

**METRO
CHARTER
COMMITTEE**

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AGENDA

DATE: January 28, 1992
MEETING: Finance Sub-Committee
DAY: Tuesday
TIME: 8:45 a.m.
PLACE: Metro, Room 440, 2000 SW 1st Avenue, Portland

8:30 Meeting called to order.

9:15 Consideration of appropriate degree of specificity for revenue sources not requiring a vote of the electors.

9:30 Consideration of specific revenue sources, including those currently now imposed or permitted by statute, and possibilities such as tax increment financing and property tax equalization.

10:15 Meeting adjourned.

SUMMARY OF THE FINANCE SUBCOMMITTEE
FOR THE METRO CHARTER COMMITTEE

January 28, 1992

Metro Center, Room 440

Subcommittee Members Present: Bob Shoemaker (Chair), Jon Egge, John Meek, Wes Myllenbeck, Hardy Myers, Ray Phelps

Dan Cooper, General Counsel for Metro, was present to answer Subcommittee questions resulting from the January 21 meeting.

Chair Shoemaker called the meeting to order at 8:55 a.m.

Question from Jan. 21 meeting: *If the charter specified a 90-day waiting period before a tax-raising ordinance went into effect--in order to allow for a referendum to the voters--could the Council prevent a referendum by declaring an emergency?*

Dan Cooper said that a metropolitan service district's initiative and referendum powers reserved to the voters are identical to home rule counties. That is significant, because the Oregon Constitution provides that those powers of Metro voters will be exercised in the manner provided for counties. State Supreme Court has said that, for home rule counties, an emergency clause applied to a tax measure is prohibited. He said the committee may want to add language to the charter to address that issue in order to remove doubt.

Question from Jan. 21 meeting: *If a statute requires a vote to enable a source of revenue to be used, can the charter overcome that by allowing it to be imposed by ordinance?*

Dan Cooper said that it is possible to grant an independent source of authority without a separate vote. The courts would probably say that the Constitutional provision gives the charter an authority that is independent of the authority coming from the Legislature, which could override the charter on all powers except for structure, which includes revenue raising. A home rule entity is free to adopt a tax consistent with its charter unless the Legislature finds it a matter of statewide concern and preempts that tax. The language in ORS Chapter 268 is not preemptive in view of taxes. The charter also cannot override Constitutional provisions on taxes.

Question: *If the charter required that imposing general purpose taxes, including a sales tax, had to go for a vote of the people, would that impede Metro's ability to impose an excise tax by ordinance?*

Dan Cooper said that words can be crafted to describe what must be voted on so that an excise tax could fall into a category immune from a vote. Language can also be crafted for a list of taxes to be grandfathered in. It would be appropriate to make sure that the intent was very clear. If language is provided that the charter is not intended to conflict with the statutes, the statutory authorities would continue to be available.

John Meek asked if the subcommittee could get a list of what projects are on the table for which Metro would contemplate using an excise tax.

Dan Cooper said that Metro currently imposes an excise tax on users of Metro functions, except on those facilities operated by Metro, but owned by Portland.

John Meek asked if, with Metro's current excise tax authority, could Metro use its function of transportation planning in order to impose a tax on auto sales.

Dan Cooper said it was his view that a tax such as that was totally outside Metro's authority. He said that one of the Charter Committee members had previously questioned whether an excise tax on solid waste facilities was a tax on people's individual garbage bills. It has been interpreted that a tax on garbage haulers is not a tax on customers, but rather a direct tax on the users, or garbage haulers.

Ray Phelps said that Metro's excise tax authority was sold to the Legislature on the basis that it was limited to 6% of gross direct revenues.

Bob Shoemaker said that, within the consideration of the Finance Subcommittee, they will regard the current excise tax as having the direct tax limitation. It can only be imposed on first-level services.

John Meek asked, if Metro were to take on water supply, how could an excise tax be imposed in that manner.

Dan Cooper said that the water could be sold at a cost per unit on a meter. That would be a possible point where the tax could be applied.

John Meek said that if Metro took over distribution, communities could be levied a tax, who would trickle the cost down to the users.

Dan Cooper said, the way the statute is written on excise taxes, it is possible to reach that conclusion, but one government levying on another would raise a lot of legal issues.

Ray Phelps said, taking the format of adding functions or planning, the subcommittee needs to discuss how to distribute the front-end cost of developing a way to move it forward in order to eventually recover the money spent out of the general fund, which is the excise money, against the function that is just brought on board. They are going to be using the excise tax, which is Metro's limited general fund, for the cost of development, and which is eventually going to have to be charged against that process.

