur., Constitutional Law, § 54; 16 C.J.S., Constitutional Law, § 26; State ex rel. Wernmark v. Hopkins, (1953) 213 Or. 669, 678, 326 P. (2d) 121, 327 P. (2d) 731; Ex parte Kerby, (1922) 103 Or. 612, 616, 205 P. 279, 36 A.L.R. 1451; Hoag v. Washington-Oregon Corp., (1915) 75 Or. 538, 613, 111 P. 574, 147 P. 756. In 11 Am. Jur., Constitutional Law, § 54, p. 663, it is said:

"\* \* \* Amendments, however, are usually adopted for the express purpose of making changes in the existing system. Hence, it is very likely that conflict may arise between an amendment and portions of a Constitution adopted at an earlier time. In such a case the rule is firmly established that an amendment duly adopted is a part of the Constitution and is to be construed accordingly. It cannot be questioned on the ground that it conflicts with pre-existing provisions. If there is a real inconsistency, the amendment must prevail because it is

the latest expression of the will of the people. In such a case there is no room for the application of the rule as to harmonizing inconsistent provisions. If it covers the same subject as was covered by a previously existing constitutional provision, thereby indicating an intent to substitute it in lieu of the original, the doctrine of implied repeal, though not favored, will be applied and the original provision deemed superseded."

Under this rule, the county home rule amendment, being the latest expression of the will of the people, would prevail over earlier provisions of the Constitution. To the extent the amendment covers and is inconsistent with the same subject matter as contained in Article VI, § 6, the amendment stands in lieu of the earlier provision.

The language of Article VI, § 10, specifically pertinent to the question reads:

"\* \* \* 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. \* \* \*

This language evidences an intention that the county charter may provide for all the officers the county deems necessary for the operation of the county government, since "Such officers shall among them exercise all the powers and perform all the duties" granted to or imposed upon any county officer by the charter, or by the Constitution or laws of the state. (Emphasis supplied)

This broad and inclusive language of § 10 brings within its scope the county officers specifically designated in § 6, namely, the county clerk, treasurer and sheriff. Accordingly, the provisions of § 10 supersede the provisions of § 6 where they are inconsistent and to the extent that counties avail themselves of the authority granted by § 10 in adopting county charters.

This conclusion is supported by the provision in § 10 expressly stating that a county charter shall not affect the selection, tenure, compensation, powers and duties of judges, justices of the peace and district attorneys. Had it been intended likewise to exclude county clerks, treasurers and sheriffs from the operation of a county charter, like provision could readily have been made.

A similar question was considered in People v. Curtice, (1911) 50 Colo. 503, 117 P. 357, 359. The question was whether under the Colorado constitutional amendment, granting home rule

to the city and county of Denver, the charter could name officers and agencies, other than those provided in the original Constitution or by general law, to discharge state and county governmental duties. It was ruled that, to the extent it undertook to do so, the amendment "being the last expression of the people upon the subject modified the Constitution so far as it applied to the territory in question" and that pre-existing provisions became inapplicable therein. See also, City and County of Denver v. Rinker, (1961) 179 Colo. 366 P. (2d) 513, 551.

It is, therefore, my opinion the provisions of Article VI, § 10, to the extent a county undertakes to exercise powers granted by those provisions, supersede those of §§ 6 and 7 and that § 10 permits the creation of offices under a county home rule charter to take the place of the offices of county clerk, treasurer and sheriff designated in § 6, Article VI, of the Constitution.

ROBERT Y. THORNTON,  
Attorney General,  
By Catherine Zorn, Assistant.

In canvassing votes east of an election for withdrawal of territory from an area education district under ORS 341.630, the votes cast by the legal voters of the entire district must be computed by including the votes cast in the petitioning area.

No. 5403 March 26, 1962

Dr. Leon P. Minear  
Superintendent of Public Instruction

You ask our opinion on a problem submitted to you by the County School Superintendent of Coos County which concerns the procedure to be followed in an election on the question of withdrawal of territory from an area education district. From your letter it appears that an election was held in the South Western Oregon Area Education District to determine whether or not the territory known as the Port Orford-Langlois School District 2CJ should be withdrawn from the area education district. Reference was made to ORS 341.630 (2) and your question is:

"\* \* \* is the total vote of the entire district counted including that of the petitioning Port Orford area, to determine whether or not the 'legal voters of the area education district' voted in favor of or against the petition of the petitioning area?"

ORS 341.630 prescribes the procedure for withdrawal of territory from an



2783 Alder  
Eugene, Oregon 97405  
April 22, 1965

Mr. Walter Merrell, Executive Secretary  
Home Rule Charter Committee  
Multnomah County Courthouse  
Portland, Oregon

Dear Mr. Merrell:

You have submitted, at the request of a subcommittee of the Multnomah County Home Rule Charter Committee, two related questions:

1. What is the legal nature of functions such as service of process and execution of writs?
2. To what offices or departments may these functions be allocated under county home rule?

By their very nature these functions are responsive to court orders and are therefore obviously court-related. The officers that carry them on--sheriffs, constables, city police officers, Federal marshals--are in a sense court officers. It has been said that in certain circumstances a deputy sheriff is "an officer of the court." Bowden v. Cumberland County, 123 Me. 359, 123 A. 166, 169 (1924). It has also been said that "the sheriff is an executive officer of the court." State v. Jacobs, 66 Oh.App. 151, 32 N.E.2d 574, 577 (1940). See also 16 Corpus Juris Secundum 861 (1956). In a broad sense, therefore, the officers that serve process and execute writs are judicial officers.

"Judicial offices are those which relate to the administration of justice. \* \* \*

"The expression 'judicial officer' is used in two senses. In the popular or broader sense it applies generally to an officer of a court whose duties are ministerial; [to] all who attend the administration of justice." 67 Corpus Juris Secundum 105 (1950).

Service of process, execution of writs, and similar functions are, however, not judicial functions.

" \* \* \* things to be done [that] call for the exercise and passing of judgment \* \* \* the law regards \* \* \* as judicial acts." In re Opinion of the Justices, 85 N.H. 562, 154 A. 217, 223 (1931).

"Judicial function presupposes the use of mental processes in the determination of law or fact, and at times involves discretion as to how the power should be used \* \* \* ." 37 Corpus Juris Secundum 1399 (1943).

Instead, service of process, execution of writs, and similar functions are ministerial functions. A ministerial function is a function "in regard to which no discretion is left in the officer on whom the duty [to exercise the function] is imposed"; is "an act which is absolute, certain, and imperative, involving the mere execution of a set task, the law which imposes it prescribing the time, mode, and occasion of its performance with such certainty that nothing remains for judgment or discretion." Ballentine, Law Dictionary With Pronunciations 820 (1948).



April 22, 1965

The functions are, moreover, executive functions. The officers that carry them on, while court-related and therefore in a broad sense judicial, are primarily executive officers.

"The . . . sheriff . . . is a county officer representing the executive or administrative power of the state within his county.

" . . . Sheriffs . . . are ministerial officers. . . .

"In general, a sheriff is the proper officer to execute all writs returnable to court . . . ." 47 American Jurisprudence 821-22 (1943).

