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REPORT ON
REPEAL OF CHARTER AMENDMENTS AND REFERRAL
TO CHARTER REVIEW COMMITTEE
(Multnomah County Measure No. 1)

Purpose: "This measure repeals amendments to Charter adopted in May 1982. Those amendments: made following offices elective rather than appointive; sheriff, county clerk, district court clerk, and assessor; required salaries of county elective officials be set by popular vote at primary or general election; limited tenures of elected officials to eight years, retroactive to 1976; prohibited paid county lobbyist; vested jail administration in sheriff; provided candidacy for different office automatically resulted in resignation from current office." (Official ballot title as certified by Multnomah County Circuit Judge William Dale, July 2, 1982.)

To the Board of Governors,
City Club of Portland:

I. INTRODUCTION

On May 18, 1982, the voters of Multnomah County passed County Ballot Measure No. 6, which had been placed on the ballot through the Initiative process. The provisions of Measure No. 6 took effect on June 17, 1982. (See Appendix A for the text of Measure No. 6.)

In late June of 1982, the Board of County Commissioners for Multnomah County adopted an ordinance referring a Charter Amendment repealing the provisions of Measure No. 6 to the voters through a special election to be conducted by mail on September 21st. This Ballot Measure, titled Multnomah County Measure No. 1, will be the only item on the ballot and reads as follows:

"Section 1. The ballot measure amending the Home Rule Charter of Multnomah County adopted by the people on May 18, 1982, and referred to as Measure 6 is repealed.

"Section 2. Section 12.50 of the Multnomah County Home Rule Charter is amended by adding Section 3 to read as follows:

(3) The [Charter Review] Committee shall also study and report on all matters contained in the Charter Amendments adopted May 18, 1982, and referred to as Measure 6."

The question which will be put to the voters is:

"Shall Charter amendments adopted in 1982 Primary be repealed and those issues be studied by the Charter Review Committee?"

II. BACKGROUND

In the mid and late 1970s Multnomah County voters adopted and subsequently repealed a number of amendments to the Multnomah County Charter. In order to reduce the number of charter amendments proposed through the Initiative process, the voters enacted a charter review process in November

of 1977 which requires the convening of a Charter Review Committee by June 30, 1983, to conduct a comprehensive study of the Multnomah County Charter. This Charter Review Committee will hold public hearings and meetings and will conduct interviews during 1983 and 1984. If the Charter Review Committee determines that changes should be made in the charter, it will submit proposed amendments to the voters in the general election of 1984.

The creation of the charter review process did not, however, create any practical or legal impediment to the continued exercise of the Initiative process, nor was it intended to do so. Ballot Measure No. 6 was placed on the May 1982 primary ballot through the initiative process. The chief petitioners, Ray Phillips and Clyde Brummell of the Committee for Fair Government, collected approximately 19,000 valid signatures to place the measure on the ballot (17,394 signatures were required). Mr. Phillips and Mr. Brummell appeared before the City Club study committee appointed to study Measure No. 6 and testified that dissatisfaction with County government, lack of responsiveness on the part of elected and appointed County officials and a lack of accessibility by citizens to the County Executive motivated them to use the initiative process to amend the charter. Measure No. 6 made diverse and significant changes in Multnomah County government and was opposed by the Committee to Save Basic County Services, The Oregonian, the Oregon Journal, Willamette Week, the League of Women Voters, and the Multnomah County Board of Commissioners.

The City Club study committee issued a report on Measure No. 6 which was published in "The City Club Reports on May 18, 1982 Primary Election Measures." The report recommended a "No" vote on Measure No. 6 and this recommendation was adopted by the City Club membership on May 14, 1982.

Overall, 148,367 voters turned out to vote in the May 18 primary election; these voters represented 49.3% of the registered voters. Of this number, 125,109 cast a vote on Measure No. 6 (23,258 voted on other issues but did not vote on Measure No. 6). Out of the 125,109 people voting on Measure No. 6, 66,926 voted "Yes" (53.4%) and 58,183 voted "No" (46.5%). Measure No. 6 thus was enacted.