Bob Shoemaker asked how specific the subcommittee would want to be in granting taxing powers. Should Metro have limitations--such as not passing a general purpose tax without a vote of the people--and then leave the rest less specific, just a broad grant of authority. We can say, except for when you have to go for a vote of the people, beyond that you are on your own. Then it will be determined by the law and the politics of the situation as you confront each prospective tax. Is that the direction we want to go with the charter? Or do we want to be very specific? He said that it needs to be thought through as to what is and isn't appropriate.

Ray Phelps said that he would want a broad grant of authority. It is better to have the tools to marshal toward a political decision.

Bob Shoemaker said that he didn't think the subcommittee has time to figure out what the limitations on taxing authority should be.

Jon Egge said the full committee has to answer what form of government is going to be in place. The subcommittee may have to make some menu recommendations depending on what the full committee decides. He said that, from what he hears, the people are willing to pay for government, provided they know where the money is going. So the subcommittee might recommend a broad authority, but tight money allocation within the agency.

Ray Phelps said he would rather do the opposite.

Question from Jan. 21 meeting: *Does the charter need to grandfather, or protect, existing taxing authority?*

Dan Cooper said that it depends on future taxing authority. If the charter is restrictive, it is a good idea to put a savings clause in to preclude taxing authority from being taken away.

Jon Egge asked if that meant the charter doesn't cancel ORS Chapter 268.

Dan Cooper said no, the charter would be a separate source of authority. If it precluded authority granted in Chapter 268, there would be future legal questions. The courts view them as two parallel grants of authority. It is clear the charter will control the government's structure. But for authority to do things and options of carrying out functions, the charter is one source and the statutes are another. The courts have said, in the absence of conflict both are effective. But if there is a conflict, the statutes are paramount. Taxing authority, as part of structure, hasn't been answered by the courts. If the Legislature has said that a tax preemption is a matter of statewide concern, the courts are going to find that is controlling. In the absence of such a finding, with the creation of Chapter 268 having no history of intended preemption, you might reach the conclusion that the charter will control the taxing authority.

Jon Egge asked if the Legislature had allowed Metro to enact a sales tax through a vote of the people, but the charter said it could be done by ordinance, wouldn't that clearly be a conflict.

Dan Cooper said if the Legislature's intent had been clearly limiting, it would be a conflict. But the charter would have a vote of approval by the people, which is consistent with the statutes.

Bob Shoemaker asked if the charter needs to be specific in protecting current taxing authority. Can there simply be a broad grandfather clause.

Dan Cooper said a broad grandfather clause would work.

John Meek said, if a city annexes a previously unincorporated area, it is taking tax base from the county. If and when Metro takes over broader aspects of its authority, how will the taxing authority be addressed? When Metro takes a function over, there is a problem of the revenues previously spent on that function, being used for something else. How do we assure the voters that we are not creating a more efficient government service, not another layer that needs to be funded? That has to be addressed, some kind of process.

Bob Shoemaker said there should be a way to link function with revenue. Is there a way to have the revenue, that supported that function locally, also flow into Metro? Is there a way to do that?

John Meek said there needs to be a process, laid out in the charter, the local governments and Metro have to go through to identify the source of revenue.

Jon Egge said, as an example, Metro might only do functional planning for water. How do we create revenue for that? That could be solved pretty easily by taking on a whole function, but funding for a portion of a function would be difficult to do.

Bob Shoemaker said how to do it is a legal question, particularly for a partial function.

Ray Phelps said it would be difficult to create a mechanism, such as John Meek suggested, that everyone will play fair. There is no certainty, if a device is crafted, that there is a subsidy guaranteed by local ordinance, because it can be changed. There is a hostage circumstance there.

Jon Egge said intergovernmental agreements could be imposed so that local governments will participate if they go through the process.

Ray Phelps said that a process would have to be determined that will prevent a whipsaw effect from happening.

Jon Egge said that it looks like there will have to be some sort of dynamic tension between RPAC and "the government." Maybe the government could figure it out with some sort of vote, the fee is going to be paid if they agree the process is going to happen.

Question: *Can the charter require a vote for general purpose taxes--income, gross receipts, ad valorem, sales--and allow other taxes--including an excise tax--used for general purposes, to be enacted by council ordinance?*

Dan Cooper said, in general, yes. That is a drafting question. You can start with a list of taxes that can be adopted by ordinance and a catch-all that says nothing else, except with a vote of the people. Or you can write it so that any and all taxes can be imposed except certain ones described as requiring a vote of the people.