The Oregon Supreme Court has said that a sergeant in a city police department was "an executive officer." State v. Coffey, 157 Or. 457, 461, 72 P.2d 35 (1937). And the United States Supreme Court has said that Federal marshals, "ministerial officers" through whom court commands must be executed, "belong emphatically to the executive department of the government." In re Neagle, 135 U.S. 1, 63 (1889).

Now the nature of an office does not determine conclusively the nature of the functions of the incumbent of the office. The Oregon Supreme Court has said, for example, that a certain circuit judge, "in the taking of the deposition in question, was acting in an administrative or ministerial capacity and not in a judicial capacity." Mannix v. Portland Telegram, 144 Or. 172, 183, 23 P.2d 138 (1933). Yet the nature of an office is a major factor to consider in determining the nature of the functions of the office, and the general nature of the offices of sheriff, constable, city police officer, and Federal marshal is one important reason for concluding that service of process, execution of writs, and similar functions are executive functions.

"Executive functions, strictly speaking, may be exercised only by duly constituted officers of the executive department . . . ." 16 Corpus Juris Secundum 846 (1956).

The word "executive" has been defined as "qualifying for, or pertaining to, the execution of the laws" and as "that which carries the laws into effect." Ballentine, Law Dictionary With Pronunciations 465 (1948). It has accordingly been held that, while the issuance of a warrant of arrest is a judicial function, serving the warrant is an executive function. State v. McGowan, 243 N.C. 431, 90 S.E.2d 703, 705 (1956). By analogy it appears that service of process in general and execution of writs in general are executive functions.

This nature of the functions has no crucial bearing on what persons in the government of a county operating under home rule may properly exercise the functions. The doctrine of separation of powers, as expressed in the Oregon Constitution, requires:

"The powers of the Government shall be divided into three separate (sic) departments, the Legislative, the Executive, including the administrative, and the Judicial; and no person charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided." Oregon Constitution, Article III, §1.



April 22, 1965

Whether this requirement applies to a county operating under home rule is dubious.

"The constitutional requirement with respect to the separation of the three departments of the government which exists in a state Constitution is generally held to refer to the state government and state officers, and not to the government of municipal corporations or their officers."

Counties operating under general law are already regarded by the Oregon Supreme Court as municipalities, public corporations, and quasi-corporations. See, for example, State ex rel. Stadig v. Deschutes County, 88 Or. 661, 173 P. 158, 159 (1918); Barber v. Johnson, 86 Or. 390, 167 P. 800, 1183, 1184 (1917); Shipley v. Hacheney, 34 Or. 303, 55 P. 971, 972 (1899). A county operating under a home-rule charter would appear to be very much a municipal corporation.

Be that as it may, allocation of functions such as serving process and executing writs is a constitutional prerogative of the county that adopts a home-rule charter. The constitutional authorization of county home rule reads in part:

"A county charter . . . shall provide . . . for . . . 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." Oregon Constitution, Article VI, Section 10 (emphasis supplied).

The conclusion is therefore warranted that in a county operating under home rule the serving of process, the execution of writs, and similar functions, ordinarily exercised by sheriffs and constables, may be allocated to whatever offices and departments of the county the charter of the county prescribes or authorizes. In the interests of flexibility and adjustability in the administrative structure of the county, it may be desirable for the power of making this allocation to be vested in part or in whole in the governing body of the county.

Respectfully submitted,

*Orval Etter*

Orval Etter



REPORT  
OF THE  
SUB-COMMITTEE ON COURT SUPPORT  
TO THE  
HOME RULE CHARTER COMMITTEE  
OF  
MULTNOMAH COUNTY, OREGON

George Birnie - Chairman  
Neva Elliott  
Alden Krieg



Background. The Sub-Committee on Court Support was assigned the responsibility for examining the administrative functions of those activities directly supporting the courts as well as the functions of the Registrar of Elections and the Coroner. The Sub-Committee on Law Enforcement referred the Donald E. Long Home to the Sub-Committee on Court Support for their purview.

On April 1, 1965 the Sub-Committee on Court Support reported to the Home Rule Charter Committee its recommendations for the establishment of a Department of Judicial Administration. On April 27, 1965 the Home Rule Charter Committee endorsed the recommendations of the sub-committee and authorized the referral of the report to the Judges of Multnomah County and to the Multnomah County Bar Association. This report will be the sub-committee's recommendations as they pertain to the remaining functions under their purview.

Donald E. Long Home. The Donald E. Long Home was originally conceived as an area of study for the Sub-Committee on Law Enforcement. The Sub-Committee on Law Enforcement, however, determined at their first meeting that the Donald E. Long Home was not a law enforcement function and transferred its study to the Sub-Committee on Court Support. Current statutes of Oregon place juvenile matters including juvenile detention facilities under the Juvenile Court which is a part of the Court of Domestic Relations. It is the recommendation of this sub-committee that the Home Rule Charter Committee take no action regarding the Donald E. Long Home. By doing nothing, the juvenile detention facility will be governed by general law and remain under the supervision of the Juvenile Court which is a state officer.

Coroner. At the time the Home Rule Charter Committee was formed the Coroner of Multnomah County was a county elected official, and the functions and duties of the County Coroner were included in those to be explored by the Sub-Committee on Court Support. Since that time, however, a bill has been passed by the current legislative assembly making the Coroner a state officer, and the Coroner is no



longer a subject of investigation by the Home Rule Charter Committee. In spite of the fact that the Coroner continues to exist as a county elected official until such time as the present incumbent either resigns his position or his term expires, the Sub-Committee on Court Support recommends that no action be taken by the Home Rule Charter Committee as regards the Coroner and, accordingly, general law will prevail.

Recorder Functions of the County Clerk. Several functions of the office of the County Clerk of Multnomah County remain for organizational disposition after combining a major share of his functions into a Department of Judicial Administration. These functions are basically those of recorder of conveyances and the custodial duties pertaining to public records. It is the recommendation of the Sub-Committee on Court Support that these duties be combined with those of the Registrar of Elections into a Department of Records and Elections as indicated in the following functional organization chart.



DEPARTMENT OF RECORDS AND ELECTIONS

RECORDS DIVISION

RECEPTION

1. Maintains control records of documents received.
2. Operates mailing unit of recording function.

INDEXING

1. Maintains index to all recorded documents.

RECORDING

1. Maintains Receiving Book.
2. Records data regarding documents received.

PHOTOCOPY

1. Makes reproductions of documents for recording into public records.
2. Assigns book and page numbers to recorded documents.

LICENSING

1. Processes and issues county licenses.
2. Processes and issues state licenses.

ELECTIONS DIVISION

REGISTRATION & TALLY

1. Registers qualified electors.
2. Receives & verifies signatures of petitions.
3. Receives declarations of candidacy.
4. Devises & prescribes contents, forms, characters, etc. of ballots.
5. Makes abstracts of votes on tally sheets.
6. Makes & delivers certificates of election.

PRECINCT SUPERVISION

1. Establishes & divides precincts.
2. Designates polling places.
3. Appoints election boards for each precinct.
4. Carries on training program for election officials.
5. Issues directives and instructions to election officials.
6. Inspects and observes the administration of election officials.



