



Josephine County, Oregon

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MEMORANDUM

TO: Board of Commissioners

FROM: Steve Rich, County Legal Counsel

DATE: August 23, 2005

RE: Annotations for Charter Provisions

The Board has asked me to annotate provisions of the county charter that have been clarified, modified or declared to be void by court decisions. Court decisions addressing other local government charters are included as well. Also, I have commented on other charter provisions that are problematic due to other judicial substantive determinations or rules of interpretation and construction. The Josephine County charter sections subject to specific legal decisions and my comments regarding sections not having been subject to legal review are stated separately below:

COURT DECISIONS

Section 14.7. County Debt Limitation [adopted by initiative, March 1993]

In Terry v. Multnomah County, 279 Or 127 (1977) and Cole v. Baker, 82 Or App 108 (1986), the court clarified "Debt", it is defined as liabilities in excess of assets. Therefore, the \$5,000 debt limitation of the charter is \$5,000 of liability above Josephine County's net asset value. Further, the retroactive provisions would violate federal (Art. I, Sec 10) and state (Art. I Sec. 21) constitutional prohibitions against impairment of contract. See also Dartmouth College v. Woodward, 17 U S 518 (1819)

Section 25(2) Compensation [adopted by initiative, May 1990]

In Hudson v. Feder, Josephine County Circuit Court case # 90-CV-139 (Judge Joan Seitz presiding), that compensation was an administrative matter and not a legislative matter; and as an administrative matter it was not an appropriate subject for amendment by initiative. This reasoning was based on La Grande v. PERB, 281 Or 137 (1978) and reaffirmed in Lane County Transit v. Lane County, 327 Or 161 (1998)

In Pumilia v. Hudson, Josephine County Circuit Court case # 94-CV-0111, the court (Judge Ross Davis presiding) determined, among other things, that Oregon state statutes preempted Section 25 (or at least portions thereof) of the charter

and that there was a clear duty on the part of the county finance director to pay Commissioners as provided by the state statutes and Section 25(1) Again, see Lane County Transit v. Lane County, 327 Or 161 (1998)

Section 29.2 Due Process and Compensation [adopted by initiative, November 1994
In State of Oregon v. Josephine County, Josephine County Circuit Court case # 98-CV-0298 (Judge Coon presiding), determined that this charter section violated state and federal constitutions, was superceded by state statute and was void

Section 29.4 Search and Seizure [adopted by initiative petition, September 1995]
The Oregon Court of Appeals, in State v. Logsdon, 165 Or App 28 (2000), determined that this charter section was invalid as "well beyond any matter that legitimately may be regarded as a 'local concern'," because it attempted to control and/or direct federal and state officials as well as alter jurisdiction and authority of the Courts

Section 29.9 Restrict Nudity [adopted by initiative, March 1994]
In Josephine County v Lacy, Josephine County Circuit Court No 05-CV-0090 (Judge Neufeld presiding) determined that the charter amendment adopted by initiative was unconstitutional under the state and federal constitutions and the amendment was void in its entirety This rationale was followed under state constitutional analysis in State v. Ciancanelli / City of Nyssa, v. Dufloth, 339 Or 330 (2005)

OTHER CONCERNS OF COUNSEL

Section 15.5 Voter Approval Requirement For Capital Programs Or Projects
[adopted by initiative, September 1993]

This amendment may be found to be invalid on the basis that: it addresses administrative rather than legislative matters See Lane County Transit v. Lane County (supra)

Section 17.5 Review of County Department Heads [adopted by initiative, May 1994]
This amendment may be found to be invalid on the basis that: it addresses administrative rather than legislative matters, and it violates the "one subject" rule for initiative measures See Lane County Transit v. Lane County (supra) and Armatta v. Kitzhaber 317 Or 250 (1998) Oreg Const. Art. IV sec 1(2)(d)

Section 26.5 Investigation of Abuse or Neglect of An Animal [adopted by initiative, November, 1990]

This amendment may be found to be invalid on the basis that: it addresses administrative rather than legislative matters. See Lane County Transit v Lane County (supra)

Section 29.1 Right To Bear Arms [adopted by initiative, November 1994]

This amendment may be found to be invalid on the basis that: it violates the "one-subject" rule for initiative measures under Oreg Const. Art. IV sec 1(2)(d) and Armatta v. Kitzhaber (supra), it addresses administrative rather than legislative matters, See Lane County Transit v. Lane County (supra), it violates the freedom of speech guarantees, it purports to direct the conduct of state officials, it purports to amend state criminal law; it violates ORS 203 720 which specifies that a majority of the electors may amend or repeal a county charter, unless the charter provides otherwise (and in my opinion the *charter* does not provide otherwise - an *amendment* to the charter provides otherwise), and contains a super-majority provision that violates equal protection and violates the "one man - one vote" requirements of Baker v. Carr, 369 U S 186 (1962), Wesberry v. Sanders, 376 U S 1, (1964) and Lucas v. Colorado, 377 U S 713 (1964)* and violates the requirements of ORS 203 720

*Note The super-majority requirement to amend does not render the entire provision invalid Such provisions violate the ORS 203 720 requirements and equal protection, "one man - one vote," requirements Currently, the courts undoubtedly would employ the term 'one person' - one vote Where similar concerns arise in other amendments, citations will be omitted

Section 29.2.1 More Due Process [adopted by initiative, March 1996]

This amendment may be found to be invalid on the basis that: it violates the "one subject" rule for initiative measures, it addresses administrative as well as legislative matters, it violates the equal protection "one man - one vote" requirement; by state statute, it attempts to amend state criminal law; alter the duties of state officials, and expands the jurisdiction of state courts

Section 29.3 Prohibits Advocacy of Forfeiture [adopted by initiative, November 1994]

This amendment may be found to be invalid on the basis that: it violates the one subject rule, addresses administrative matters as well as legislative matters, it is superceded by state statute, attempts to alter the duties of state officials and jurisdiction of state courts, violates freedom of speech and contains a super-majority provision that violates state statute and equal protection, "one man - one vote," requirements

Section 29.6 Vote on Private Management [adopted by initiative, September 1995]

This amendment may be found to be invalid on the basis that: it violates the one subject rule, addresses administrative as well as legislative matters, contains a super-majority provision that violates state statute and the equal protection, "one man - one vote," requirements, and violates prohibitions against impairment of contracts in state and federal constitutions

Section 29.8 Speech and Religion

This amendment may be found to be invalid on the basis that: it violates the one subject rule, addresses administrative as well as legislative matters, attempts to alter the duties of state officials, amends state criminal statutes, expands

jurisdiction of state courts, and contains a super-majority provision that violates state statute and the equal protection, "one man - one vote," requirements

Section 29.10 Parents and Children

This amendment may be found to be invalid on the basis that: it violates the one subject rule, addresses administrative as well as legislative matters, amends state criminal statutes, purports to alters the duties of state officials, expands jurisdiction of state courts, and violates state statute and the equal protection, "one man - one," vote requirements