Ballot Measure No. 1 will repeal all of the provisions of Measure No. 6 and is the subject of this report. Two out of five members of your Measure No. 1 Study Committee previously served on the Measure No. 6 Study Committee and three are new. Formation of a new study committee and presentation of a new report is appropriate because the underlying issue has changed as a result of enactment of Measure No. 6 and the County Commissioners' action referring it for repeal by special election. If the issue remained simply whether the substantive provisions of Measure No. 6 represent good public policy for Multnomah County, the report and recommendation contained in the May 5, 1982, City Club report would be unchanged and there would be no need for this Committee. But such is not the case. The issue before your Committee now is whether a wholesale repeal of the provisions of Measure No. 6 is appropriate.

III. INTRODUCTION TO ARGUMENTS

The arguments advanced in favor of Measure No. 1 (repealing Measure No. 6), and those in opposition to Measure No. 1, were divided between arguments that addressed the substantive provisions of Measure No. 6 and arguments that addressed whether the referendum process used by the County

Commissioners impedes or nullifies the ability of the people of Multnomah County to use the Initiative process to effect change in County government. Thus each of the following "Argument" sections is divided into "substance" arguments and what we have called, for want of a better term, "process" arguments. The arguments on Measure No. 1 which address the merits of the substantive provisions of Measure No. 6 are the same as those presented to the City Club Study Committee last spring. Because they are still applicable, they are quoted verbatim from the May 18, 1982, City Club report (pages 365 - 366).

IV. ARGUMENTS ADVANCED IN FAVOR OF THE REPEAL MEASURE

A. Substantive Arguments

"1. The measure is so technically flawed in its approach to amending the Charter and would make so many unrelated changes that it is unworkable and would almost certainly be the subject of extensive and costly litigation, the cost of which would be borne by the county taxpayers. For example:

"a) No procedures are set out for how the voters would determine the salaries of elected officials. There is no provision for any person or group to propose a salary level for an affirmative or negative vote, nor is there any provision for paying an elected official any salary if the proposed salary is defeated. It is unlikely that qualified persons would run for and serve in fulltime positions without any guarantee of adequate compensation throughout their term.

"b) The positions of County Clerk and District Court Clerk do not exist under Multnomah County Home Rule and election of persons with these titles would serve no purpose. Most of the tasks traditionally performed by a District Court Clerk will be the responsibility of the State after January of 1983, pursuant to 1981 legislation whereby the State will assume responsibility for administration and funding of the court system.

"c) The prohibition against elected officials serving more than eight years, arbitrarily retroactive to 1976, does not state whether this applies to persons holding the same office for more than eight years or whether persons who have held any elected office within the county since 1976 are precluded from holding any other office if they have served a total of eight years.

"2. The persons serving as Sheriff and County Assessor are currently appointed on the basis of professional training and ability in their fields. Although the state has prescribed qualifications for those offices, neither the Chief Law Enforcement Officer nor the Assessor in the county should be politicians concerned about winning popular votes.

"3. The Sheriff, whether elected or appointed, is a law enforcement person and, as such, may not have the separate skills necessary for administering a corrections system. Turning over admin-

istration of Multnomah County's jails to the Sheriff would not solve the problems of the criminal justice system nor would it decrease crime.

"4. The County needs the flexibility to retain an experienced lobbyist to monitor legislation that would affect the County and to coordinate the presentation of Multnomah County's position on legislation. The alternative to this single voice would result in contradictory positions and ineffective representation."

B. Process Arguments

1. Since enactment of Measure No. 6, the early fears of prolonged and costly litigation to interpret its provisions are being realized. The County currently is defending an action brought to enforce the provisions requiring election of the sheriff, assessor, county clerk, and district court clerk. More litigation will follow, particularly on the questions raised by the limitation on the number of years in office and its retroactivity, the automatic resignation of an incumbent filling for a new office, and the provision requiring salaries to be set by popular election.
2. Unless the provisions of Measure No. 6 are repealed now, the courts, and not the voters, will be the final arbiter of what the actual changes made in the Charter will be.
3. Measure No. 6 made such significant changes and the problems of implementing the changes are sufficiently complex that the voters should be given an opportunity to repeal Measure No. 6. By acting to place the entire measure on the ballot for repeal, the County Commissioners are exercising their responsibility as the elected stewards of County government. To allow the provisions of Measure No. 6 to remain in the charter and not give the voters a chance to re-examine the issues would be an abrogation of this responsibility, since the voters will ultimately have to pay for the litigation and organizational changes that will occur under Measure No. 6.
4. Measure No. 6 should be repealed because adequate information about its provisions was not available to the voters. There was no campaign on the issue and almost no publicity. A total of 148,367 Multnomah County voters went to the polls but only 125,109 cast a vote on Measure No. 6. The resulting "undervote" of 23,258 (15 percent) could be interpreted to mean that a number of voters did not understand Measure No. 6.
5. The ballot question on Measure No. 6 was worded very generally and did not adequately convey the effects of the Measure. The question read: "Shall certain county appointive offices be made elective, their salaries be set by popular vote, and other restrictions be enacted?"
6. The charter review process is in place and will be activated next Spring with the appointment of the committee members. The Committee will conduct open public hearings and spend substantial time deliberating and gathering information regarding the fiscal and organizational impact of changes in the charter before placing proposed amendments on the 1984 general election ballot. This is a desirable process and should be given a chance to work. Passage of Measure No. 1 will not

