

PECK

Charter  
Review

June 22, 1983  
Meeting

~~Peck~~  
Peck

Please

return

Thanks

MULTNOMAH COUNTY CHARTER REVIEW COMMITTEE

Meeting 7:00 pm, June 22, 1983

Agenda

- 7:00 pm Call to Order
- 7:00 pm Welcome
- 7:05 pm Approve Minutes
- 7:15 pm Introduce John Leahy, Orval Etter
- 7:15 pm Discussion of counsel with Leahy
- 7:25 pm Discussion of open meeting law, ethics considerations with Leahy
- 7:40 pm Etter Presentation
- 8:15 pm Questions
- 8:40 pm Discuss personnel process/applications to date
- 8:50 pm Appointment of Rules Committee
- 8:55 pm Schedule next meeting
- 9:00 pm Adjourn

MULTNOMAH COUNTY HOME RULE CHARTER COMMITTEE

MINUTES

June 22, 1983

Absent: Linda Rasmussen

Third session of the Multnomah County Home Rule Charter Committee convened at 7:00 pm on June 22, 1983, in Room C of the Portland Building. The draft agenda for the meeting was approved and the minutes from the June 13, 1983, meeting were approved as corrected following addition of Committee member Florence Bancroft's amendment concerning voting.

The following matters were discussed in the course of the meeting:

- County Counsel John Leahy discussed the open meeting law and responded to committee member questions concerning influence of the Charter on Multnomah County.
- guest speaker Orval Etter made a presentation on the history of Oregon home rule and answered committee member questions.
- the committee reviewed administrative matters related to hiring staff.

DISCUSSION WITH COUNTY COUNSEL

As an introduction, County Counsel John Leahy made the following points concerning the Charter Committee's task:

- the committee, is, in effect, drafting a constitution for Multnomah County, a difficult, refined endeavor;
- the Charter is both a political and a legal statement, which must be extremely well-crafted to manage the incompatibilities which arise between those two functions;

- in his six years as counsel to the county, there has been a continuous need to interpret the Charter and litigation has sometimes grown out of Charter provisions.

While stressing the need for the committee to have legal counsel for its drafting, Mr. Leahy suggested that, given the small number of home rule counties in Oregon and the relatively limited opportunities for experience in working on charters that appear, finding legal counsel with charter experience will be difficult. He agreed with the committee's informal decision to seek independent counsel (i.e., not use the County Counsel's office). He offered his office's services to the committee, however, and urged them to seek counsel with legislative drafting experience.

his  
In concluding opening remarks, Mr. Leahy pointed out that five revisions of the Charter had occurred in the last six years. The result, in his opinion, had been the unsettling of county government. This effect was contrary to the original ideas and goals of county home rule.

Committee member Anne Porter asked him for examples of problems which had grown out of the Charter. Mr. Leahy stated that the largest problems were associated with interpreting Ballot Measure Six language, which appeared to not have been drafted with the aid of legal counsel experienced in legislative drafting. Expensive litigation was also growing out of those difficulties.

Responding to questions on the open meeting law, Mr. Leahy stated that the law has proved easy to abide by and that the committee should have no problems with it. Specific points to observe were the 72-hour meeting notices and the emergency meeting provisions.

PRESENTATION BY MR. ORVAL ETTER

After being introduced by committee chair Frank Shields, Mr. Etter discussed his experience working with home rule in Oregon and answered questions from the committee. Issues raised in those questions were:

- role of the county under home rule, including county functions
- home rule and consolidation
- counties as an arm of the state
- the economy and implications on home rule
- potential of a "super county" developing
- tax policies and urban subsidy actions
- home rule and urban subsidy actions

Mr. Etter pointed out that the home rule grants a county self-determination based on provisions of its charter. Statutory home rule appeared in 1973 when the legislature granted ordinance authority powers to general law counties. He stressed that, without a charter, that authority can be withdrawn by the legislature at any time. He also stated that, when litigation generated by county charters over the last 25 years is compared to litigation in the 25 years after municipal home rule, the level of court action has been much lower for counties.