REPORT  
OF THE  
SUB-COMMITTEE ON COURT SUPPORT  
TO THE  
HOME RULE CHARTER COMMITTEE  
OF  
MULTNOMAH COUNTY, OREGON

George Birnie, Chairman  
Neva Elliott  
Alden Krieg



REPORT OF THE SUB-COMMITTEE ON COURT SUPPORT TO THE HOME RULE CHARTER  
COMMITTEE OF MULTNOMAH COUNTY

Sub-Committee Assignment. On January 12, 1965, the Home Rule Charter Committee divided itself into sub-committees to explore in depth the various facets of county government. The Sub-committee on Court Support was given the responsibility for making studies and recommendations regarding the functions of the District Court Clerk, the Constable, the County Clerk, and the Sheriff (as they relate to process service). In addition, the sub-committee was assigned the functions of the Registrations and Elections Division and the Coroner. Since the establishment of sub-committees, the Sub-committee on Law Enforcement has concluded that the juvenile detention facility (Donald E. Long Home) appropriately belongs under the study of the Sub-Committee on Court Support.

Scope. This report will concern itself only with those functions directly supporting the courts in an administrative and clerical capacity and is restricted to the functional duties of the County Clerk, the Sheriff's Civil Division, the Constable, and the District Court Clerk.

History and Growth. <sup>of County Clerk.</sup> The office of County Clerk was established by the Constitution of Oregon <sup>partly</sup> to serve ~~some of the executive functions of the courts.~~ At the time of its establishment, the duties of the county clerk were relatively simple - even the typewriter was not in general useage. From the constitutional office serving <sup>two</sup> ~~a single judge as a part of his duties,~~ the office grew to the present complex ~~of~~ serving fifteen circuit court judges handling 47,000 cases and proceedings <sup>last</sup> ~~per~~ year. The judges themselves have become specialized with a separate department for probate matters (taken over from the County Judge) and a separate department <sup>for</sup> ~~of~~ Domestic Relations <sup>matters</sup> including <sup>matters.</sup> ~~the Juvenile Department.~~ When the District Court was established, the County Clerk was the Clerk of the District Court. Later legislation created the office of the District Court Clerk.



County Clerk. A review of the office of the County Clerk reveals an activity employing 81 personnel with a budget for 1964-65 fiscal year in excess of a half-million dollars. It is headed by an elected County Clerk drawing a salary of \$12,500 per year. The duties of the County Clerk fall essentially into two categories: (1) the clerical responsibilities in support of the circuit court, and (2) the custodial responsibilities pertaining to public records. In this report, the clerical responsibilities in support of the circuit court are all that will be considered. The statutory functions of the County Clerk as they relate to his duties as clerk of the courts are indicated in Chart I.

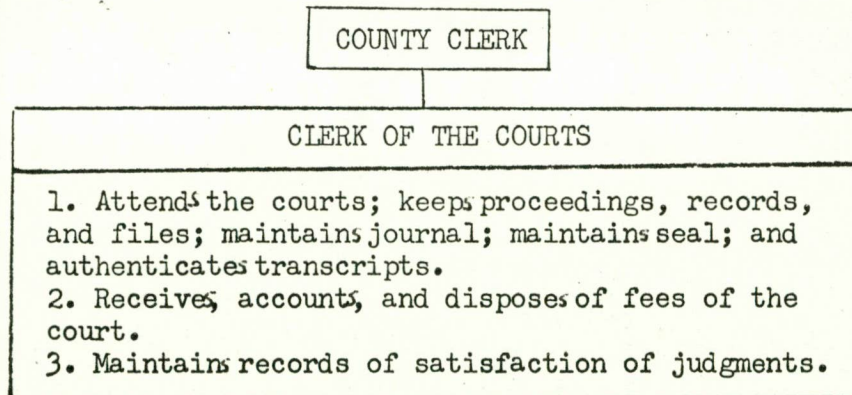


CHART I



To accomplish these duties, the County Clerk has divided his department into divisions each relating to a part of the County Clerk's responsibilities. Chart II is a functional chart showing the functional responsibilities of each of the divisions as they relate to the County Clerk in his capacity of Clerk of the Courts.

CLERK OF THE COURTS (FUNCTIONAL)

CIRCUIT COURT DIVISION

1. Files all suits in circuit court and all papers from outset to completion.
2. Collects alimony support and disburses to claimants.
3. Dockets cases and places liens against property.
4. Issues executions after trial.
5. Collects judgments of the circuit court.
6. Issues bench warrants on direction of the court.

PROBATE COURT DIVISION

1. Files unprobated wills, estates, guardianships, will contests, conservatorships, and determinations of inheritance taxes.
2. Files adoptions and changes of name.
3. Ascertains docketing.

COURT CLERK DIVISION

1. (Court administrator) Serves Presiding Judge and judges committee on administrative problem study.
2. (Calendar Clerk) Sets calendar for Trial Judges.
3. Docketing cases of Trial Bench.
4. (Deputy Clerks of individual courts) Serves Courts.

TRANSCRIPT DIVISION

1. Prepares transcripts of court records for appeals to higher courts.

COURT FILES DIVISION

1. Files all records of cases coming before the circuit court and probate court.

CHART II



District Court Clerk. The office of the District Court Clerk employs twenty-four personnel with a budget for 1964-65 fiscal year in excess of \$150,000. It too is headed by an elected official known as the District Court Clerk with a salary of \$9,500 per year. The duties of the District Court Clerk in their broadest sense are identical to those of the County Clerk except<sup>that</sup> the District Court Clerk renders the clerical support to the District Court. The statutory functions of the District Court Clerk are as indicated in Chart III.

DISTRICT COURT CLERK
1. Files, keeps, and preserves the records, books, papers, and all other property pertaining to the Court.
2. Files all papers in any action, suit, or proceeding before the court.
3. Supplies and executes subpoenas, writs of attachment, and writs of execution.
4. Administers oaths and takes affidavits.
5. Maintains docket of the Court.
6. Maintains a permanent record of all actions, proceedings, and judgments had or rendered in the Small Claims Department.

CHART III

To accomplish her duties, the District Court Clerk has divided her department into two divisions each relating to a part of her responsibilities.

DISTRICT COURT CLERK	
CIVIL DIVISION	CRIMINAL DIVISION
1. Files small claims and other litigation.	1. Files all misdemeanor and felony cases as well as traffic citations.
2. Supplies & executes writs of attachment and execution.	2. Supplies and executes writs of execution.
3. Maintains docket.	3. Maintains docket.
4. Performs cashiering and accounting.	
5. Maintains calendar.	

CHART IV



Comparison of County Clerk and District Court Clerk. The Sub-Committee on Court Support found it most interesting to compare the functional statements of the two departments and note the similarity of functions. It further noted that neither official, both of whom are elected at large, have any policy making decisions to render. Both departments follow the dictates of the legislature as to their duties and in large measure as to procedure they follow. It is also interesting to note that Multnomah County is the only county in Oregon that has a District Court Clerk. In all other counties having a district court, the County Clerk is ex-officio Clerk of the District Court. In all charter counties in Oregon, the office of the County Clerk has been abolished as an elected position.

Chart V is a comparison chart of the two departments as to functions performed. It should be noted that one department serves the Circuit Court and the other serves the District Court. Aside from this minor difference, the work of the two departments is almost identical.