Question: *Is a real estate transfer tax limited by Ballot Measure 5 provisions?*

Dan Cooper said the opinion of the Attorney General is no, a real estate transfer tax is not limited by Ballot Measure 5. A real estate transfer tax is viewed as an activity tax. He said that there is a moratorium on that tax until 1994.

Hardy Myers said that it was possible the Legislature might extend the moratorium.

Jon Egge said, in light of what Hardy Myers said, that the charter could enable real estate transfer tax, intending for it to do great things, and the Legislature could extend the moratorium.

Ray Phelps said that a charter, approved by the voters, that exercises local support of a real estate transfer tax is an expression to the Legislature that they shouldn't extend the moratorium.

Bob Shoemaker asked, if Metro takes over Tri-Met, will it come complete with the payroll tax? If the charter says that no general purpose taxes can be imposed without a vote of the people, do we shoot ourselves in the foot regarding an inherited payroll tax that comes with the function?

Dan Cooper said, yes, potentially. The charter may have to carve it out and address that issue specifically.

Jon Egge said that the charter would have to reserve the payroll exclusively to Tri-Met. If the charter gives the authority to enact a payroll tax by ordinance, you can kiss the charter good-bye.

Dan Cooper said the charter could be written in a way so that if Tri-Met merged to Metro, taxing powers could be moved to Metro, but only to the extent they are exercised to the benefit of the Tri-Met function. They can't be piggybacked into other Metro functions.

Jon Egge said there are obvious administrative functions, such as government overhead. These are legitimate charges against Tri-Met. But Tri-Met, through the fare box, could also end up being a payer of excise taxes.

Dan Cooper said, to the extent that centralized services are provided for Tri-Met, those are legitimate charges to pass through to the Tri-Met system.

Bob Shoemaker said that the subcommittee needed to discuss what specificity there should be in describing the revenue sources not requiring a vote of the electors.

Ray Phelps said that Metro needs a broad taxing authority provided with some specifics, but very few. The reason is that we don't know what the future holds. What form Metro takes is dictated by the mix of people moving into the area. We don't know the results. Metro needs the opportunity to be responsive to political needs rather than being captive to the past. Right now it can't because it has too many restrictions that make very little sense.

Bob Shoemaker summarized that Ray Phelps advocated a charter that would say that Metro may continue all the taxing authority it now exercises, and can enact by ordinance any other revenue-producing device, except that any general purpose tax on sales, services--excluding excise tax--income and property would require a vote of the people.

Ray Phelps said that the premise on which he was recommending broad authorities is based on a referendum potential.

Bob Shoemaker added that any tax imposed by ordinance could not have an emergency clause. There must be an opportunity to refer.

Ray Phelps said that makes Oregon work. Business gets done, the government can function and the people have access. That is a fairly decent balance.

Bob Shoemaker said they should put that proposition on the table for discussion.

Jon Egge said that there are many taxing authority possibilities. He can't see approval of a property, income or sales tax ever happening. He is concerned that a referendum would become a moot point. The hotel/motel industry, for instance, could be taxed by Metro, knowing that they could never get enough signatures to force a referendum. If a tax is general in authority, the charter should be specific on how to spend it. It should specify a dedication of tax sources and how they would be spent.

Ray Phelps said the charter needs to have political sense. Jon Egge's proposal would produce a government that is too robotic, with too much rigidity. There is not enough flexibility now. The subcommittee needs to make tools available so the elected people can be responsive.

Bob Shoemaker summarized that Metro could continue as it is now taxing. It can impose any other tax it can dream up by ordinance, with no emergency clause and subject to referral. General purpose taxes, including income, property and sales taxes, must go to a vote of the people.

Hardy Myers said in that conception a hotel/motel tax could be in a middle category of possibly being imposed by ordinance.

Bob Shoemaker said it would be left to politics to determine the situation. The next question is: Should the charter place limitations on the flow of revenues that can be imposed by ordinance? Should the purpose of the function be related to the tax?

Hardy Myers said with this conception revenue bonding would be part of the revenue raising authority by ordinance. Should revenue bonding authority be addressed in the charter? He asked Bob Shoemaker what he sees as the major alternative approach to that. Is it the limitation of the specific authorities to tax and a reservation of all the rest to a vote of the people? Within that listing you might have a dedication of the funds of a given tax to a particular function. Or a dedication of all of the funds of each tax, or some of the tax, or none of the tax.

Bob Shoemaker said, as an alternative, the charter could specifically list every revenue source available to Metro, and to deal with each one with specific limitations.

Jon Egge said he didn't want to see a general fund government. Some of these funds are going to be dedicated, and some are going to be very broad and undedicated. He could understand that, but questioned whether it should be a totally undedicated fund.

