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PORTLAND <i>City Club</i> BULLETIN	Mayfair Room • Benson Hotel Friday . . . 12:15 p.m.
<hr/> Portland, Oregon • October 27, 1972 • Vol. 53, No. 22	

Note: Preceding the Admiral's talk, the City Club Committee on Measure No. 2, "Qualifications for Sheriff Set by Legislature" will present its report, contained herein, for consideration and action by the membership.

THE SPEAKER:

JOHN M. TIERNEY

Rear Admiral, U. S. Navy
 Commandant, Thirteenth Naval District

HIS TOPIC:

THE BOARDMAN QUESTION
—THE NAVY'S VIEW

If one were to choose an area over which there would be years of controversy, the vast, semi-arid, barren expanse of Eastern Oregon known as "the Boardman area" is the least likely candidate that comes to mind.

However, since 1920, when he assembled 2500 people from 100 miles around to demonstrate what might be accomplished on the 300,000 acre site, the late Samuel H. Boardman sensed the potential—with a little water—of the region. As Oregon's first superintendent of state parks, Boardman felt that "contacts with nature were essential for the preservation of man's mental and spiritual well-being", and his plans called not only for irrigation for agricultural development but also for wildlife refuges and extensive recreational use.

In the past several years, Boardman area uses have grown to include a large industrial park, with the coming of power from the great Columbia River dams, and a bombing range for the U. S. Navy.

The latter use of a large portion of the general Boardman area is the one to which this week's speaker will address himself. During his recent inspection of the range, Admiral Tierney reported that the Navy has been under pressure from Congress to move out to make room for a proposed nuclear power plant and that Stanford Research Institute had been retained to search out a suitable site for a new bombing range, with the needed technical advantages now available at Boardman.

Admiral Tierney only recently assumed command of the 13th Naval District. He has most recently served in the office of the Chief of Naval Operations in Washington, D.C. He formerly commanded the aircraft carrier, USS Constellation.

"To inform its members and the community in public matters and to arouse in them a realization of the obligations of citizenship."

PROGRAM SCHEDULE:

Nov. 3: Report on Measure No. 10, "Documentary Stamp Tax Ordinance" and Dr. Keith Oles, OSU Geologist, on "The Truth, The Whole Truth and a Lot More About the Arctic North Slope" (Illustrated).

Nov. 10: Dr. Dale Parnell, Superintendent of Public Instruction, State of Oregon.

LISTEN TO CLUB PROGRAMS

City Club programs can be heard live from 12:40 to 1:30 each Friday over KOAP-FM (91.5 meg) or that evening at 10 p.m on KOIN-FM (101.1 meg) and Tuesdays, 7 p.m. over KBPS (1450-AM).

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**CLUB MEMBERS CONSIDER
FOUR BALLOT MEASURE
REPORTS AT OCT. 20 MEETING**

With consideration of the four ballot measure reports at the October 20th membership luncheon meeting, the City Club has now completed action on nine of the eleven measures on the state and county ballots on November 7th.

The following reports were considered last week:

Measure No. 3, "Amends County Purchase and Lease Limitations". The Committee recommendation was split, 6 "Yes" and 1 "No". Following presentations by Steven Karp for the majority and Warren C. Deras for the minority, the membership present and voting supported the minority's "No" vote, winning by a margin of only 4 votes.

Measure No. 5, "Authorizing Minimum Jury Size of Six Members". The unanimous recommendation of the Committee, presented by Chairman Stephen B. Herrell for a "No" vote on the constitutional amendment gained a strong voiced majority for the negative vote.

Measure No. 6, "Broadening Eligibility for Veterans' Loans". The Committee was evenly split, 3 and 3 for "Yes" and "No" votes. Chairman William Keller spoke for the affirmative recommendation and John Brady Marks presented the negative recommendation. The "No" vote won by a voiced vote.

Measure No. 7, "Repeals Governors' Retirement Act". The unanimous recommendation of the Committee for a "Yes" vote on the initiative measure to repeal the Governors' Retirement Act which had been passed by the 1971 Oregon Legislature was presented by Chairman Morton T. Rosenblum.

After pro and con discussion from the floor, a voiced vote was taken and the chair ruled the "ayes" had it.

A re-cap of Committee and Club action on all eleven measures will be included in the November 3rd issue of the *Bulletin*. (except for the Club vote on Measure No. 10 which will be taken on that day).