DISTRICT COURT CLERK

FILING OF CASES
1. Files all small claims and other litigations. 2. Files all papers and documents for misdemeanors and felony cases as well as traffic citations.
DOCKETING
1. Maintains docket of proceedings on civil matters. 2. Maintains docket of proceedings on misdemeanors, felonies, and traffic citations.
WRITS AND EXECUTIONS
1. Supplies and executes writs of attachment and execution. <del>2. Supplies and executes writs of execution.</del>
RECORDS
1. Maintains records of cases from outset to completion.

COUNTY CLERK

FILING OF CASES
1. Files all suits in Circuit Court. 2. Files unprobated wills, estates, guardianships, will contests, conservatorships, and determinations of inheritance taxes. 3. Files adoption and change of name.
DOCKETING
1. <sup>Maintains</sup> <del>Dockets</del> <sup>OF</sup> circuit court cases. 2. Ascertains docketing of probate matters.
WRITS AND EXECUTIONS
1. Places liens against property. 2. Issues executions after trial. 3. Collects judgments. 4. Issues bench warrants.
RECORDS
1. <sup>Maintains</sup> <del>Files</del> all records of cases coming before circuit court and probate court.



Problems Encountered. With the decentralization of functions of the ~~two~~ Clerk jurisdictions and the further decentralization of the business of the circuit court, the public must search out the proper office of Multnomah County government for the filing of a case, the payment of a fine, or the source of information on a case depending not only upon the <sup>COURT WHICH HAS</sup> jurisdiction of the <sup>MATTER BUT ALSO THE</sup> ~~case (circuit or dis-~~ <sup>NATURE OF THE MATTER, I.E.,</sup> ~~trict court)~~ <sup>IT</sup> but whether the ~~case~~ is a traffic violation, misdemeanor, small claim, litigation under \$1,000, probate matter, domestic relations matter, criminal matter, juvenile matter, or civil matter of \$1,000.

Hypothesis. The Sub-Committee on Court Support visualizes a single Department of Court Administration under an appointed Court Administrator who would serve the courts as indicated on Chart VI. This department would include at least two divisions.



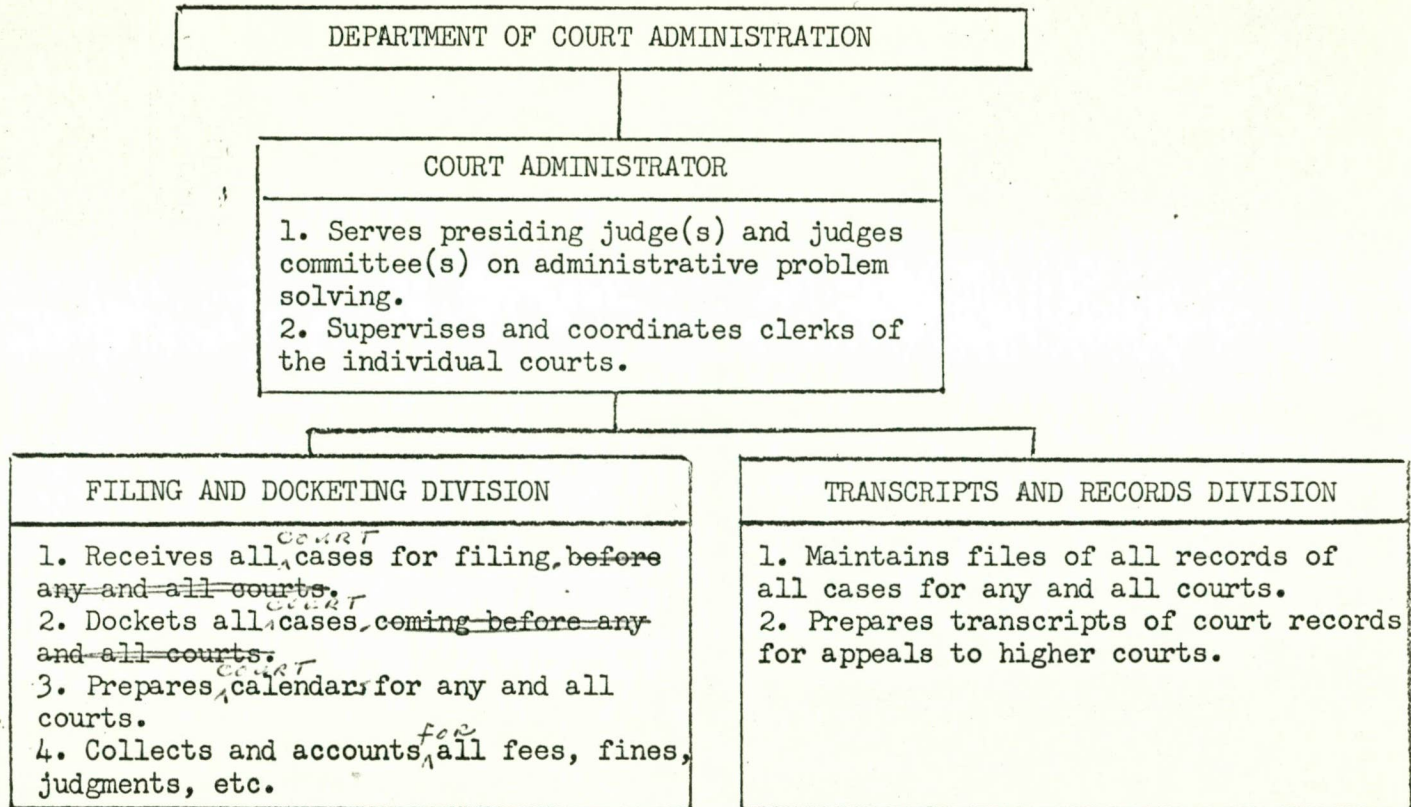


CHART VI

With a single Department of Court Administration serving the clerical functions of all the courts, the sub-committee further visualizes a single central office for the conduct of the business of the courts. In this manner, any member of the public or any member of the bar would have a single source of information regarding any case before any court; a single place for filing of a case; and a single place for the payment of fees, fines, and judgments regardless of the type of case or the jurisdiction of the case.

Tentative Recommendation. The Sub-Committee on Court Support recommends that ~~both~~ <sup>The OFFICES OF</sup> the County Clerk and the District Court Clerk be ~~abolished as elected~~ <sup>combined</sup> ~~offices in Multnomah County~~ and those duties pertaining to clerical support of the courts be placed in a Department of Court Administration under a Court Administrator appointed because of qualifications in law, ~~and/or~~ business management, ~~or public administration.~~



Constable. A review of the office of the Constable reveals an activity employing a total of seventeen personnel with a budget appropriation for 1964-65 fiscal year in excess of \$127,000. It is headed by an elected official drawing a salary of \$9,500 per year. The duties of the Constable are essentially those of executive officer of the District Court. He serves summons, writs, orders, and processes; and he executes decrees of the District and Justice Courts.

To accomplish his duties, the Constable has divided his office into two divisions each relating to a part of his responsibilities and broken down functionally as indicated in Chart VII.