Wes Myllenbeck said he disagreed. The charter should permit general fund revenue in case a major source of revenue is needed.

Jon Egge said if the charter can follow and track the money--identify the funds and dedicate it--it should be done.

Ray Phelps said the subcommittee should take a chart provided that was previously provided to the subcommittee and add a column which identifies where law requires a vote and another column that identifies whether the charter should require a vote.

Bob Shoemaker said the next exercise should be to look at the revenue raising possibilities. We need to ask ourselves whether we need to be specific. We could have a chart and list each possible source that could be available. It should be everything we can think of, including relevant information. It should include current statute and constitution limitations. We are not trying to decide if it is good or bad, but whether we need to flag it and trust the politics of time to deal with the issues that imposing a certain type of tax might generate.

Ray Phelps said then conversation would then be how discretionary a specific allocation is and whether more or less restriction is needed.

Bob Shoemaker said the subcommittee should decide whether the charter should limit the use of revenues from a tax or whether to leave it wide open.

Dan Cooper was asked to prepare an answer to John Meek's previous question--when there is a function transfer, how could the previous provider be decreased accordingly.

Bob Shoemaker said if Metro cannot require a source to follow a function, the people are forever hostage.

Dan Cooper said he has always viewed that the charter process as not able to require a take over of local government services. It would require something else, such as legislation, in addition the a home rule charter. The sense is that the charter is not a source of power to require functions to be taken away from existing governments. It can authorize what a metropolitan government is to do, but home rule provisions are not good for precluding what other governments can do now. It is different, however, if governments want to get out of a certain business and hand it over to Metro.

Bob Shoemaker asked whether a charter couldn't by itself take over a function. Can the charter authorize the council to take over a power?

Dan Cooper said he is cautious about saying the charter could have a take over power. Taking over Tri-Met is provided clearly in the statutes for a forced merger. The extent somebody might view a Metro charter to have authority that impinges on what local government can do is a long step in concluding what a charter can do.

Bob Shoemaker asked about planning. Can't the charter preempt local governments in the critical area of planning?

Dan Cooper said that preemption of local governments comes up frequently. He said the word "take over" comes up frequently, but he doesn't know exactly what people mean by it. There are a lot of problems with people assuming the charter is a vehicle for Metro to take over what local governments are doing.

Bob Shoemaker said the constitutional amendment provided that the metropolitan service district shall have jurisdiction over matters of metropolitan concern, as set forth in the charter. For instance, the charter could say that urban growth management is a matter of metropolitan concern, and include such things as the potential location of industry and shopping centers. We are proposing in the charter that Metro do that.

Dan Cooper said land use function areas have to be exercise in the context of the statutes. the charter can't conflict with the statutes on land use matters. Courts will give predominance to state law. Suppose Metro decided to provide police forces. Cities have full power of police authority. By reaching the conclusion that policing is of metropolitan concern, or some aspect of it, it is possible for Metro to enter an area and exercise that function. The question is does that grant of authority give Metro the authority to regulate and preempt cities who have their own independent constitutional authority. He said he doesn't have the knowledge to know if the courts will conclude that Metro has the same authority. He said he doesn't see full plenary powers transferred to Metro that are the plenary powers of the state. He is a long way from reaching that conclusion.

Bob Shoemaker said he thought the language of the constitutional amendment sounds preemptive.

Dan Cooper said the constitutional amendment was written to parallel county home rule language. Counties' relationship to cities--in terms of counties telling cities they can't do things--has never been answered in part because counties have never gone aggressively at telling cities what functions they should get out of. The Legislature has, over the years, carved up a lot of the turf between cities and counties. Many of the statutes separate what counties may do and what cities may do.

Hardy Myers said the outcome of this conversation is how does it dictate how the charter is drafted. Should the charter answer how the issue is raised?

Dan Cooper said his concern is the interpretation of preemptive. Metro may have a charter loaded with lots of baggage and restrictive provisions that could haunt them later. He said he doesn't believe the constitutional language grants preemptive authority.

Bob Shoemaker asked if Dan Cooper had studied the subject sufficiently to raise an opinion, or a cautionary flag.


Dan Cooper said he wanted to raise a cautionary flag.

Bob Shoemaker suggested that research might be needed now.


Hardy Myers said, it has been the view of members of the committee, to the extent there could be a state preemption issue, the charter language could anticipate that by conditioning it in terms of a change in state law, then there could be a parallel effort to modify state law to remove any concern of the charter's provisions going forward.

The meeting was adjourned at 10:30 a.m.

Submitted by,


Janet Whitfield
Committee Administrator

Reviewed by,


Kimi Iboshi
Committee Clerk