**REPORT
ON
QUALIFICATIONS FOR SHERIFF
SET BY LEGISLATURE
(State Measure No. 2)**

Purpose: Amends Section 8, Article VI, Oregon Constitution to permit the qualifications of the county sheriff to be established by the legislature. Under present law there are no professional qualifications required for the office of county sheriff. Also deletes obsolete references to the offices and duties of precinct and township officers.

To the Board of Governors:
The City Club of Portland:

I. INTRODUCTION

Your Committee was requested to study and report on State Ballot Measure No. 2, placed on the ballot by referral from the 1971 Legislature. The measure was House Joint Resolution No. 42, which would amend the Oregon Constitution to permit the legislature to set qualifications for the office of county sheriff.

II. SCOPE OF RESEARCH

In the course of its study, your Committee reviewed the history of this subject, as reflected in Attorney General's opinions, court decisions, and previous legislation and constitutional amendments. Some of that history is summarized below. In attempting to get various viewpoints, members of the Committee communicated with the following persons, either by telephone, correspondence, or personal interview:

State Representatives:

Harvey Akeson
Robert Elliott
Ken Maher
Irvin Mann, Jr.
Roger Martin
Hugh McGilvra

Anthony Meeker
Grace Peck
Allen Pynn
Mary Rieke
Bill Stevenson
Thomas Young

State Senators:

Edward Fadeley
Kenneth Jernstedt

Sheriffs, Past and Present:

Bud Barnes, Yamhill County
Donald E. Clark, Multnomah County
R. L. Gillmouthe, Hood River County
Francis Lambert, Multnomah County
J. Bard Purcell, Multnomah County

Board on Police Standards and Training:

Paul Bettiol, Executive Director
R. L. Gillmouthe, Member

Others interested:

James E. Whalen, Director, Security Division,
University of Oregon Medical School.

The Committee also referred to the report of the City Club Committee on Law Enforcement in the City of Portland (August 30, 1968, Vol. 49, No. 13), which contains some pertinent information; it examined the Multnomah County Home Rule Charter and it briefly examined the Policies and Procedures Manual of the Board on Police Standards and Training.

III. HISTORICAL BACKGROUND OF HJR 42

The original 1857 Constitution of the State of Oregon established the county offices of clerk, treasurer, sheriff, coroner and surveyor (Art. VI, §§ 6, 7, 8; Art. VII, § 16). Their terms were two years, but the only qualification for office established was that they be electors of the county (Art. VI, § 8). In 1920 the Constitution was amended to establish four-year terms of office, but with no other change (Art. VI, § 6, Initiative Petition approved by voters November 2, 1920, effective November 29, 1920).

In 1949 the Legislature passed an act requiring that a county surveyor must be either a registered professional engineer or a registered professional land surveyor (Ch. 31, Or. Laws 1949). At the 1952 election Peter W. Welch was elected surveyor of Multnomah County, although he was neither a registered professional engineer nor a registered land surveyor. In a *quo warranto* proceeding the Oregon Supreme Court held that the act of the Legislature was invalid, in that the Legislature had no power to add to the qualifications for office set forth in the Constitution. If the Constitution had not prescribed any qualification whatever, then the Legislature could have done so; but since the Constitution did require that the county surveyor be an elector of the county, it was presumed that this was the only qualification that the Constitution intended. Therefore, Peter Welch was declared to be the duly elected and qualified surveyor of Multnomah County [*State ex rel Powers vs. Welch*, 198 O. 670, 259 P. 2d 112 (1953)].

Thereafter, in 1955, the Constitution was amended with respect to the county coroner and county surveyor to provide that they "shall possess such other qualifications as may be prescribed by law" (HJR 7, 1955, amending Art. VI, §§ 6 and 8, approved November, 1956, effective December 4, 1956). Under this amendment the Legislature could prescribe additional qualifications for the coroner and surveyor, but not for the sheriff.

In the 1971 session the House Committee on Rules, at the request of the Oregon Sheriffs' Association, introduced HJR 42, which would amend Art. VI, § 8, to include the county sheriff as an office for which the Legislature could provide additional qualifications. It would also delete the reference to township and precinct officers from that portion of the section requiring certain officers to keep their respective offices at such places and perform such duties as may be prescribed by law. HJR 42 passed the House of Representatives by a vote of 31 to 24, and the Senate by a vote of 28 to 2, and it is now Ballot Measure No. 2 for the 1972 general election.