only repeal the provisions of Measure No. 6 but will also specifically direct the Charter Review Committee to study the issues raised by Measure No. 6.

V. ARGUMENTS ADVANCED IN OPPOSITION TO THE REPEAL MEASURE

A. Substantive Arguments

"1. In 1977 revisions to the Multnomah County Charter created numerous policy-making positions which are presently appointed and not directly accountable to the electorate. Voters should have a clear opportunity to voice their opinion on policy areas which, in other Oregon Counties, are normally within the jurisdiction of a Sheriff and Tax Assessor. Elections held only for County-wide officials with general responsibility, such as County Commissioners and County Executives, limit voters' ability to influence specific policy areas which are important to them, such as: County-wide law enforcement and corrections policies; and County tax assessment, the administration of which, while largely governed by the state law, contains substantial room for interpretation.

"2. The two-term limitation proposed would be a stimulus to citizen participation in government and would limit the ability of an individual to make a career out of being an elected County official. Oregon's Governor, as well as other elected officials, including the United States President, presently are limited to two-terms.

"3. The elimination of any paid political lobbyist for the County would result in reduced cost and closer association of elected County officials with State government officials which may increase the County's influence at the State Legislature.

"4. The public should not be expected to finance the career aspirations of public office holders. Elected officials are paid to perform the job for which they were elected and should not be paid for campaigning for election to another office."

B. Process Arguments

1. Multnomah County voters expressed their will at the May 1982 primary election and knew what they were voting on. The Oregon Voters Pamphlet carried no arguments in favor of Measure No. 6 and the only arguments "against" the measure were presented by the League of Women Voters. Notwithstanding uniform opposition by the media, however, voters passed the Measure. Their eyes were open. The ballot title was brief as required by Oregon Law but in no way concealed the sweeping character of the changes sought.
2. Any litigation that has occurred or will occur is the direct result of the current County officials' resistance to implementing the provisions of Measure No. 6. The intentions and language of Measure No. 6 are clear and are not in need of court interpretation.
3. Measure No. 6 was not enacted by the voters as a result of lack of information, but was enacted because of dissatisfaction with County

government, the lack of responsiveness by elected and appointed County officials to the desires of the voters, and a lack of accessibility to the County Executive.

4. The wholesale repeal of Measure No. 6 is not warranted. If the County Commissioners feel that there are defects in Measure No. 6 which cannot be remedied by ordinance, they should refer only those individual matters to the voters for clarification. A "No" vote will tell the County Commissioners that the voters object to the way they are using the referendum process.
5. A vote in favor of repeal will remove any incentives for the County Commissioners to address the issues raised by Measure No. 6 in advance of the charter review process. A vote against repeal will be a directive to the Board to implement those elements of Measure No. 6 that are capable of reasonable implementation and to refer those that are not to the voters for further direction. Whatever the defects in the drafting of Measure No. 6, the voters clearly wanted to address the issues in Measure No. 6 now, through the initiative process, rather than wait two years for the Charter Review process to work.

VI. DISCUSSION AND CONCLUSION

When Measure No. 6 came before the City Club last Spring for study and recommendation, the issue was clearly whether the charter amendments made by Measure No. 6 were desirable public policy and should be adopted. The answer then was unambiguous. The City Club committee, and the City Club membership, recommended a "No" vote on Measure No. 6 because it was so poorly drafted that some of the provisions were unworkable and no valid public policy reasons existed to support even those that could be implemented.