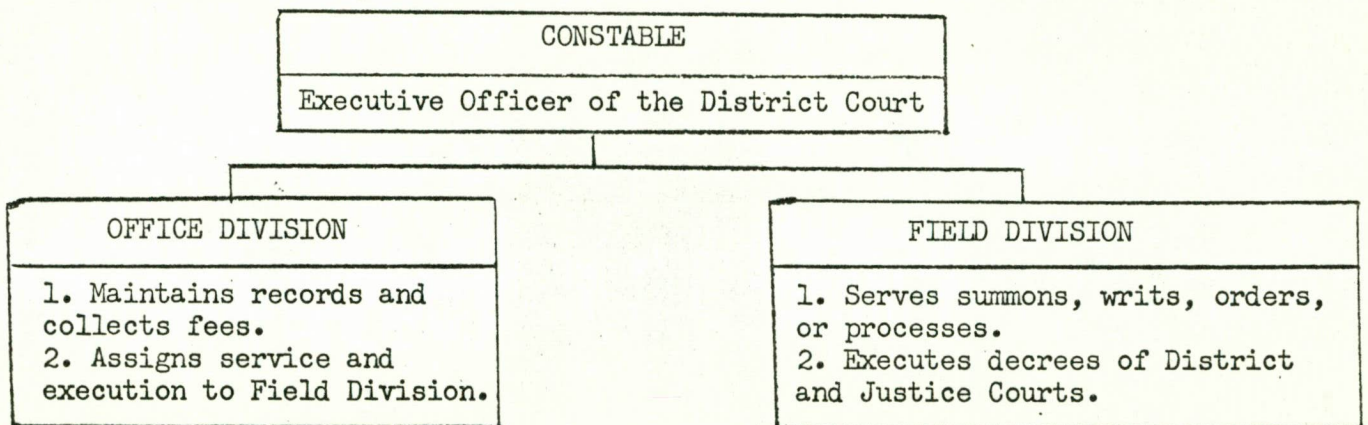


CHART VII

It will be noted that the Constable has no policy making decisions to render and no discretion in the execution of the duties enumerated. All of his duties are either directed by statute or by the courts. It should further be noted that the election of Constables only takes place in cities having a population of 25,000 or more. In all other jurisdictions, the duties of the Constable are performed by appointed Constables or by the Sheriff.



Sheriff. The sheriff is by statute chief executive officer of the county and, among others, has the duty to "attend the terms of the Supreme, circuit, or county court held within his county, and to obey its lawful orders or directions," and to "Execute the process and orders of the courts of justice or of judicial officers, when delivered to him for that purpose, according to law." Accordingly, even though the sheriff has the authority to perform process service and execution for the District Court, his duties in this regard are primarily directed to service of the circuit court because of the establishment of the office of Constable and the statutory lesser fees required for service by the Constable.

To accomplish his duties to the courts, the sheriff has established a Civil Department and has divided that office into two divisions each relating to a part of his responsibilities and broken down functionally as indicated in Chart VIII.

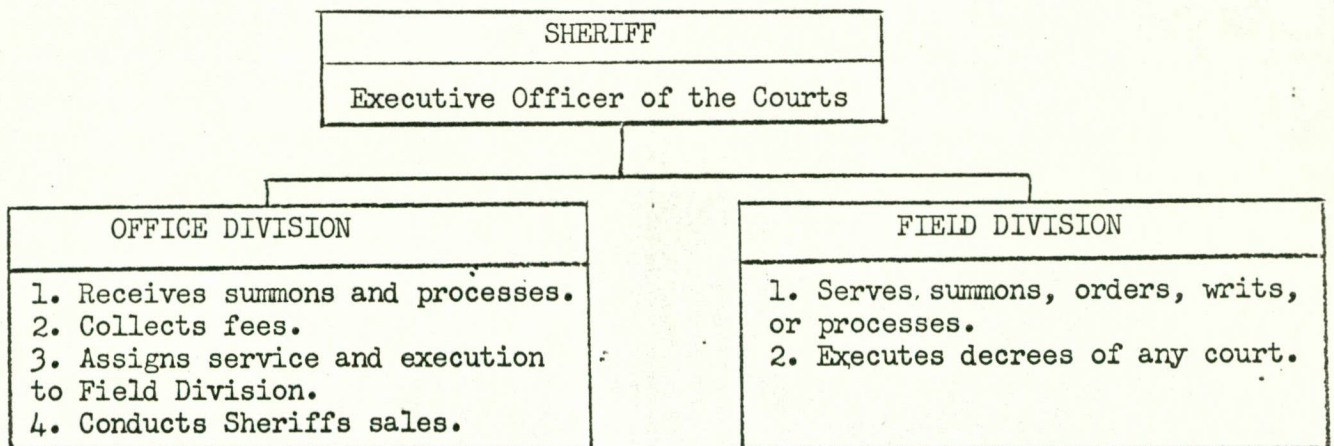


CHART VIII



Comparison of Constable and Sheriff. Chart IX is a comparison chart of functional responsibilities of the Constable and the Sheriff as these responsibilities relate to the service of process and the execution of court orders. It will be noted in this comparison chart that there is one additional

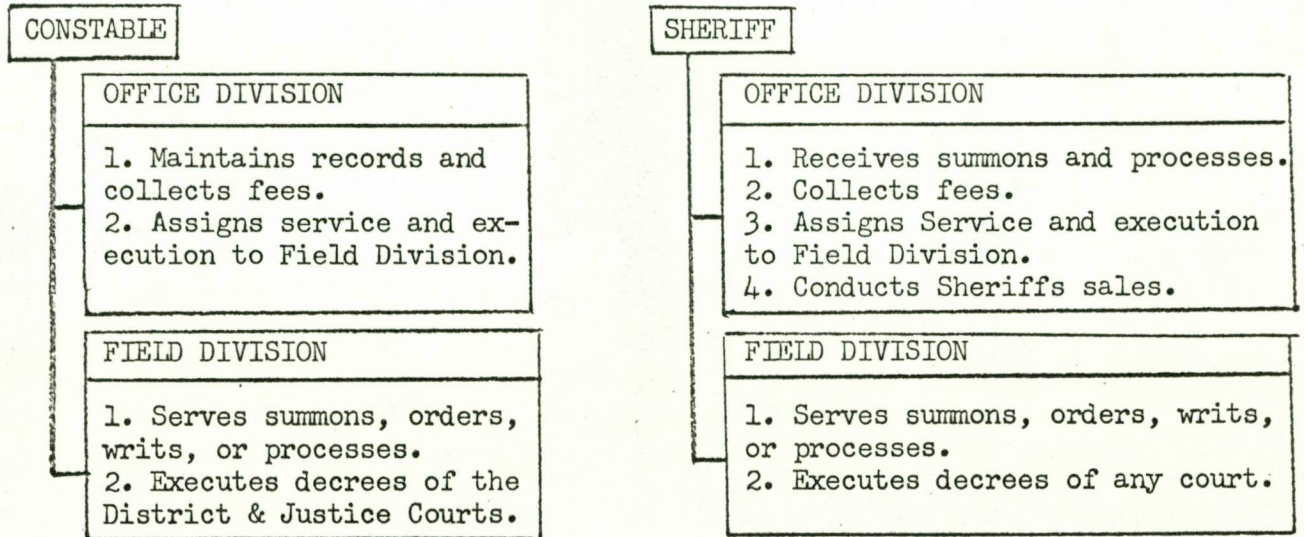


CHART IX

duty on the Sheriff's side that the Constable does not have, and that duty is the responsibility of conducting sheriffs sales. It will further be noted that in all instances, the Sheriff has all the authority necessary for the conduct of the Constable's functions <sup>but</sup> while the Constable does not have the authority to conduct <sup>all</sup> the Sheriff's functions.