The full text of HJR 42 is as follows:

HOUSE JOINT RESOLUTION 42

Be It Resolved by the Legislative Assembly of the State of Oregon:

Paragraph 1. Section 8, Article VI of the Constitution of the State of Oregon, is amended to read:

Sec. 8. Every county officer shall be an elector of the county, and the county sheriff, county coroner and county surveyor shall possess such other qualifications as may be prescribed by law [; *and*]. All county [, *township, precinct*] and city officers shall keep their respective offices at such places therein, and perform such duties, as may be prescribed by law.

Paragraph 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next regular general election held throughout this state.

Filed in the office of Secretary of State June 17, 1971.

The 1971 Legislature also passed Chapter 299 (HB 1654), which would implement the constitutional amendment, if it is passed, by setting up certain qualifications for the office of sheriff. Chapter 299 is as follows:

CHAPTER 299

AN ACT

[HB 1654]

Relating to sheriffs.

Be It Enacted by the People of the State of Oregon:

SECTION 1. The sheriff shall:

- (1) Be not less than 21 years old;
- (2) Be certified or eligible for certification by the Board on Police Standards and Training; and
- (3) Have at least four years' experience in law enforcement or two years' post-high school education, or any combination of experience and education for at least four years.

SECTION 2. Section 1 of this Act does not apply to any sheriff in office on the operative date of this Act.

SECTION 3. This Act shall not be operative unless the Constitution of the State of Oregon is amended by vote of the people as proposed by Enrolled House Joint Resolution 42 (1971 regular session).

Approved by the Governor June 4, 1971.

Filed in the office of Secretary of State June 4, 1971.

The Board on Police Standards and Training was set up in 1961 and is now governed by ORS 181.610 to 181.710. Among other things that Board (appointed by the Governor) has the following responsibilities:

181.640 Minimum standards and training established for certification; annual report; duties in improving law enforcement units; grants authorized; rule making (1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law by improving the competence of police officers the board shall:

- (a) Establish for police officers reasonable minimum standards of physical, emotional, intellectual and moral fitness.
- (b) Establish for police officers reasonable minimum training, including but not limited to courses or subjects for instruction, facilities for instruction, qualification of instructors and methods of instruction.
- (c) Establish a procedure to be used by law enforcement units to determine whether a police officer meets minimum standards or has minimum training.
- (d) Subject to such terms and conditions as the board may impose, certify police officers as being qualified, and revoke such certification in the manner provided in ORS 181.662 to 181.664.

[ORS 181.640(1)]

Under ORS 181.660(1)(b), the minimum standards and training requirements established by the Board do not now apply to county sheriffs; but if the proposed Constitutional amendment (Measure No. 2) is passed, Chapter 299 will become effective, and thereafter new sheriffs will have to be either "certified or eligible for certification" by the Board on Police Standards and Training.

**IV. RELATIONSHIP OF HJR 42 AND CHAPTER 299
FOR PURPOSES OF THIS REPORT**

It is recognized that Chapter 299 is rather loosely drawn. For example, in Section 1 (3) the reference to "any combination of experience and education for at least four years" is not limited to experience in law enforcement, nor to post-high school education, such as mentioned in the earlier part of that subsection.

Likewise, there is no definition of what is meant by "certified or eligible for certification". The Board on Police Standards and Training now has three classes of certificates—basic, intermediate, and advanced—and the Act does not specify which is intended to be required. Since the present Board standards do not apply to sheriffs, there is no certificate for sheriffs, as such.

Furthermore, Chapter 299 leaves uncertain the method for establishing whether or not a person is "eligible for certification". Presumably, when a candidate files for sheriff he would file with his declaration of candidacy a statement evidencing his qualifications; but the county clerk should not have to pass judgment on whether or not the candidate is "eligible for certification". We are informed that the Board on Police Standards and Training will consider this problem, if the Constitutional amendment passes, and will probably devise a procedure for issu-

ance of some sort of preliminary statement as to whether or not the candidate is eligible. But this has not yet been done.