In considering whether Measure No. 6 ought to be repealed so soon after its enactment by the voters through the initiative process, this Committee examined the Measure's substantive provisions and concluded that the concerns expressed by the prior City Club study committee are still valid. The defects in Measure No. 6, as set out in the prior City Club report, p. 366, are as follows:

"a) It would be difficult to attract qualified people to public office where their compensation is set by election(s).

"b) The positions of County Clerk and District Court Clerk do not now exist in Multnomah county and the traditional duties are distributed throughout several other administrative positions.

"c) Neither the County Clerk nor the District Court Clerk positions involve policy-making and election would be inappropriate.

"d) The prohibition against an elected official running for another office while serving will make it more difficult to fill public office with people who have prior government experience. Your Committee is sympathetic to the idea that elected officials should give best efforts to the job they currently hold, but we believe the ballot box is an adequate remedy for dealing with those who do not.

"e) The government of a large urban county should not be precluded by law from having a paid lobbyist in Salem."

These problems have not changed or been eliminated simply because the measure was passed by the voters. In fact, the full extent of the difficulties of interpretation and implementation have been made even more apparent in an extensive memorandum to the County Commission written by County Counsel John Leahy, and dated June 3, 1982. The memorandum addressed the subject of "Implementation of Home Rule Charter Amendments of 1982," and outlined the practical and legal barriers to prompt and effective implementation of the provisions of Measure No. 6, and discussed the major constitutional law issues raised by the specific provision relating to tenure qualifications for and restrictions on holding elective office. Your Committee believes that the flaws in Measure No. 6, the fact that aspects of it already have been the subject of litigation, and the likelihood that litigation will continue and increase, justify repeal in the special mailed ballot election.

Your Committee also believes there is a great deal of value to the orderly and comprehensive charter review process which will occur in 1983 and 1984 and which must, if Measure No. 1 is passed, consider the proposals contained in Measure No. 6. This process should be given a chance to work. The enactment of Measure No. 6 made changes which are not trivial - they change the character of County government. We do not believe two years is too long to wait for the comprehensive charter review process to consider these proposals for radical changes. We do not need to make major changes in County government through the scatter-gun initiative process and we should not.

Even though your Committee unanimously recommends repeal of Measure No. 6, the decision was not an easy one to make. We are seriously concerned about the damage to the voters' faith in the responsiveness of County government that may have occurred as a result of the County Commission using its power of referendum to call a special election to repeal in its entirety a measure which was initiated and enacted by the voters. Over 19,000 registered voters of Multnomah County signed the petitions to put Measure No. 6 on the ballot, and 53.4% of the voters who voted on Measure No. 6 favored Measure No. 6.

Both proponents and opponents of repeal have expressed opinions as to why the voters enacted Measure No. 6. The opinion of proponents of repeal is that a substantial number of "Yes" votes were cast as a result of the lack of information about the effects of Measure No. 6. The opinion of the opponents of repeal is that there is significant discontent with some aspects of County government and that the affirmative vote on Measure No. 6 was rooted in this discontent. Your Committee believes both opinions are valid and it is likely that both lack of information and unhappiness with County government contributed to the passage of Measure No. 6.

Your Committee was very disturbed by the County Commissioners' decision to put all provisions of Measure No. 6 on the ballot for repeal rather than allowing the voters to decide on the individual and separate changes made by Measure No. 6. In another June 3rd memorandum to the County Commission regarding "Repeal of Home Rule Charter Amendments of 1982," County Counsel John Leahy outlined two approaches to referring Measure No. 6 to the

voters. The first approach outlined was a measure to repeal Measure No. 6 in its entirety; the alternative approach was to refer to the voters a repeal of the specific portions of Measure No. 6 which were considered to be unworkable or contrary to the public interest. Your Committee was unanimous in its opinion that the approach of wholesale repeal adopted by the Commissioners was the less desirable approach. By putting separate portions of Measure No. 6 on the ballot for separate vote, the County Commissioners could have learned just which aspects of County government the voters want to change now, without waiting two years for the charter review process. Your Committee is very critical of the County Commissioners for their failure to use this referendum on Measure No. 6 to learn what the voters really want. If Measure No. 6 is in fact repealed, there will still be no answer to the question of whether the voters do want changes in County government, and if so, what those changes should be.