A summary of the discussion between Mr. Etter and committee members appears in the appendix.

PERSONNEL ACTIONS

An interview subcommittee was appointed (Frank Shields, Carol Kirchner, Chad Debnam, Anne Porter and Linda Rasmussen). The committee asked the interview subcommittee to submit three candidates for the full committee to interview.

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Subcommittee chair Penny Kennedy raised the question of the committee's authority to draft and sign a personnel contract. County Counsel John Leahy will be asked to review the question.

ADJOURNMENT

The committee asked staff to mail the proposed agenda and draft minutes to committee members in advance of the meeting.

Next meeting was scheduled for July 6, 1983, at 7:30 pm in the Portland Building.

The committee then adjourned at 9:28 pm.

## APPENDIX

### SUMMARY OF QUESTIONS AND ANSWERS

Mr. Etter stressed the importance of careful attention to drafting language in any charter. At the time the original charter was worked out for Multnomah County (he was a participant), few examples were available as guides. In the opinion of the drafters, problems which only experience could resolve were inevitable.

#### Role of the County

Committee member Anne Porter, making reference to amendments made over the years, asked if Mr. Etter could define the role of the county.

He responded that one role continues to be to function as a city. He stated that the county may have gone as far in that role as it can with respect to functioning as a city outside other cities' limits. Questions of fiscal equity in terms of who received services had arisen in 1965 as well as today. At the same time, Portland opposed home rule in Multnomah County in terms of the county potentially restricting the city's expansion.

Also in 1965, the questions of the financial and administrative structure of the county were debated. In effect, the charter set the stage for the county to act as a city. Given the restrictions being placed on municipal home rule, he sees some advantages as a county is allowed to act more "like a city than some cities".

Committee member Paul Thalsofer raised the point of Multnomah County's decision to divest itself of an urban service role.

Mr. Etter stated that this reflects a political decision and represents the county deciding not to exercise its full range of powers. When this discussion

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arises, the county's role is examined in first in terms of functions and then in terms of aspects of functions. As an example, he cited police services delivered by a county as being a function with numerous aspects. Distinguishing between municipal and county divisions with respect to those aspects is largely arbitrary and subject to political decisions. As attempts to make these distinctions become a public policy process, the topic of city-county consolidation generally arises.

#### Consolidation

Committee chair Frank Shields asked how city-consolidation would work in Multnomah County given the multiple municipalities already in place.

Mr. Etter mentioned that in San Francisco, where consolidation occurred in 1856, some segments were removed from the consolidated entity. Another possible solution appears in Toronto, Canada, where hierarchies of responsibility between cities and the county are well-defined. He went on to cite the general lack of success for consolidation in the United States and the strong tendency of small entities to fight for their political independence.

Consolidation, or a federal structure, had once been proposed for Multnomah County. It was delayed to allow the legislature to make changes in laws required for it to occur. By the time municipal laws were liberalized to permit the federalized structure, the Metropolitan Service District idea had surfaced and supplanted the former idea.

Counties as an Arm of the State

Committee vice-chair Carol Kirchner raised the point that counties had been established originally to handle rural administration for the state.

As developed in the United States, the county was closer to the state than was any other agency, according to Mr. Etter. That status still prevails, and is reinforced by the state home rule charter provision enacted in 1958. That amendment states that counties have all the duties and powers called for by state law, a provision not applied to municipalities under home rule.

However, at the same time counties were established, home rule-like provisions were allowed. Tradition has allowed the counties to elect their own officers and determine the location and size of their courthouses, both decisions which would be left to the central authority under English conventions.

Counties were largely established to administer the ad valorem property tax for the state. The state requires a list of property, someone to assess the value of that property, and someone to portion the land on the basis of its value. This administrative role still exists.

