

A BRIEF HISTORY OF OREGON COUNTY GOVERNMENT

By Ken Tollenaar¹

Creation of Oregon Counties

The very first sentence of the 1843 document establishing a provisional government for Oregon divided the area into four “districts” for purposes of administering governmental functions. Britons and Americans were still competing for governance rights in the area. The settlers favoring America, having won a close vote at Champoeg, laid out the four districts (renamed “counties” in 1845) to include everything from the Pacific Ocean to the summit of the Rocky Mountains and from 54 degrees to 42 degrees north latitude. That would embrace the present states of Oregon, Washington, and Idaho, parts of Montana and Wyoming, and parts of the provinces of British Columbia and Alberta.

The first four counties (Clackamas, Tuality, Yamhill and Champoeg) were reduced in size by the 1846 treaty dividing British and American jurisdictions at the 49th parallel, and by creation of the Washington and Idaho territories. Additional counties were carved out of the original four: four more under the provisional government (1843-1848), and ten more under the territorial government (1849-1859).

All counties were created or abolished by special acts of the Oregon legislature until 1908, when Hood River County was created by a state-wide initiative measure, followed by Jefferson County (1914) and Deschutes County (1916) which were carved out of Crook County by local petition and elections in accordance with a general state law enacted in 1913.

No new counties have been created in Oregon since 1916, although there have been some minor boundary adjustments. All such adjustments have been made by special legislative acts. ORS Chapter 201 sets out the boundaries of each of Oregon’s 36 counties in metes and bounds, and the Attorney General has opined that the legislature has full power to consolidate counties or

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otherwise revise their boundaries. That applies to home rule counties as well as general law counties. General law procedures for local action to create and adjust county boundaries (ORS Chapter 202) are fairly restrictive, requiring majorities of all registered voters to successfully petition and vote on creation of new counties and, in the case of changes in county boundaries, separate majorities of registered voters in each affected county.

Organization and Functions of Early Oregon Counties

Government was relatively simple during provisional and territorial days. The central government consisted of a governor, a legislature, and supreme and circuit courts, with the few administrative duties carried out mainly by the counties. The early counties were responsible for law enforcement and jails, maintenance of property records, minor judicial functions, establishment and maintenance of roads, and little else. Taxation was sort of catch-as-catch-can, and much of the road work was done by settlers themselves.

The provisional government created the offices of county treasurer (1843), sheriff (1845), assessor (1845), clerk (1846) and coroner (1847). What passed for county governing bodies took various forms. In 1843, three justices of the peace in each county were made responsible for what was referred to as “county commissioner jurisdiction,” although that term was never clearly defined. In 1845, governing bodies became “county courts” and were assigned responsibility for probate and “county commissioner” jurisdiction. There was no such thing as a budget, but these primitive governing bodies did exercise some control over the limited county activities by auditing the bills submitted for county payment. The territorial government added the offices of school superintendent (1850) and surveyor (1854), and the county courts began to assume responsibility for “poor relief.”

One-man County Courts?

Delegates to Oregon’s 1857 constitutional convention had a lively discussion around the report of its judiciary committee, which had recommended that county courts consist of a single county judge who would exercise both judicial functions and the “county commissioner

jurisdiction.” According to the Salem *Statesman* (September 1, 1857), delegate George H. Williams argued:

How was it now under our present system of county affairs? When the money of the county was misappropriated or lavishly expended who was responsible for it? Can you trace responsibility anywhere? No. You might run to one and another, but you could never fasten direct responsibility anywhere. Thousands of dollars had been lost to counties in this way . . . Give us one competent man to administer the affairs of the county, whose compensation would enable him to devote his time to his duties, and we would have a much more satisfactory and economical administration of county affairs . . . Pay to this judge what you now pay to county commissioners, judges of probate and auditors, and you would have a round (*sic.*) salary.

Other delegates disagreed, arguing that the plan would give one man too much power and that, as one delegate put it, “The people had not asked and did not desire any change in the present system of administration of our county affairs. Why then change it?”

The upshot was a compromise constitutional provision calling for election of a county judge but allowing the legislature to create by statute two offices of county commissioner for any or all counties “to sit with the County Judge whilst transacting County business.” Alternatively, the legislature could “provide a separate (*sic.*) board for transacting such business.” The first Oregon Legislative Assembly following statehood did, in fact, create the county commissioner offices, so that each county thenceforth had a county judge (a constitutional office) and two county commissioners (statutory offices.)

County Organization and Functions under Statehood

The “county court” system established by the 1857 constitution and the first legislative session under statehood prevailed for about the first 100 years of the state’s history. County judges had jurisdiction “pertaining to . . . boards of County Commissioners,” as well as jurisdiction for probate, “delinquent children,” and civil actions up to \$500. The constitution required election of additional county officers (sheriff, clerk, and treasurer) and subsequent legislation created several other elective county offices, including the assessor, surveyor,

coroner, and school superintendent. Later legislative action abolished the offices of coroner and school superintendent.

Over the years, the legislature has enacted bills on a county-by-county basis transferring some or all of the county judge's judicial duties to the circuit courts. In some counties the county judge retained the title and a six-year term, but functioned only as the chair of the county court. Some counties obtained special legislation eliminating the office of county judge entirely, and substituting a third commissioner. In 1961, the Association of Oregon Counties (AOC) successfully sponsored legislation delegating to the counties themselves the power to convert to the Board of County Commissioner system if the county judge no longer had any judicial functions. The 1961 statute has been used frequently, as the legislature continued to move the county judge's judicial functions to the state courts in additional counties. County judges in only a few small eastern Oregon counties retain any judicial functions today.

