

45

ELECTIONS

Studies in County Government

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

Election of Officers

Throughout Oregon history the manner of electing officers of the counties of the state has been governed by state law. Under county home rule, however, it appears that the manner of electing county officers is to be governed ultimately by charter. The county-home-rule amendment to the state constitution requires:

"A county charter . . . shall provide directly or by its authority, for the . . . election or appointment . . . of such officers as the county deems necessary."

This provision appears to imply that the manner of electing officers of a home-rule county shall be governed ultimately by the county, and that if state law is in any way to control the manner of electing these officers, it may so control only by authority of the county. This authority may be granted, and the applicability of the state election laws to the election of officers in a home-rule county may be clarified, by a charter provision reading as follows:

Section _____. ELECTION OF COUNTY OFFICERS. Except as this charter provides to the contrary, the manner of electing officers of the county shall be any manner now or hereafter prescribed by the election laws of the state for electing county officers in general.

A home-rule county apparently may prescribe in full detail by charter and ordinance the manner of electing its elective officers. It is improbable that any county will follow this course under home rule, because there appears to be little or no dissatisfaction with the election laws of the state as they apply to the election of county officers.

Nomination of Officers: Primaries

The manner of nominating candidates for elective offices of the counties of the state is governed generally by state law. These candidates are usually nominated at primary elections. Under county home rule, however, the manner of nominating candidates for county offices apparently can be governed by charter. There is reason for regarding the whole process of election as including the process of nomination, and therefore for concluding that the county-home-rule amendment, in requiring a county charter to "provide directly or by its authority, for the . . . election . . . of such officers as the county deems

necessary," requires the charter to govern directly or indirectly the manner of nominating candidates for elective county offices.

The county-home-rule amendment, in other words, affords ample basis for concluding that the manner of nominating candidates for elective offices of a home-rule county shall be governed ultimately by the county, and that if the state law is generally to control the manner of nominating these candidates, it may so control only by authority of the county. This authority may be granted, and the applicability of the state election laws to the nomination of candidates for elective offices in a home-rule county may be established and clarified, by a charter provision reading as follows:

Section _____. NOMINATION OF CANDIDATES FOR ELECTIVE COUNTY OFFICES. Except as this charter provides to the contrary, the manner of nominating candidates for elective offices of the county shall be any manner now or hereafter prescribed by the election laws of the state for nominating candidates for county offices.

This provision would make clear that under county home rule candidates for elective county offices could continue to be nominated at the regular primary elections held pursuant to state law.

Nomination of Officers: Other Methods

Under home rule a county apparently may prescribe its own manner of nominating candidates for elective county offices.

This action may be taken by ordinance. To this end the charter of the county may simply require:

Section _____. NOMINATIONS. The county council shall prescribe by ordinance the procedure for nominating candidates for elective offices of the county.

In complying with this mandate the county council may make the state law on nominations applicable to nominations of candidates for county offices or may provide that these candidates be nominaable only by petition or convention.

Under home rule a county may, on the other hand, prescribe in detail by charter a procedure for nominating candidates by petition. To this end the charter may provide:

Section _____. NOMINATIONS.

- (1) A legal voter may become a candidate for an elective office of the county--
 - (a) if he has resided in the county for twelve consecutive months immediately before being so nominated and

- (b) if he is nominated as such by a petition complying with the requirements of this charter.
- (2) The petition--
 (a) shall be in a form prescribed by the county council,
 (b) shall specify the office that the nominee seeks, and
 (c) shall be signed by not fewer than 50 legal voters.
- (3) No person may sign more than one petition pertaining to the same office at the same election. If he does so, his signature may be valid only on the first legally sufficient petition filed for nominating a candidate for the position.
- (4) On the petition each signer shall state his residence, identifying it by its street and number or other commonly used description.
- (5) The signatures to a nominating petition may appear on more than one paper. To each separate paper of a petition, however, the circulator of the paper shall attach his affidavit--
 (a) stating the number of signers of the paper and
 (b) asserting that each signature on it has been made in his presence and is the true signature of the person whose name it purports to be.
- (6) All papers comprising a nominating petition shall be assembled and filed with the county clerk as one instrument not earlier than _____ and not later than _____ days before the election at which the nominee's name is to be submitted to the voters. The clerk shall record--
 (a) the exact time at which the petition is so filed and
 (b) the name and address of the person who files it.
- (7) Promptly upon receiving the petition the clerk shall examine it as to its legal sufficiency. If he finds that the petition is not signed by the required number of legal voters, he shall, within five days after the filing, notify the nominee and the person who files the petition, of its insufficiency in signatures. If he finds the petition insufficient in any other particular, he shall return it at once to the person who filed it, stating in writing wherein it is insufficient. An insufficient petition may be amended and filed again as a new petition, or a substitute petition for the nominee may be filed, within the time allowed for filing nominating petitions.
- (8) Immediately upon ascertaining that a nominating petition is legally sufficient, the clerk shall notify the nominee of his nomination. In order for the nomination to have legal effect the nominee shall within five days after the notification file with the clerk an acceptance of nomination, in whatever form the county council prescribes.