While the mixed role of the county -- as an agent of the state and as a partially independent entity -- has existed since the formation of counties, problems developed after World War II. Urban problems developed outside city boundaries, and while cities had been shown to be an effective way to handle such problems, state law did not allow cities to annex newly developed urban areas at their discretion.

By the 1950's, the success of municipal home rule suggested that similar provisions for counties may pose a solution to the unincorporated urban area situation in the state. The subsequent apparent link between urban issues and county home rule can be seen in the absence of any home rule counties east of the Cascades.

The Economy and Implications on Home Rule

Committee member Chad Debnam asked if the current economic condition held implications for home rule.

Mr. Etter stated that, although the economy's impact on collected taxes and how they were administered was dramatic, that home rule was flexible enough to address the challenge. He contrasted Lane and Multnomah Counties as an example.

Lane County achieved home rule four years before Multnomah County. During the 1960's and 1970's, Lane County commissioners carefully avoided moving into an urban service role to avoid antagonizing their relationships with the surrounding cities. At the same time, Multnomah County aggressively developed municipal services programs. Also, Multnomah County and Portland were competing for access to land and an increasing number of special service districts, with the Board of County Commissioners heading them, were appearing.

Now, these trends are reversing between the counties. That reversal is largely a function of political decisions, however, and not a feature of home rule.

Possibility of a "Super County" Developing

Committee member John Vogl, mentioning the likely annexation or consolidation of the county's unincorporated area, asked if the county would then restrict its service delivery functions to the rural areas or become, in effect, a super county.

Mr. Etter felt this was a political decision which could go in either direction. In his opinion, consolidation is an issue which keeps appearing largely because of recurring policy questions and that any move toward "super county" status would promote consolidation considerations.

The central problem of consolidation in Multnomah County is that the metropolitan area which has developed does not fit within delineated county boundaries, and that those boundaries have a sacrosanct status making it extremely difficult to change them. In any case, changes in boundaries by charter have shown a low success rate.

Tax Policies and Urban Subsidy Actions

Committee chair Frank Shields asked if, by providing differential tax rates, the urban subsidy questions could be resolved and pressure to create a new city would fade.

Mr. Etter saw this as an attractive solution, but a difficult one. The complexity of setting values on the differing tax rates and then convincing the public to vote for them has generally been overpowering.

Provisions do exist which permit differing levels of taxation, however. In 1957, the state's annexation law authorized a lower tax rate for people in newly annexed areas. This was seen as a way to encourage annexation, since a recurring complaint arose from people in newly annexed areas. They had previously started paying the higher tax rates before actually receiving the expanded services. Under the 1957 law, subsequently upheld in the Supreme Court, a delay in collecting those higher rates permits service delivery to begin first.

The urban subsidy issue itself has been raised since at least 1955, mainly because determining the subsidy levels involved is extremely complicated.

#### Home Rule and Urban Subsidy Actions

Committee member Anne Porter asked if home rule would be necessary as the county withdrew from its municipal services delivery role.

Mr. Etter responded that home rule had been sought before urban service questions arose. It was pursued because people wanted a more flexible county government and improved local administrative structure. Historically, the commission form of government and the managerial form appeared at the same time, and both wanted home rule. As improvements in city government appeared through municipal home rule, it became attractive to seek similar flexibility for counties.

He went on to discuss problems which have developed in Multnomah County, stating that referring to "county government" was actually incorrect. In effect, the presence of numerous elected officials leads to "county governments". Although the budget process is seen as unifying control of the county under the Board of County Commissioners, the elected officials themselves, being

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directly responsible to the electorate become a government unto themselves.

Mr. Etter concluded his remarks by stating that the original charter had gone farther than many other county charters in unifying control of the county, and that recent amendments had retreated from that position, including the interesting addition of the County Clerk to elected official status.

