OFFICE OF MULTNOMAH COUNTY ATTORNEY

CONFIDENTIAL MEMORANDUM

TO: Sheriff Bob Skipper

cc: Chair Ted Wheeler

FROM: Agnes Sowle, County Attorney

DATE: August 25, 2008

RE: Qualification of Multnomah Count Sheriff.

Query: Are sheriffs in Multnomah County required to meet the qualifications set forth by ORS 206.015?

Short Answer: Yes.

Introduction:

On August 13, 2008, you received a letter from John Minnis, Director of the Department of Public Safety Standards and Training (DPSST) in which he asserts that the statutory qualifications for sheriff found in ORS 206.015 do not apply to home rule counties, such as Multnomah County. Mr. Minnis bases this assertion on an argument by Deputy District Attorney John Bradley that under a 1980 Attorney General Opinion, a sheriff in a home rule county "is not required to comply with state law or associated state administrative rules related to qualifications for sheriff." He also states that he submitted the issue to Christine A. Chute of the Department of Justice, who agreed that the Brown opinion indicates that pursuant to Article VI, section 10 of the Oregon Constitution, the statutory requirements for sheriff do not apply to sheriffs from home rule counties.[1]

Multnomah County's Home Rule Charter sets out none of the qualifications for sheriff found in ORS 206.015.[2] Mr. Minnis acknowledged that DPSST has always operated under the understanding that the statutory qualifications applied to all sheriffs, and that he would seek an

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[1] Mr. Minnis did not provide you any written opinion by Ms. Chute, but simply revealed the opinion in his letter to Sheriff Skipper.

[2] The Charter only sets out two qualifications for Sheriff: that he be an elector of the county for 18 months prior to taking office and that he be eligible to be bonded. MCC §4.10.

official opinion from the Attorney General regarding "this topic and the interplay of possible conflicting constitutional provisions and statutory law with the charters of home rule counties." Like DPSST, Multnomah County has always operated under the opinion that the statutory qualifications for sheriff applied to Multnomah County Sheriffs.

Discussion:

John Bradley's Theory

The theory argued by John Bradley, apparently agreed with by Ms. Chute and cited by Mr. Minnis, rests on a 1980 Attorney General opinion written by then Attorney General James M. Brown. The opinion addresses the candidacy for county sheriff in Hood River County. It answers questions about two definitions, "eligible of certification" and "four years' experience in law enforcement," found in ORS 206.015,[3] and two questions regarding the role of a county clerk related to the qualifications for sheriff in the Hood River County Charter. In dicta, Attorney General Brown asserts that state law relating to sheriff's qualifications does not apply to home rule counties unless the county has adopted the state qualifications in, or pursuant to, its charter. Attorney General Brown rests his dicta on the following quote from Article VI, section 10, of the Oregon Constitution, that the charter of a home rule county:

> "…Shall prescribed [sic] the organization of the county government and *shall provide* directly, or by its authority, for the … *qualifications* … of such officers as the county deems necessary…" 1980 Ore AG LEXIS 289; 40 Op Atty Gen Ore 464 (1980). [emphasis and ellipses in original].

Bradley argues that because Multnomah County's Home Rule Charter neither sets out the statutory qualifications nor incorporates them, the County is not bound to the statutory qualifications.

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[3] ORS 206.015 is the Oregon statute which sets out the qualifications for sheriff. It provides, in part:
(1) A person is not eligible to be a candidate for election or appointment to the office of sheriff unless:
(a) The person is 21 years of age or older;
(b) The person has at least four years' experience as a full-time law enforcement officer or at least two years' experience as a full-time law enforcement officer with at least two years' post-high-school education; and
(c) The person has not been convicted of a felony or of any other crime that would prevent the person from being certified as a police officer under ORS 181.610 to 181.712.
(2) As used in subsection (1) of this section, "two years' post-high-school education" means four semesters or six quarters of classroom education in a formal course of study undertaken after graduation from high school in any accredited college or university. The term does not include apprenticeship or on-the-job training.

Attorney General Brown does not provide any additional analysis for his dicta, and specifically does not provide any case law or analysis supporting the dicta. The omission is unfortunate because in 1978, a Supreme Court decision regarding home rule and subsequent appellate decisions, indicate that the Brown dicta is too simplistic to apply to the statutory qualifications of sheriff in home rule counties and should not be relied upon.