The Constable serves papers for the District Court while the Sheriff serves papers for the Circuit Court. There is little if any difference in the manner of service, and the two departments send process servers into the same areas on almost identical routes doing almost identical work. ~~There is~~ Considerable duplication of effort, time, and equipment ~~RESULTS.~~



Hypothesis. The Sub-Committee on Court Support visualizes the consolidation of the two departments into <sup>ONE DEPARTMENT</sup> ~~an organizational entity~~ to serve all of the courts. The new organizational entity would draw from the functional responsibilities of the present District Court Clerk and the County Clerk.

Tentative Recommendation. The Sub-Committee on Court Support recommends that the <sup>OFFICE OF THE</sup> Constable <sup>BE COMBINED WITH THE DUTIES</sup> ~~be abolished as an elected office of Multnomah County~~ and ~~that the duties of the office be combined with those of the Sheriff that~~ relate to process service and execution of court directives.

The functional responsibilities of the combined departments are indicated on Chart X.

PROCESS SERVICE
<ol style="list-style-type: none"><li>1. Receives summons and processes.</li><li>2. Supplies and executes writs of attachment.</li><li>3. Places liens against property.</li><li>4. Issues bench warrants on direction.</li><li>5. Serves summons, orders, writs, or processes.</li><li>6. Executes <sup>COURT</sup> <del>decrees of all courts.</del></li></ol>

CHART X



County Organization for Court Support. The placement of ~~this organization~~ of Process Service into the overall organization of the county continues to be a matter of conjecture. Ideally, the sub-committee visualizes <sup>the</sup> ~~this~~ division of process service as a part of the Department of Court Administration as indicated in Chart XI. In this manner, all court support activities would be combined under the Court Administrator who would <sup>ACT AS EXECUTIVE OFFICER</sup> ~~have the complete responsibility~~ <sup>OF THE COURTS.</sup> ~~of serving the courts administratively and acting as their executive officer.~~

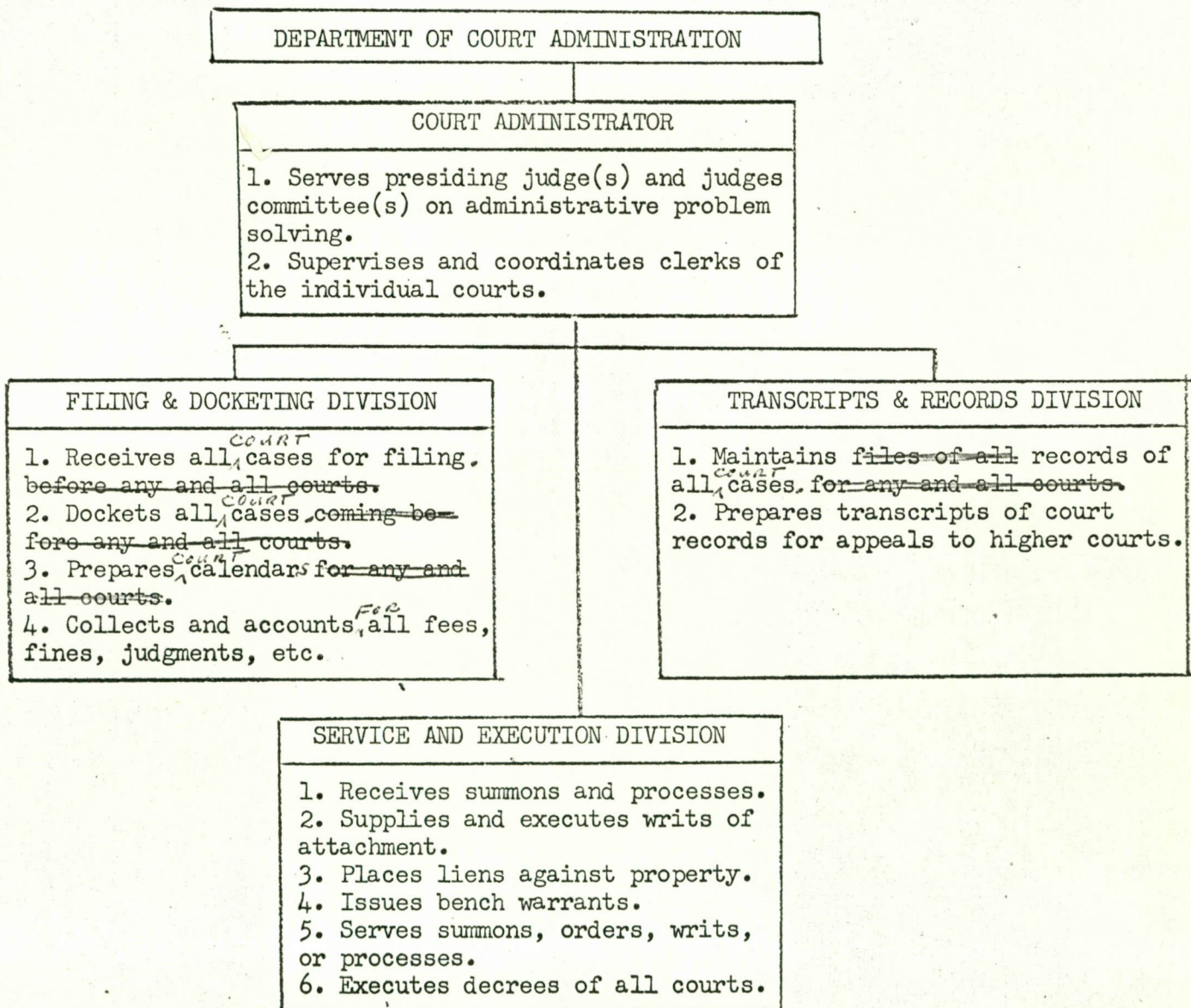


CHART XI



Management and Political Philosophy. From the standpoint of management *simplicity*, philosophy, the ideal ~~arrangement for the~~ organizational placement of the Department of Court Administration would be in a direct supervisory line from the judges themselves. From the standpoint of political philosophy, however, this placement under the judges would <sup>combine</sup> ~~create a combination of~~ judicial functions with executive functions <sup>CONTRARY TO</sup> ~~which is contraindicated by~~ the separation of powers concept of American democracy. This arrangement would be further complicated by the fact that the Court Administrator would be working for nineteen judges from two different jurisdictions. And while it is possible