1  
6.22-83

absent: ~~Hackett~~  
Kasmussen

→ model charter

## Charter Meeting

minutes

FS began 7:02

reviewed draft minutes, made technical corrections  
and restored through amendment concerning voting  
approved as corrected

FS welcomed Leahy, Etter

Counsel

FS introduced Leahy to discuss counsel for committee,  
offer comments on agenda of committee,  
ethics + open meetings

JL discusses Etter's background as father of county  
home rule in OR

3\* need counsel -- are drafting constitution

- difficult, refined endeavor

- not many lawyers in OR good at it since  
experience opportunities for experience limited

2\* six years as counsel, have continuously had  
interpret charter, sometimes had to enter  
litigation on how charter.

3\* hindsight shows areas needing improvement  
political + legal statement

- not always compatible, must be  
extremely well crafted

also need some rule charter experiences  
- only small number home rule charters

independent council might be <sup>wise</sup> move  
2 in last 6 years, have had 5 absolute  
revision votes

2 result has been significant unsettling of  
county govt, quite contrary to original  
idea of home rule in 1958 (Iare County)

NO [ in 1978, Clark felt unwise to have county  
council serve committee  
- could be perceived as attempt to maintain  
county status quo

4 suggestions

- 1. if can afford, go with experienced  
council independent of present county  
govt
- 2. if can't afford independent council,  
county council available to serve in  
any way, to any extent, requested
- 3. - cautions not to employ council  
lacking municipal home rule  
govt, legis. drafting

questions

Kortee

what are examples of budget?

Leahy

biggest problem of last year has been  
not putting into effect ballot  
Measure 6

amendments do not appear to have  
been drafted by experienced legis-  
draftsmen

carrying out language has been:

- difficult
- unwilling to city govt
- expensive because of litigation

is currently bill in legis. on charter  
amendments, should be checked

→

ck

comments that, while appreciated Leahy offer,  
felt independent counsel was best  
course

- not meant as intended as any criticism
- commend his office

JC

thanks her, says office available to  
whomever hired

FS

raises open meeting law topic

④

JL

committee shouldn't be scared by law

- has proved easy to handle

- somewhat difficult when have social events

- little trouble with commission of this size

also shouldn't be afraid of financial disclosure forms

CD

is there a length of time on posting announcements

JL

72 hours, plus emergency provisions

→ FS

instructed DP to get disclosure forms

get meeting announcement forms from clerk

PT

has filed disclosure for Troutdale, is another one necessary

→ JL

will call back on it

FS

introduces Ether

(5)

Etter

worked for Govt. Res. on 3 occasions since before WWII

(bio)

- original contact was with range local govt, led to county work

returned in 1960 to work on county home rule shortly before retired (1980) retained by Mult. Co. charter committee

— hindsight, as Leahy says, shows room for improvements if one compares amt. litigation reaching appellate courts after county home rule compared 25 years after ~~munici.~~ home rule, level much lower for county

experience

— in terms style, ~~and~~ drafting style suggest should alter "shall be" to "is"

drafting

inevitable that language was general

- had no clear patterns to follow  
- felt were fixing problems only experienced could correct

- general grants of power, as example  
- intent on broad grant of power  
- hasn't been prolific source of litigation

- generally get feeling that county has power - achieving objective

6

person doing drafting never totally free  
- especially true with respect personnel  
in mult. cr.  
- legal staff in county has faced this

HP mentioned 67, 82 articles on county role, how  
does see role of county

OE one role is for county to ~~for~~ continue to  
function as city

role of  
county

may be that county has gone as far as can  
to function as city outside city limits  
- as did this right outside other cities,  
fiscal equity questions (present in 1965) and  
political relationships questions (in 1965,  
Portland opposed home rule, saw county  
acting as city restricting city's desire to  
expand)

county problems in areas of finance, admin.  
structure did arise ~~as different~~

- seemed as though charter set stage for  
county to act as city

- answers to problems dealt with in  
terms <sup>differential taxation</sup> new districts, not in terms  
charter

⑦

have developing new political relationships as  
have cities within a county which  
is acting like city  
county, under its charter and given limitations  
being put on muni. home rule, may  
be able to act more like city than city

