

Regional Governance Committee Legal Subcommittee

RELATIONSHIP OF METRO HOME RULE CHARTER AND STATE STATUTES

- A home rule charter for a metropolitan service district has never been created before. Speculating about the authority of the charter in relation to state statutes and city and county charters is risky.
- The courts generally have held that state statutes have authority over city and county charters except on issues related to how the city and county governments are organized to do business. It seems likely, but not certain, that the same would be true for METRO's charter. If the METRO charter conflicts with current state statutes concurring legislation to amend the statutes would probably be required in order to implement those portions of the charter which differ from the statutes. Without concurring legislation, the Charter probably can not grant greater powers than given by statute to METRO or restrict any powers current statutes direct METRO to exercise. Powers which current statute gives METRO the discretion to determine whether to exercise probably can be restricted. It is appropriate for the Charter to identify a process which must be followed when deciding what powers can be exercised by the regional government.
- There is little benefit at this time to be derived from requesting an Attorney General's opinion on this issue.

RELATIONSHIP OF LOCAL GOVERNMENT PLANS TO REGIONAL PLAN AND LCDC

- It seems unlikely that the state legislature would agree to amend state statutes to allow METRO to be the sole review authority to determine compliance of local comprehensive plans with state planning goals. This would require not only amending METRO's enabling statutes, but also land use planning statutes (ORS 197 and ORS 215).
- If local comprehensive plans are made a part of a regional plan by the Charter, then METRO may be open to legal challenge from every decision a local government makes regarding its comprehensive plan. Some local governments include their zoning ordinance as part of their comprehensive plan. METRO would have more responsibility and be exposed to greater legal risks under this approach than it is currently.
- Including local plans as a part of a regional plan raises the question of what to do with the rural lands which are a part of some local plans, but outside METRO's service boundary.
- Delegating the staff function of reviewing local comprehensive plans for compliance with state planning goals to METRO could create an opportunity in the land use process for additional legal action. A staff report written by the METRO Planning and Development Department and submitted to LCDC for final action could be considered a land use action, making it a legally challengeable document.
- An approach to integrating METRO involvement into the local planning process is to actively use the current functional planning process as set forth in state statute. Local plans must be consistent with METRO's functional plans. METRO could systematically review local plans for compliance with its functional plans and send its analysis to LCDC for consideration.

PROCESS FOR APPROVING METRO BECOMING INVOLVED IN A NEW PLANNING OR SERVICE DELIVERY FUNCTION

- There is no legal problem with requiring local government involvement in the process which would lead to a decision to expand METRO's functions in the future to some area of planning or service delivery which is not specified in the Charter as an outright authority. The Charter could go so far as to require a positive vote of some percentage of local governments as a part

of this decision-making process. This would not be an improper delegation of authority from the regional government to local governments. It would be wise to require that the METRO Council be the body which assigns an issue to the Regional Policy Advisory Committee (R-PAC) or other advisory bodies for study, and require R-PAC to make a recommendation on it within a specific amount of time.

- If functions are to be added to METRO's responsibilities over time it is better to specify the process for making those decisions in the charter, as opposed to including a list of prospective authorities. This approach probably provides greater flexibility over time than including a list, which could be interpreted as limiting.

OTHER ISSUES

- The Charter could require the regional government to make financial resources available or identify funding sources whenever it requires a local government to take an action.
- The Charter could describe the regional government's authorities to raise revenues, but require that a separate action be taken to actually authorize the raising of revenue to pay for the regional government. For example, the Charter could require the METRO Council to submit a funding measure to the voters subsequent to the passage of the Charter. The separation of these issues would make it easier to interpret the reasons underlying the electorate's vote on the charter itself.
- Current statutes do not give METRO the power to condemn private or public property without fair compensation.