For these, and possibly other reasons the Committee is of the opinion that Chapter 299 is poorly drawn and is inadequate as an implementation of the amendment, if it passes. Apparently some members of the Legislature felt similarly and voted against the constitutional amendment because they were dissatisfied with the implementing statute. For example, when HJR 42 was on the floor of the House for a final vote, Representative Densmore voted "No" and explained his vote as follows:

"I voted 'No' on HJR 42 because the statute proposed to implement this resolution is not a good one."¹

It is the view of the Majority of this Committee, however, that the merits of the Constitutional amendment (HJR 42) do not depend on the implementing legislation (Chapter 299). The Legislature will be meeting in January, 1973, and necessary amendments can be made before there is likely to be any occasion to apply Chapter 299. Therefore any defects in Chapter 299 should not be a reason for opposing the Constitutional amendment, if the principle of permitting the Legislature to prescribe qualifications for the office of sheriff is otherwise good.

V. ARGUMENTS PRO AND CON

In general, the measure is an expression of a desire to improve the quality of law enforcement and administration. Those who favor the measure see it as a means of getting more professionalism into the sheriffs' offices. They deplore the possibility that one can run for the office of sheriff with no prior training or experience in the work of the office and be elected on the basis of popularity or name familiarity only.

Those who oppose the measure generally seem to fear a loss of local control over the office. They say, in effect, that if the voters are satisfied, no outside agency should be permitted to veto the voters' choice. Some also expressed the fear that in the less populous counties there may not be a sufficient number of candidates who can meet the qualifications, thus restricting the field to one or a very few candidates. Some expressed the view that they "don't like artificial barriers to public office".

As mentioned above, the bill was introduced at the request of the Sheriffs' Association, and it apparently represents a sincere desire on the part of the present sheriffs (or a majority of them) to upgrade their positions. It may have the incidental effect of protecting incumbents by reducing the number of possible challengers at the polls, but the Committee found no evidence that this was the principal motive.

Some indicated a philosophical disagreement with having an elective sheriff, and would prefer an appointed peace officer, or even centralized law enforcement in the State Police. They argue that in an appointive office, qualifications would be desirable, and even necessary; but that so long as the office is elective, no hurdles should be put in the way of a free expression of the voters' will.

It was also suggested that establishing qualifications might be used as a means of preventing or eliminating candidates from minority groups, and examples were mentioned of police departments where this has supposedly been done.

With the availability of Federal funds to assist local law enforcement, a sheriff may need particular qualifications in order to obtain and properly administer such grants. While the present standards of the Board do not attempt to measure such abilities (and it might be impractical to do so) this is an illustration of the increasingly technical nature of the sheriff's office. At the same time, some students of the subject urge that the only way to make needed changes in major police agencies is to go outside career police services and seek public administrators of broad background, or persons who have achieved distinction in other fields (e.g., deans of law schools, etc.). From that standpoint, requirements that emphasized police experience might be a hindrance.

VI. DISCUSSION AND CONCLUSIONS

In considering the office of sheriff, it must be kept in mind that the position is vastly different in different counties. In some of the sparsely settled, predominantly rural counties, the sheriff has only a small staff, and he may personally participate in direct law enforcement activities. In metropolitan counties, where the sheriff's staff is large, and even departmentalized, his work is more that of a business administrator, and it may be only rarely, if ever, that he personally performs police work. But even if the sheriff does not ordinarily act as a policeman, he is undoubtedly better able to administer his department if he has an acquaintance with police-type work and an understanding of the problems his subordinates face in the field.

The duties of a sheriff are many and varied, and the duties set forth for one county may vary greatly from those of another. In all counties, however, the sheriff has many duties in addition to pure police work. Crime prevention may be quite a different field from law enforcement, and jail administration may be different from either. The civil functions of serving process, enforcing judgments, collecting taxes, etc., have little in common with investigating homicides. And even if the sheriff does not personally perform all these duties, he will be better able to supervise others if he has a basic knowledge of the subject matter.

If qualifications are to be set by law, they should recognize this variety in job content; and they should either be limited to minimum standards, or they should be flexible enough to allow for variations. The Committee regards Chapter 299 as an attempt to set only minimum qualifications; but for reasons expressed above we believe it needs amendment. While it is not strictly within the assignment of this Committee (which is merely to review Measure No. 2) we urge that the 1973 Legislature review Chapter 299, Oregon Laws 1971, and make such amendments to it as will more adequately implement the constitutional amendment, if passed.