PT if potential exists for city. county to act as  
city, what about <sup>current</sup> existing actions

OE clear that recent trend, based on policy  
decision, is to retract muni. services  
county function - county desiring not to exercise full  
range powers

PT does public safety function as county or  
city service

OE is a mixture  
students of this first talk of functions, then  
aspects of functions

~~app~~ - public safety definitely has array of  
aspects

difficult to determine city - county divisions  
of aspects

- where place them <sup>largely</sup> tend to be  
arbitrary, altho some things, like auto  
control, tend to be urban

(8)

tends emphasize question of consolidation when  
attempt separate these functions & aspects  
in largely urban setting like Mult. Co.  
consolidation has worked in S.F. since 1856

FS how does it work when have multiple  
consolidation  
see pg. 14 municipalities

OE becomes more complex, but S.F. ~~is~~ has both  
separation and consolidation

- San Mateo made up of segment taken  
out of S.F.

around WWI, attempted to establish state-like  
boroughs

- failed -- once get small entities into  
existence, something about political  
system gives them fierce claim on  
life

would offers notable examples of recognizing  
hierarchies of responsibilities among  
areas (Toronto)

in U.S., any time small entities approached  
with logic of this, fight it fiercely

9

at one time, proposed federated system in  
Mult. C.

- by time legis. liberalized muni. laws  
to allow it, county moved toward  
ITERO idea -- not as full a structure

CK felt counties largely set up by state  
county as arm of state largely to handle rural admin  
OE as best forth in US, county was agency of  
state more than any other agency  
that status still prevails

- 1958 amendment says county has all  
duties, power that exercise under state  
law
- not present in muni. amendment  
at same time counties established as agent of  
state, was given some home rule  
when counties set up, states largely dependent  
on ad valorem property tax
- states needed list of property, someone  
to assess value, someone to portion land for  
state on basis value
- set up counties to do this.

at same time, seen that counties had some duties  
could do themselves

10

territorial

seen in courthouses -- tradition allowed  
one, <sup>in each county</sup> state allowed local determination  
on when, how large

- state law specified presence of courthouse, rest discretionary
- also allowed to elect officers ~~as do~~
- English form would have had those officers appointed -- chose not to do this

- led to mixing -- early on -- of counties as state agent + also independent

over years, found it breaking down as post-war urban problems arose

- had seen cities could make changes,
- [ but state law didn't allow cities to annex newly developed urban areas
- attempted give counties way to handle these urban problems

at same time, home rule was being discussed largely behind scenes

by 1950's, muni. home rule success gave incentive to county home rule

- no county east of cascades has adopted
- before WWI, activity was in eastern OR

CD does present econ. status effect implementation of home rule

DE overall, yes

econ + home rule

- would need particulars particulars what do with taxation presumably effected by econ. conditions

unfav. econ. conditions ~~not~~ (he doesn't think) impede home rule -- enough latitude exists

can contrast same - Mult co.

- Same 4 years ahead Mult. on home rule
- in 1960's, <sup>-70's</sup> commissioners avoided moving into urban services to avoid conflict with cities

at same time, county + North had competitive

- competing for unincorporated land
- increasing number special districts
- after 1960 commissioners headed districts

trends between <sup>mult + Lane</sup> counties reversing

- is political decision, not a feature of home rule, how this works out

JV feels safe to assume ~~or~~ unincorp area will be become city or annexed

(12)

would county be super city or restrict  
self to rural areas

OE would be political decision

- could go either way

JV wouldn't it be a ~~strong~~ (possibility of  
super county) promote consolidation

OE usually does

consolidation dismissed for 50 years  
pressures of area keep consolidation issue  
coming up

→ [problem faced is that metro area not  
nicely delineated by county boundaries  
fact is that county boundaries have a  
sacrosanct status making change  
difficult

if ether campaigned statewide for appointed  
sheriffs or elected chiefs of police,  
no one would agree