County functions, programs and services remained relatively stable during the state's first 100 years. By mid-20th century, counties still provided the traditional services of property tax administration, jails, rural law enforcement, elections, records, and county roads, and they were providing limited public health services. Counties also supported agricultural extension programs and there were county library systems in about half of the counties. Creation of the state highway system in 1916 relieved counties of some of their road responsibilities, but for many years they were still required to provide substantial financial and in-kind support for state highway construction. Care of vulnerable populations had been largely assumed under state and federal categorical programs, although counties remained responsible for general assistance and the county courts served with four lay persons appointed by the governor as members of the county welfare commission. Counties also paid 30 percent of the state's non-federal public assistance expenditures until AOC-sponsored legislation in the late 1960s relieved them of that burden.

As the role of government evolved in response to changing economic and social conditions during these years, the tendency was to look to the state government rather than the counties to address new needs and problems. The number of state departments and agencies grew from nine in 1859 to 130 in 1939, and with numerous reorganizations and consolidations

the number still stands at about 140 today. Clearly, there was greater reliance on state agencies, and relatively less on counties in their role as “agents of the state.”

Post-World War II Transformation of County Government

Things changed rapidly for Oregon counties (as well as their counterparts in other states) after World War II.

First, the post-war housing boom, facilitated by major improvements in highway and road systems, coupled with a virtual cessation of annexation to cities, created demands for a range of urban-type services in the suburban fringe areas. Many counties responded passively to these demands by creating single-purpose special districts to provide services to these areas. Others, concerned about the fragmentation and lack of accountability associated with multiple overlapping special districts, sought ways for county governments themselves to take responsibility for meeting suburban fringe area needs. One result was the AOC-sponsored county service district law (ORS Chapter 451), which allowed counties to provide a variety of services in sub-areas of the county financed by the areas directly benefited, but with accountability fixed clearly on the county governing body.

Second, Oregon counties began to take on responsibility for land use planning and regulation of development. The first county planning law enacted in 1947 was permissive legislation under which some but not all counties developed comprehensive plans and implemented them through zoning. The Land Conservation and Development Act enacted in 1973 made planning and development regulation mandatory, and gave counties a key role in this state-local partnership.

Third, counties entered into a variety of intergovernmental arrangements to cope with emerging needs that spilled across local government boundaries and could best be addressed in cooperative and joint programs with cities and other counties. Most counties became members of councils of government (COGs), many of them multi-county, that facilitate these kinds of

intergovernmental programs and activities. ORS 190.003-190.265 provides broad statutory authority for joint and cooperative programs involving local, state, and federal governments.

Fourth, and probably most significant, during the “Great Society” years of the 1960s the federal government instituted a large number of federal-state and federal-state-local programs in such fields as environmental regulation, job development, public safety, human services, transportation, and many others. The number federal grants-in-aid programs increased from 51 in 1964 to 550 in 1974. Financed by federal and state grants, counties greatly expanded their service delivery roles. Governmental functions became highly “integovernmentalized,” and counties were operating more and more as partners with both the federal and state governments, rather than just as “agents of the state.” The AOC recently published the following chart showing how counties today are sharing intergovernmental program responsibilities with state government, and most of those programs also include significant federal funding (and federal “strings”) as well.

Shared State-County Services

All Serving the Same Oregonians

Health & Community Services	Public Safety	Economic Dev., Natural Resources & Recreation	Transportation & Land Use	Other Community Services
Child Protection	Appellate Courts	State Parks	Highways	Management & Admin.
Housing	State Patrol	State Lands	Land Use Planning & Coordination	Property Management
Mental Health Hospital	State Prison	Water Regulation	Highway & Road System	Shared Management & Admin.
Aging Services	Trial Courts	Wildlife Regulation	Senior & Disabled Transport.	Assessment & Taxation
Alcohol/Drug Treatment	District Attorney	State Fair	Development Services	PERS
Children & Families Svcs.	County Jail	Economic Development	Engineering	Human Res. & Employee Rel.
Dev. Disabled Services	911/Emerg. Communications	Oregon Plan Implementation	Building Permitting & Inspect.	Elections
Mental Health Services	Emergency Management	State Forest Management	Surveying	Property & Facilities Mgmt.
OHP Services	Homeland Security	Federal Land Policy	Capital Projects	Procurement
Veterans Services	Community Corrections	Extension Service		Recording Public Documents
Public Health Services	Court Security	Telecommunications		
Environmental Health	Juvenile Services	County Fair		
Housing Services	County Law Library	Watermaster		
Medical Examiner	Sheriff Patrol	County Forest Management		
Solid Waste/Recycling	Animal Control	County Library		
		County Parks		
		County Museums		

= Directly Supports Schools/Education



Green = State-provided services

Red = State-county shared services

Blue = County delivered services

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These post-WWII developments have greatly expanded the county's role in the federal system, and have also greatly expanded the complexity of setting and implementing county policies and administering county programs. The Jacksonian idea that any citizen could handle the duties of public office has clearly become obsolete.

Oregon's county governing bodies have turned more and more to professional administrators and trained specialists to share the administrative roles they inherited from earlier and simpler days. They have become less involved in day-to-day administration and more involved in planning and policy management. County leadership in the transformed county environment requires new skills in intergovernmental negotiation and lobbying, and there is a greater need for elected officials to work to develop popular consensus in support of county actions to meet the changing social and economic needs of their communities.

Fortunately, Oregon's constitutional statutory "home rule" provisions establish the essential legal foundation local governments need to deal with the continuing challenges of a changing governmental environment. However, recent appellate court interpretations have restricted the scope of Oregon home rule, and have opened the door for the state legislature to enact preemptions and mandates that make it more difficult for counties and cities to meet the needs of their communities. This presents a challenge to local government officials that they must address in the future.

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