- (9) If the clerk receives the acceptance within the five days, he shall cause the nominee's name to be printed on the ballot for the general November election at which the nominee is to stand for election.
- (10) The nominating petition for a successful candidate at an election shall be preserved in the office of the county clerk until the expiration of the term of office for which the candidate is elected.

Partisanship and Nonpartisanship

County elections in Oregon have traditionally been partisan. The first two illustrative sections set forth above are adapted to continuation of this tradition. The fourth illustrative section, on the other hand, is adapted to nonpartisan nominations and elections, although it does not rule out partisan nominations and elections. If a county desires that partisanship in nominations and elections of county officers continue, it may provide by charter:

Section _____. PARTISANSHIP. Nominating documents and election ballots may by words or other symbols indicate candidates' affiliations with, and preferences for, political parties.

If a county desires, on the other hand, that partisanship in nominations and elections be explicitly prohibited, it may include in its charter the following prohibitions:

Section _____. NONPARTISANSHIP.

- (1) No ballot used to elect a candidate to an elective office of the county may indicate the candidate's affiliation with, or preference for, a political party.
- (2) No petition for nominating a candidate for such an office may indicate the nominee's or any other person's affiliation with, or preference for, a political party.

Recall

The effect of the county-home-rule amendment to the state constitution on the recall of officers in a home-rule county is not entirely clear. The recall amendment to the state constitution provides that "every public officer" in the state is subject to recall.¹ The county home-rule amendment, adopted long after the recall amendment was adopted, requires that the charter of a home-rule county "provide directly, or by its authority, for the election and . . . tenure . . . of such officers as the county deems necessary." Because the law on the

1. Oregon Constitution, article II, section 18 (1926).

recall deals with one aspect of the total process of election of county officers and qualifies the law on tenure of public office, and because the county-home-rule amendment requires a county charter to deal with the election and tenure of the officers of the county, the question may arise whether the officers of a home-rule county are subject to recall in the absence of a charter provision to that effect. Doubt on this matter can be dealt with most satisfactorily by a charter provision that by mere reference makes the state constitutional and statutory provisions regarding the recall applicable to the elective officers of the county. To this end a county charter may provide:

Section _____. RECALL. An elective officer of the county may be recalled in the manner, and with the effect, now or hereafter prescribed by the constitution and laws of the state.

Elections on County Measures

The election laws of the state have governed not only the manner of electing county officers but also the manner of conducting other county elections. The adoption of home rule by a county would, in the absence of provisions to the contrary in the charter of the county, leave these laws applicable to these other county elections. Elections, for example, on bond issues and on measures referred because of initiative and referendum petitions could still be held on the basis of state law.

The election laws of the state would govern these elections if the county said nothing about them. The county could, however, explicitly effect this result by affirmatively providing in its charter:

Section _____. ELECTIONS ON COUNTY PROPOSITIONS. Except as--
 (1) this charter or
 (2) legislation enacted in accordance with it
provides to the contrary, the manner of conducting an election on a proposition concerning the county shall be the manner prescribed by the laws of the state for an election in the county on such a proposition.

To what extent a home-rule county may deviate from a state-prescribed manner of conducting an election on a county measure is not clear. The laws of the state provide, for example, that at certain bond elections in counties "the governing body may submit to the legal voters as separate questions, the issuance of bonds for two or more purposes."¹ Whether a county may by charter limit this authorization is doubtful. The election laws of the state provide, for another example, that "the procedure to be followed" by the people of a county in enacting, amending, or repealing local laws for the county "by the initiative and referendum process" is the procedure prescribed by certain sections

1. ORS 287.058 (1959).

of the elections laws.¹ Whether a county may by charter prescribe a different initiative-and-referendum procedure is not clear.

Deviations from State Election Procedure

If home rule for Oregon counties corresponds essentially to home rule for Oregon cities, it includes power on the part of a county to prescribe election procedures especially adapted to the county. Existence of this power is desirable from the standpoint of the objectives of county home rule. By charter and ordinance the home-rule cities of Oregon commonly prescribe special local requirements and procedures regarding their elections. The need for counties to do so is less than the need for cities to do so, because of the comprehensive provisions in the laws of the state for county elections. Because of the comprehensiveness of these provisions, and because of the doubt about county power to override state provisions regarding elections on county propositions, there appears to be no need here to suggest additional charter provisions by which counties may deviate from state-prescribed election procedures. Provisions for this deviation may, moreover, be made by ordinance as well as charter, within limits set by the charter of the county and by the constitution and laws of the state.

1. ORS 254.310 (1959).