- even tho are same issue

overall, <sup>in city, ~~street~~ boundaries</sup> changes by charter have low success ratios

FS if differential taxation allowed, wouldn't it  
taxation, urban services stem county retreat from urban services  
and also dissuade new city creation

(13)

OE ~~is taxation differentiated by area~~  
sees positive value to more of it, but  
complexity makes it difficult to  
explain to electorate  
first effort on this in 1957 annexation law  
- authorized lower tax rate in newly  
annexed areas  
- after 20 years, got explicit Supreme  
Court case ~~of~~ allowing it  
tried in to annexation as way to speed it  
up

differentials allow to directly ~~tackly~~ tackle  
urban subsidy issue

FS then why hasn't East County been paying  
more for sheriff

RP who says they haven't  
where does ~~any~~ lower level taxation come from

OE reasoned that, after annexation, city couldn't  
immediately provide full services  
also, pre-stalled claim that, in newly annexed  
area, people complain about taxes going  
up

RP sees differential helpful in showing people  
what they are paying for

OE gets extremely complicated  
in 1955, got into argument in presence of  
urban subsidy

issue of urban subsidy tended to turn on  
whether added in education

- without education, city does appear to subsidize unincorporated
- with education, goes other way

FP doesn't <sup>city-county</sup> consolidation address this

OE yes, but when look at 1898 New York  
consolidation, see other question

consolidation

- should property tax be equalized, since boroughs made Manhattan possible
- Manhattan didn't want their taxes subsidizing housing (would go up) -- but did equalize

FP if county withdraws from urban services, <sup>home rule & urban services</sup> is home rule required

- OE home rule sought before urban problems
- pursued because people wanted more flexible base
  - improved admin. structure

(15)

as commission, <sup>happened at same time</sup> managerial forms govt on rise,  
wanted some rule

- saw city govt improvements, wanted it  
open to county (county is dark continent  
Amer. govt.)

→ while talk about county govt, really have  
county govts as elect everyone  
- are directly responsible to electorate  
- become govt unto themselves  
- have collection of county governments --  
don't have unified entity

while attempt unified control thru budget,  
elected officials largely independent

→ parlance tends to obscure this situation

WP did have <sup>unified</sup> county govt until '82

OE did go further than most others  
~~kept~~

went backward, including interesting addition  
of court clerk

Itac what are main <sup>general law</sup> some rule - other differences  
OE has charter -- self-determination based on  
charter unique to that entity

(16)

in 1973, ~~at~~ statute adopted giving all countries general ordinance powers

- have come to refer to them as statutory home rule
- could still be repealed by legislator -- they can't take away charter

~~short~~ - short break -

~~break~~

~~CK motion to break~~

~~passed 5-4~~

FS entered further discussion of personnel action

personnel

- ratings <sup>(3)</sup> will meet

- interview <sup>(5)</sup> = 5 LR, RP, CD, FS, CK  
FS, CK, FS, CD, LR

need to work out interview questions

LR suggests interview committee generally comes back with recommendation and 3 names unless committee doesn't accept recomm.

CK personnel sub has timeline

PK concerned about possibility of having to interview

15 in 2 days

SV feels should bring one candidate

one candidate

- what would full committee vote on

⑰

→ Parsons may need replacement

- schedule doesn't allow

- will wait until have workplan

LD would have chance to review materials before interview

RP should cut back number reviewed to allow ~~not~~ longer interviews

would like to interview 3, not one

- interview committee brings in 3 finalists

FS

OK who will chair interview

(discussion of rating - interview process)

PK who will handle ultimate contract drafting and signing

→ ask Leahy 1. can they sign contract

2. language

3. .

FS previously asked LR to consider rules committee,

- will be appointing one to address rules, by laws

next meeting

FS next meeting Weds. (July 6 7:30  
→ - interview finalists July 13 7 pm  
(tentative))

OK would like agenda, minutes in advance

adjourns 9:28 p