Subject to that qualification, the Committee generally endorses the idea that the setting of qualifications by law is a desirable means of upgrading and improving the effectiveness of the office of sheriff. To paraphrase a famous saying from another context, the business of law enforcement is too important to be left to amateurs!

With respect to the arguments that this will deprive the voters of local control and limit the field of possible candidates, the Committee feels that these fears are exaggerated and are outweighed by the desirability of improving the quality of the office.

And with respect to the suggestion that minimum qualifications might be manipulated in such a way as to discriminate against minority groups, the Majority of the Committee feels that it must approach the subject on the assumption that the law will be administered fairly and in good faith.

The portion of the proposed amendment dealing with township and precinct offices needs no comment. The reference to such offices in the present constitution is obsolete and should be removed as a matter of "housekeeping".

VII. MAJORITY RECOMMENDATIONS

The Majority of your Committee recommends that the City Club go on record as supporting Ballot Measure No. 2 and urging a vote of "Yes".

Respectfully submitted,
Edwin H. Armstrong
Thomas D. Kerrigan
Richard F. Lancefield
Walter T. Lee
Robert A. Rice
Randall B. Kester, *Chairman*,
FOR THE MAJORITY

VIII. MINORITY STATEMENT

The basis of the minority argument is that Chapter 299 is so loosely drawn that its implementation concurrently with the constitutional amendment, unreasonably restricts the population from whom sheriffs can be drawn and allows the State Board on Police Standards and Training (SBPST) to exercise arbitrary enforcement of vague standards.

In its report on *Law Enforcement in the City of Portland*, the Committee, discussing selection procedures of Portland Police Bureau recruits, stated, "The question that haunts the Committee is whether potentially successful police officers are being eliminated as a result of present selection procedures".² The selection standards for recruits are listed as Appendix J of the same report,³ and these are now incorporated into the standards for the SBPST certification required in Chapter 299. In the same study, that Committee further stated: "Although nearly five per cent of Portland's population is Negro, less than 1 per cent of the police force is Negro (6 out of more than 700) . . . some of the standards required for becoming a police officer may prevent many Negroes from qualifying."⁴

At the present time, September 13, 1972, there are again only six black police officers on a force of approximately 735. Black citizens as well as other minority groups have long complained that arbitrary middleclass standards are used to disqualify them from police job eligibility.⁵

The physical standards of SBPST required for certification under Chapter 299 include "normal color vision". While this may be an understandable requirement for a rural county sheriff whose major duties are on-the-street law enforcement, it does not seem pertinent to disqualify 5 per cent of the population from seeking the post of urban sheriff whose main duties are those of public administrator. Likewise, a conservative estimate of 15 per cent would be excluded from running for the office because of being overweight or underweight.

Of greater import is the exclusion of any applicant for SBPST certification who has been "convicted, by any state or by the federal government, of any crime, the punishment for which *could have been* (emphasis added), imprisonment in a federal prison or institution".⁶ In Oregon, with its forward-looking attempt to update its statutes, persons can be disqualified from running for sheriff under this standard for such matters as having made an untrue statement derogatory to the financial condition of a savings and loan association (ORS 163.450), or having thrown a rock at a freight train (ORS 164.530). One wonders what similar statutes exist in the other 49 states which would disqualify persons coming into Oregon from running for sheriff.

IX. MINORITY RECOMMENDATION

The Minority feels that it is preferable to leave the decision of qualifications for sheriff to the electorate of each county until such time as Chapter 299 can be better written, and therefore, recommends a vote of "No".

Respectfully submitted,
Peter Wolmut,
FOR THE MINORITY

Approved by the Research Board September 14, 1972 for transmittal to the Board of Governors.

Received by the Board of Governors September 17, 1972 and approved for distribution to the membership for presentation, discussion and action.

¹Senate and House Journal, April 23, 1972, p. 420.

²*Portland City Club Bulletin*, Vol. 49, No. 13, p. 131, "Report on Law Enforcement in the City of Portland."

³*Ibid*, p. 159.

⁴*Ibid*, p. 129.

⁵Portland Comprehensive City Demonstration Program, Part I, p. 1.145 (3), Dec. 15, 1968.

⁶*Portland City Club Bulletin*, Vol. 49, No. 13, p. 159, "Report on Law Enforcement in the City of Portland."