The Law of Home Rule Authority

The state's legislative power is limited by Article VI, section 10 of the Oregon Constitution which states the following:

> "A county charter may provide for the exercise by the county of authority over matters of county concern. * * * A county charter shall prescribe the organization of the county government and shall provide directly, or by its authority, for the number, election or appointment, qualifications, tenure, compensation, powers and duties of such officers as the county deems necessary. Such officers shall among them exercise all the powers and perform all the duties, as distributed by the county charter or by its authority, now or hereafter, by the Constitution or laws of this state, granted to or imposed upon any county officer. * * * The initiative and referendum powers reserved to the people by this Constitution hereby are further reserved to the legal voters of every county relative to the adoption, amendment, revision or repeal of a county charter and to legislation passed by counties which have adopted such a charter * * *."[4]

That provision gives "home rule" counties authority over "matters of county concern." However, the path of the law of home rule in Oregon meandered somewhat until 1978 and the *La Grande* decision. In *La Grande* the Supreme Court held that the essential focus of the home rule provisions is that the "form and structure of local governments is protected from most state interference." *La Grande v. PERB,* 281 Or 137, 156 (1978) *adhered to on reh'g,* 284 Ore. 173 (1978)**.** The Court also held that "a general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local government's freedom to choose its own political form." 281 Or at 156**.**

Since its decision in *La Grande,* the Supreme Court has consistently held that although laws enacted pursuant to home rule charters are preeminent in matters of local political organization, state legislative enactments remain preeminent in matters concerning "substantive social, economic or other regulatory objectives." *City of Roseburg v. Roseburg City Firefighters,* 292 Or 266, 274-76 (1981). *See also Pacific N.W. Bell v. Multnomah Co.,* 68 or App 375, 378, *rev*

[4] The state's legislative power is likewise limited by Article IV, section 1(5) and Article IX, section 2, which provide home rule authority to cities. Cases interpreting city home rule are hence analogous to situations regarding counties and are freely relied upon by the Courts. *Buchanan v. Multnomah County,* 79 OR App 722 (1986) *rev den* 302 Or 158 (1986).

den 297 Or 547 (1984). Two types of state statutes impinge on local autonomy: "those which regulate the organization of local government and those which deal with substantive state policy and affect local government. *Roseberg*, 209 Or at 275.

Home Rule Authority and the Qualifications for Sheriff of Multnomah County

The home rule issue presented by Mssrs. Bradley and Minnis is that we have a state statute that sets out several specific qualifications required for county sheriffs. The statute is found in ORS Chapter 206 which, in addition to qualifications, sets out the duties and authority of all county sheriffs statewide. Under the analysis set forth in *La Grande* and subsequent cases, we must determine whether the state law addresses primarily "substantive social, economic, or other regulatory objectives of the state," because if so, it will displace our Charter provision even if it conflicts with it. *La Grande*, 281 Or at 149. One could certainly argue that it is in the state's interest to set out consistent qualifications for all county sheriffs much as it has set out the duties and authority of county sheriffs in the remainder of Chapter 206. In fact, it would be difficult to argue that the state qualifications are simply matters of local government form and structure.

In this case, Multnomah County's Home Rule Charter is silent about qualifications of its elected sheriff other than residency and eligibility to be bonded which applies to all of the County's elected officials. Hence, the Charter is not incompatible with the state law; it simply adds additional qualifications. Even if the Charter provision was incompatible, the state's enactment would likely control in this situation: "When a local enactment is found incompatible with a state law in an area of substantive policy, the state law will displace the local rule." *La Grande*, 281 Ore. at 149**.**

That does not mean that state legislation in a substantive area will automatically displace county policy in the same area. Local legislation is not incompatible with state law simply because it imposes greater requirements than does the state, *see State ex rel Haley v. City of Troutdale*, 281 Ore. 203 (1978); *Oregon Restaurant Ass'n. v. City of Corvallis*, 166 Ore. App. 506, 509-11 (2000), nor because the local legislation and the state law deal with different aspects of the same subject, *see AT&T Communs. of the Pac. Northwest v. City of Eugene*, 177 Ore. App. 379, 390-91 (2001), *rev den*, 334 Ore. 491 (2002).

Conclusion

I cannot recommend following the opinions of John Bradley and John Minnis. Reliance on dicta in the 1980 Attorney General Brown opinion fails to take into consideration the long history of home rule law in Oregon and the Oregon Supreme Court's active role in its interpretation. Based on both, I believe that if presented with this issue today, the Court would come to a different conclusion than Mssrs. Bradley and Minnis. Further, the significance of the qualifications for sheriff for both Multnomah County and the State of Oregon, weigh in favor of continuing to rely on ORS 206.015 for the qualifications of Sheriff of Multnomah County until a Court finds that they do not apply.