Because the County Commissioners chose the approach of wholesale repeal, your Committee considered recommending a "No" vote on Measure No. 1. The "process" arguments against repeal merit serious consideration and if a "No" vote on Measure No. 1 would in fact result in another referendum on Measure No. 6, this time with each separate provision being presented for a separate vote, your Committee might well have recommended a "No" vote. We realize, however, that if Measure No. 1 is defeated, it will not be possible politically for the County Commissioners to go back to the electorate for a third vote on the provisions of Measure No. 6. Since the option of voting on the individual provisions of Measure No. 6 is not available and the voters of Multnomah County have only the Hobson's choice of retaining all of the provisions of Measure No. 6 or repealing all of them, your Committee recommends that Measure No. 1 be passed, thereby repealing Measure No. 6.

VII. RECOMMENDATION

Your Committee recommends a "Yes" vote on Multnomah County Ballot Measure No. 1 in the September 21, 1982, special mailed ballot election.

Respectfully submitted,

Bruce A. Bishop
Ronald Hemphill
William June
Rita A. Quinn
Diana E. Godwin, Chairman

Approved by the Research Board on August 18, 1982 for transmittal to the Board of Governors. Received by the Board of Governors on August 23, 1982 and ordered published and distributed to the membership for discussion and action on September 3, 1982.

CITY CLUB OF PORTLAND BULLETIN 81

APPENDIX A

Text of Measure No. 6

BE IT ENACTED BY THE PEOPLE OF MULTNOMAH COUNTY

Be it resolved that the registered voters of Multnomah County amend the Multnomah County Home Rule Charter as follows:

Chapter IV Section 4:30

The compensation of all elected officers of Multnomah County shall be fixed by the registered voters of Multnomah County at either a Primary or General Election only.

Chapter VI, Section 6:10, Section 6:20, Section 6:30, and Section 6:40

The people of Multnomah County shall elect:

1. A County Sheriff for the function of said office as prescribed by State Law and he shall have sole administration of all county jails and correctional institutions located in Multnomah County.
2. A County Clerk, A District Court Clerk, and a County Assessor, as prescribed by State Law.
3. Multnomah county shall not employ or hire a paid lobbyist.
4. That no elected official of Multnomah County may serve more than eight years. This amendment to be retroactive to 1976.
5. No elected official of Multnomah County may run for another office in mid-term. Filing for another office shall be the same as a resignation, effective as of date of filing.

APPENDIX B

Persons Interviewed

Earl Blumenauer, Multnomah County Commissioner
Clyde V. Brummel, Resident and Elector of Multnomah County and Chief Petitioner for Ballot Measure No. 6.
Dennis Buchanan, Multnomah County Commissioner
Robert Goldstein, Resident and Elector of Multnomah County and Chief Petitioner for Ballot Measure No. 6.
Henry Kane, Attorney at Law and Counsel for Committee for Fair Government.
Fredrick Pearce, Director of County Division of Public Safety
James Wilcox, Director of County Division of Assessment and Taxation.

APPENDIX C

Bibliography

- "Ballot Measure No. 6 - Boon or Bust," Oregon County Lines. Published by Multnomah County. June 1982.
- "Report on May 18, 1982 Primary Election Measures," City Club of Portland Bulletin. Vol. 62, No. 54. May 5, 1982, pp. 363-369.
- "Clements v. Fashing No. 80-1290," United States Law Week. June 22, 1982.
- First Reading of Proposed Ordinance Referring a Charter Amendment to September 21, 1982 Election. Board of Commissioners of Multnomah County Public Hearing. June 15, 1982.

John B. Leahy, Memorandum re. "Repeal of Home Rule Charter Amendments of 1982" and memorandum re. "Implementation of Home Rule Charter Amendments of 1982 (Ballot Measure No. 6)." June 3, 1982.

Letter to John B. Leahy from Henry Kane. July 22, 1982.

Letter to Diana E. Godwin from Henry Kane. July 30, 1982.

Letter to Henry Kane from John B. Leahy. July 30, 1982.

Multnomah County Code Provisions, Chapters 2.30 (Administrative Departments); 4.30 (Vacancies in Office); 4.51.060 (Measures referred by board); 4.51.070 (Election dates); 4.51.080 (Election notice and procedure); and 4.51.090 (Applicability of state law). August, 1981 revision.

Multnomah County, Oregon - Home Rule Charter. As ammended (sic) through November 4, 1980.

State of Oregon ex rel. Committee for Fair Government versus Donald E. Clark et al. Petition for Alternative Writ of Mandamus Case No. A8207-04368. Circuit Court, State of Oregon, Multnomah County. Filed July 21, 1982.