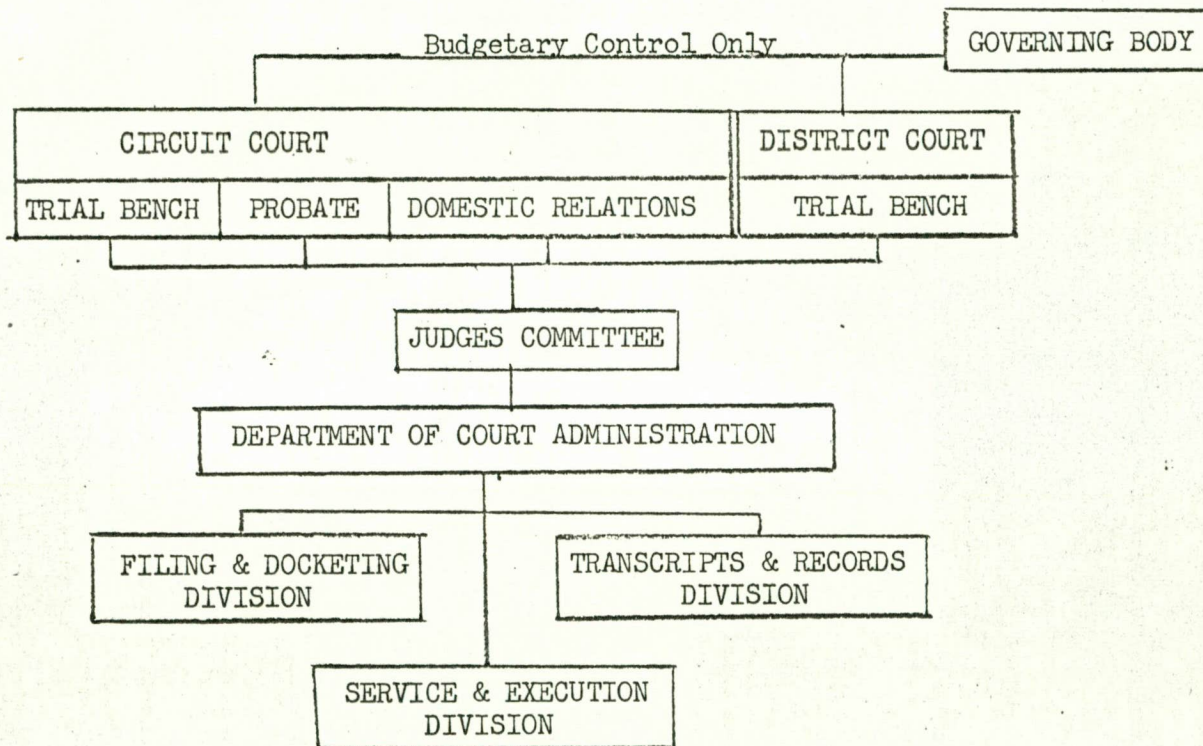


CHART XII

for the judges to form themselves into a Judges Committee, as indeed, the Circuit Court judges have already done, the Constitutional provision prohibiting a charter from concerning itself with matters of judicial function would make it extremely unlikely that a charter provision compelling the judges to form such a committee would be constitutional. <sup>IN ABSENCE OF LEGISLATIVE AUTHORITY.</sup> Furthermore, ~~the constitution itself~~ JUDICIAL DISTRICT BOUNDARIES do NOT NECESSARILY follow County Boundaries, SO JUDGES ~~AND THEIR EXECUTIVE FUNCTIONS~~ ARE NOT MATTERS OF "LOCAL CONCERN" NECESSARY FOR county legislation or charter content. Accordingly, it is EXTREMELY doubtful that a charter



~~establishes the functions of court administration under a County Clerk and a Sheriff as the executive officers of the court.~~ It is doubtful that a charter could legally compel the judges to assume the role of being their own executive officer. While there is considerable precedent in case law allowing the judges wide discretion in the use of administrative rules, we continue to have the constitutional provision, in addition to statutory requirements, that the county will furnish the administrative support to the courts through one or more executive officers who are county officials. Chart XII (above) shows the lines of authority of a Department of Court Administration reporting to a committee of judges. In view of the legal barriers and in view of the political philosophy of separation of powers, this organization structure is not recommended.

The second alternative to the organizational placement of a Department of Court Administration (as does its very composition) depends upon the ultimate decision of the Home Rule Charter Committee as a whole regarding the upper structure of the county's organization. While the Home Rule Charter Committee concluded that the powers of the governing body couldn't be determined until the composition of the governing body were determined, and the composition of the governing body and the executive hierarchy could not be determined until the committee knew what there was to govern, legal questions necessitate an answer to the question of the executive hierarchy before the placement of a Department of Court Administration can be made in the organization structure. Accordingly, the Sub-Committee on Court Support has of necessity considered the alternatives of executive structure. A discussion of the alternatives is in order at this point.



Concepts of Executive Structure. There are basically three different concepts of executive structure in municipal government, and any structural difference is no more than a variation of the basic three. These are (1) Administrative Officer concept; (2) Manager concept; and (3) Elected Executive concept.

~~Commission~~  
Administrative Officer Concept. ~~Commission~~  
The ~~Administrative Officer~~ concept visualizes a governing body possessing both the legislative and the executive powers of government. <sup>A VARIATION OF THIS CONCEPT VISUALIZES AN ADMINISTRATIVE OFFICER.</sup> An administrative officer is an appointed official serving at the pleasure of the governing body and possessing only the authority granted him by the governing body. ~~All authority not granted or delegated by the Board is not possessed~~ Authority granted can be taken away. An administrative officer will hold his position only so long as <sup>THE GOVERNING body desires.</sup> ~~pleases the governing body.~~ He cannot criticize the policies of the governing body and retain his job - his duty is to make the policy work whether it is good or bad.

Under the administrative officer plan of organization structure, there is at least one group of functions that cannot be transferred back and forth between a governing body and an administrative officer, and those are the police functions. Discussion of the police functions is quite germane to the question at hand, for the police functions by both the Constitution and the statutes of Oregon, include the execution of court decrees. Accordingly, under the administrative officer concept leaving the legislative and the executive powers of government in the hands of a board, the Sheriff generally continues to be an elective official and he retains the functions of process service and execution. This has been the case in both Washington County and Lane County. Accordingly, if the Home Rule Charter Committee should decide on the administrative officer concept of government for Multnomah County, the Department of Court Administration could be placed organizationally under the governing body with the



Division of Service and Execution being placed under an elected Sheriff.

(Additionally, items 2 through 4 of the functional statements under the Service and Execution Division contained in Chart XI would transfer to the Filing and Docketing Division of the Department of Court Administration.) Chart XIII indicates the relative structure under this type of government organization.

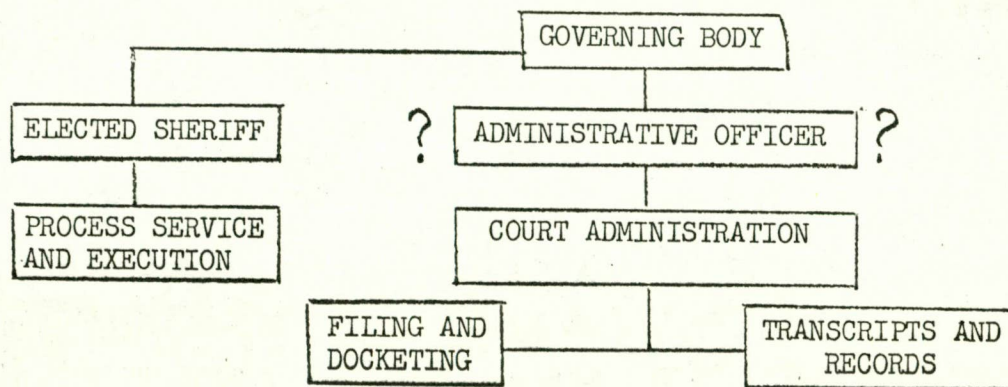


CHART XIII

County Manager Concept. The County Manager concept of municipal government is an effort to strengthen the Administrative Officer concept by granting <sup>AND FORMAL POWER OF APPOINTMENTS.</sup> authority in the charter to an appointed manager. The manager, too, serves at the pleasure of the governing body. Authority not granted to the manager in the charter is reserved by the governing body. Once again, the governing body has the legislative power of the government and the executive power not specifically delegated to the manager by the charter. The proponents of the manager form of government argue that this type of structure gives the people "professional" management. Opponents say it is worse than the Administrative Officer concept because it draws professional administrators from other jurisdictions who spend half their time looking for their next job. From the political science point of view, it is little, if any, better than the Administrative Officer concept in that the same arguments are present. The governing body retains both the legislative and executive authority in fact if not in theory. The Manager serves at the pleasure of the Board, ~~and retains his position only so long as he pleases the~~



