



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 1, 2009

Representative Arnie Roblan
900 Court Street NE H272
Salem OR 97301

Re: State Mandated County Services

Dear Representative Roblan:

Enclosed you will find an updated version of the report on state mandated county services. This updated report takes into account the feedback that we received from the Association of Oregon Counties about the first report.

As in the first report, we have summarized each statutory provision that requires Oregon counties to provide a service and have included summaries of provisions that do not mandate any particular service, but that regulate services that counties generally perform.

We hope this research is helpful to you.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

By

Mark B. Mayer
Staff Attorney

A large, stylized handwritten signature in black ink, appearing to read "Mark B. Mayer".

Encl.

COUNTY DUTIES AND SERVICES REQUIRED BY OREGON LAW

CONTENTS

Duties and Services Relating to County Officials

- County clerks
- Sheriffs
- County assessors
- County treasurers
- County surveyors
- District attorneys
- Medical examiners
- County commissioners and judges

Duties and Services Relating to Courts, Prisons and Involuntary Commitment

- Circuit courts
- Justice courts
- Juvenile courts
- Prisons
- Community corrections
- Court costs and mental health services relating to involuntary commitment proceedings

Duties and Services Relating to Land Use

- Planning and zoning responsibilities
- Urban service agreements

Fiscal Duties and Services

- Budgeting
- Levying of property taxes
- Assessment of taxable property
- Annual audits
- County school fund

Duties and Services Relating to County Roads

- Regulation and financing of county roads, local access roads and trails

Other Mandated Duties and Services

- Civil service commission
- Emergency management
- Solid waste disposal
- Local commissions on children and families
- Public health services
- Homeless removal policy

SUMMARIES

I. Duties and Services Relating to County Officials

Establishment of County Officials

A county's electorate must elect a sheriff, a county clerk, a county assessor, a county treasurer, a county surveyor and the appropriate number of county commissioners. ORS 204.005. The county's governing body must determine a compensatory amount for these officers, and the county must compensate them. ORS 204.116. Additionally, the county's governing body may hire other county employees. ORS 204.601. If a county hires additional employees, it must determine a compensatory amount for those employees and it must compensate them. ORS 204.601.

County Clerks

A county clerk must keep and maintain the county's records, including:

- (1) Records related to a county's governing body and to proceedings of the county court;
- (2) The County Clerk Lien Record, which includes deeds, mortgages and all other documents that affect the title of a piece of property; and
- (3) Certified copies of death certificates, marriage licenses and domestic partnership certificates. ORS 106.100, 205.110, 205.130, section 6, chapter 99, Oregon Laws 2007.

In conjunction with these tasks, a county clerk must issue marriage licenses and domestic partnership certificates. ORS 106.041, section 6, chapter 99, Oregon Laws 2007.

County clerks also must collect and distribute fees associated with the recording of documents and the issuance of licenses and certificates, including:

- (1) Marriage license fees and domestic partnership certificate fees to be distributed to the Domestic Violence Fund;
- (2) Recording fees to be distributed to the County Assessment and Taxation Fund;
- (3) Recording fees to be distributed to the Oregon Land Information System Fund; and
- (4) Government survey fees to be distributed to the Public Land Corner Preservation Fund. ORS 106.045 (2), 203.148 (2), 205.323 (3), section 7, chapter 99, Oregon Laws 2007.

A county clerk must conduct elections. ORS 246.200. To do so, a county clerk must:

- (1) Register all individuals who properly submit a voter registration card;
- (2) Maintain the voter register;
- (3) Deliver and safeguard absentee ballots;
- (4) Publish and distribute voter pamphlets; and
- (5) Process all voter ballots. ORS chapters 247, 253, 254.

A county must pay for the clerk's election-related expenses. ORS 246.250 (2).

The county clerk's office must be open from 9 a.m. to 4 p.m. on nonholiday weekdays, except on election days, when the office must be open from 7 a.m. to 8 p.m. ORS 205.242 (1), 246.270. That said, if a county is experiencing a fiscal emergency, its governing body may shorten the office's hours of operation. ORS 205.242 (2).

County clerks also have duties relating to the operation of county boards of property tax appeals. ORS chapter 309. Those duties are more thoroughly described in part IV.

Sheriffs

A sheriff must arrest and imprison violators of the law. ORS 206.010 (1). To facilitate the fulfillment of these duties, a county must provide its sheriff with an office in the building that serves as the county court. ORS 206.180. Additionally, a sheriff must:

- (1) Maintain order in the sheriff's county;
- (2) Execute and process court orders and warrants;

- (3) Obey the orders of any court that has jurisdiction over the county (for instance, a court may order a sheriff to take personal property into the sheriff's custody when that property is subject to a lien); and
- (4) Keep a record of all fees. ORS 206.010, 206.020, 206.030.

Sheriffs also have duties relating to the operation of county prisons and the disposition of county lands. ORS chapters 169, 275. Those duties are more thoroughly described in part II.

County Treasurers

A county treasurer must receive moneys paid to the county and disburse payments made by the county. ORS 208.010. The treasurer must keep a record of these payments and disbursements and must separate the record into distinct accounts. ORS 208.070. The treasurer also must file a monthly financial statement at the county court and must annually settle any debt owed by the county to the county court. ORS 208.090, 208.140.

Treasurers also have duties relating to the bookkeeping of road work expenditures. ORS chapter 368. Those duties are more thoroughly described in part V.