~~Board. He cannot be critical of the Board or its policies without losing his~~  
job. The Manager is rarely given all the executive powers of government, and  
in those areas where <sup>he</sup> ~~it~~ is not granted the powers specifically, he holds the  
same position as an Administrative Officer. Accordingly, the placement of the  
Department of Court Administration would depend upon the powers granted by  
charter to the County Manager. If the County Manager were not given the police  
powers by charter, the organizational placement of the Court Administration  
functions would be exactly the same as under the Administrative Officer concept  
shown in Chart XIII. If the County Manager were given the police powers of the  
Sheriff, the organizational placement should be as indicated in Chart XIV.

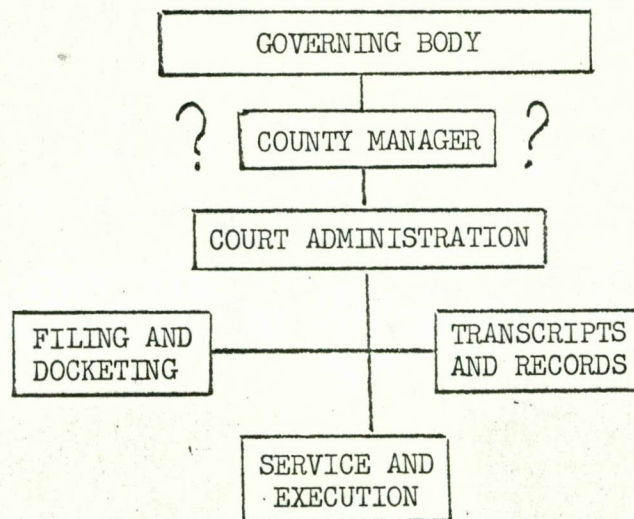


CHART XIV



Elected Executive Concept. The third alternative is the Elected Executive concept sometimes called the Strong Mayor type of government. In this concept of municipal government, the governing body has only the legislative power of the county and is restricted to matters of policy. The Executive Officer of the county is elected by the people at large and is responsible only to them. He is obliged to carry out the policy of the governing body much as the Governor is obliged to carry out the dictates of the legislature, but he has a voice to criticize and has the right and the duty to use it. He is generally given the power to act as the executive officer in all matters including police matters. Under this concept of government structure and organization, all legal barriers to forming a Department of Court Administration disappear, and the organizational placement would be as indicated in Chart XV.

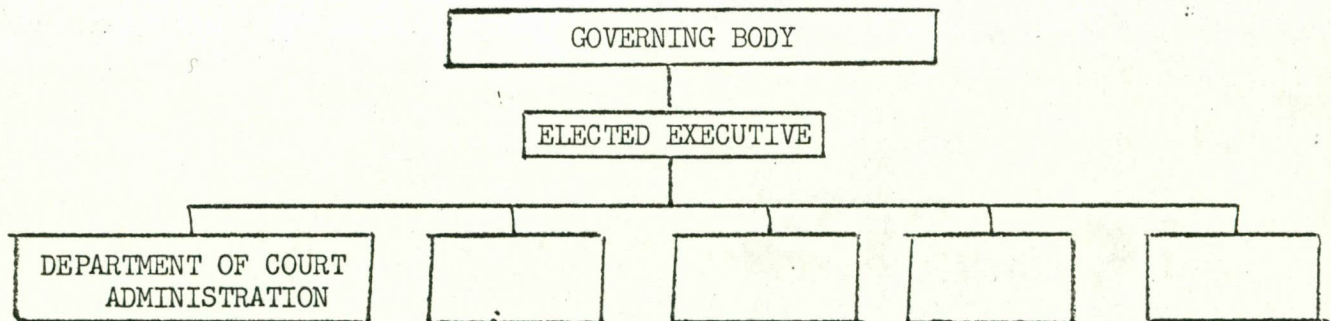


CHART XV



Political Concurrences. On December 9, 1964, the Honorable Dean Bryson, speaking for the Circuit Court Judges of Multnomah County, said, "I think it is time that we started ...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."

At the same meeting, Margaret Cawood, District Court Clerk, said, "I offer these suggestions to be part of your charter consideration: ...Set up a Court Administrator for the entire county and have him perform the duties that are now done in my office for the District Court. Have him do for both the Circuit Court and the District Court. As Judge Bryson mentioned, we are getting to where all of the court activities should be closely coordinated and I think that is a necessary step." Later in the same meeting and during the question period, Mrs. Cawood said, "I think that the Constable and the District Court Clerk's office could very well be consolidated. I think also that what the Sheriff does in the way of civil service should be done by the Constable because he serves papers too. I think the Constable is set up to serve papers, and the Sheriff should be set up for the enforcement of laws. I feel it is much more to the point to have the Constable's office serving papers than for the Sheriff to be doing it."

In response to a direct question, Mrs. Cawood said, "Yes, that (the same administrator doing the work for the circuit court and the district court) is what I had in mind. I think perhaps the court administrator should be under an elected official and not be under civil service and not have to come up through the ranks."

On January 5, 1965, James Haggerty, Constable of the Portland District, told the Home Rule Charter Committee, "...We serve a lot of civil papers through our department anyway, and I think it would probably be a proper thing to place the Civil Department of the Sheriff's office under the Constable."



All of the foregoing statements are accurate as to words and as to context. While the Constable was referring, of course, to combining the Sheriff's Civil functions into the Constable's office, he was nonetheless advocating the combination of the two offices. Unfortunately, there are legal barriers to the Constable assuming the powers of the Sheriff, while none exist conversely.

It would appear that this recommendation for the establishment of a Department of Court Administration has the backing of at least two of the elected officials affected.

Summary and Recommendation. In summary, the Sub-Committee on Court Support recommends to the Home Rule Charter Committee that a Department of Court Administration be established in the charter document; that the Department be headed by a Court Administrator with qualifications in law ~~and~~ or business or public administration; that the Administrator be appointed by the county executive "by and with the advice and consent of the judges", that he serve at the pleasure of the county executive; that his duties consist of serving the judges in an administrative capacity by maintaining court records, files, and dockets; serving summons, orders, writs, or processes; executing decrees of all the courts; and such other duties as prescribed by the county executive. (If the county executive is either an administrative officer or a county manager, the duties of the process service and execution are recommended for inclusion in the duties of the Sheriff.)

It is further recommended that this report be sent to the Judges Committee for their study, comments, and recommendations to the Home Rule Charter Committee. It is additionally recommended that this report be sent to the Multnomah County Bar Association for their study, comments, and recommendations before any charter language is drafted.