County Surveyors

A county surveyor must conduct surveys of county land when a court orders the county surveyor to do so. ORS 209.030. A county surveyor also must approve plats of subdivisions and partitions and number those plats. ORS 92.050 (4)(a) and (b). Additionally, a county surveyor must:

- (1) Keep a record of all surveys conducted by the county and its officers;
- (2) Establish or reestablish all public land survey corners;
- (3) Maintain those survey corners; and
- (4) Keep a record of those survey corners. ORS 209.070.

A county's governing body must determine a compensatory amount for the county surveyor, and the county must compensate the surveyor. ORS 209.080. The county also must pay for the surveyor's materials and other job-related expenses. ORS 209.230.

District Attorneys

A district attorney must prosecute violators of the law. ORS 8.650. That process includes the initiation of indictment proceedings. ORS 8.660. Additionally, a district attorney must:

- (1) Administer laws on public assistance and support enforcement;
- (2) Collect state penalties and forfeitures;
- (3) Assist the juvenile court; and
- (4) Advise and represent county officers and employees, unless the county's governing body appoints legal counsel to handle those duties. ORS 8.675 to 8.690, 203.145.

Although the state has the responsibility of paying a district attorney's salary, a county may supplement that salary. ORS 8.830, 8.852. A county must determine the number and compensation of deputy district attorneys, and the county must pay those attorneys with county funds. ORS 8.760.

Medical Examiners

A county's governing body must appoint a medical examiner to investigate questionable deaths. ORS 146.065 (1). A county must pay for the medical examiner's expenses, including equipment, maintenance costs, investigation costs and compensation. ORS 146.075 (2) and (4). Additionally, a county must pay for the burial of any unclaimed bodies. ORS 146.075 (5). ORS chapter 146 also sets forth the procedure for investigating deaths. Medical examiners and sheriffs must follow these procedures.

County Accountants

A county is not required to employ a county accountant. ORS 210.100. However, if a county chooses to employ a county accountant, the county accountant must comply with the regulations in ORS chapter 210.

Other County Officials

Additionally, counties must have a county assessor, a budget officer and budget committee, a county board of property tax appeals, an executive emergency management officer, a civil service commission and a land use planning director. ORS chapters 215, 241, 294, 308, 309, 401. The duties of those officials are more thoroughly described below.

II. Duties and Services Relating to Courts, Prisons and Involuntary Commitment

Circuit Courts

A county must provide its circuit courts with courtrooms, offices and jury rooms, and it must pay for the maintenance and utility costs of those facilities. ORS 1.185 (1)(a). Although the state pays for these courts' supplies and materials, a county must pay for a court's other expenses. ORS 1.185 (1)(b) and (2).

Justice Courts

A county is not required to establish a justice court. ORS 51.020. However, if a county establishes a justice court, it must provide that court's justice of the peace with equipment, supplies, books, records and statutory materials. ORS 51.140. The county may provide the justice of the peace with a courtroom and clerical assistance. ORS 51.140 (1). ORS chapter 51 also sets forth basic guidelines for regulating justice courts. If a county chooses to establish a justice court, it must comply with the regulations in ORS chapter 51.

County Courts

A county is not required to operate a county court. It may, instead, establish a board of county commissioners according to the procedures set forth in ORS chapter 203. However, if a county chooses to operate a county court, it must comply with the regulations in ORS chapter 5.

Juvenile Courts

A county must establish a county juvenile department and appoint one or more counselors to the juvenile department. ORS 419A.010 (1)(a). The juvenile department must conduct investigations, represent the interests of the child, ward, youth or youth offender and furnish information to and for the courts. The juvenile department must take charge of the child, ward, youth or youth offender before and after court hearings. ORS 419A.012. The juvenile department also must report annually to the Oregon Criminal Justice Commission. ORS 419A.014.

Prisons

A county must have a correctional facility, unless an incorporated city within the county's boundaries contracts with the county to carry out that duty. ORS 169.030 (1) and (3). The county must use fireproof materials to build the facility, and it must build a sufficient number of suitably located fire exits. ORS 169.030. The county also must provide for the care of its prisoners. ORS 169.220.

Sheriffs are responsible for every prisoner in their county's correctional facility. ORS 169.320. ORS chapter 169 delineates the proper treatment of prisoners. ORS 169.105 to 169.220. To properly execute a sheriff's duties, a sheriff must comply with these regulations.

Community Corrections

A county must take responsibility for felony offenders sentenced to 12 months or less. ORS 423.475. The county also must assume responsibility for community-based supervision, sanctions and services for felony offenders who are on parole, probation, post-prison supervision or conditional-release. ORS 423.478 (2).

Court Costs and Mental Health Services Relating to Involuntary Commitment Proceedings

In involuntary commitment proceedings, a county must pay for:

- (1) The services of the district attorney or any other appointed counsel who presents the state's case;
- (2) Costs incurred during the proceeding, including the costs of transporting, committing and delivering the involuntarily committed person;
- (3) The costs of hearings; and
- (4) The fees charged by physicians and other qualified persons. ORS 426.250, 426.255.

If a county pays for these expenses, but the involuntarily committed person is a resident of another county, the county of which the person is a resident must reimburse the county that paid the expenses for any reasonable and actual expense related to the care, custody, treatment, examination and commitment of the person. ORS 426.310.

A county also must pay a hospital for any costs associated with the emergency psychiatric care, psychiatric treatment and custody of a person admitted to the hospital for purposes related to involuntary commitment. Although the state provides counties with funds for this purpose, a county is responsible for these expenses when the county exhausts those funds.

Also, a hospital must charge and collect other expenses related to the care of the person from other responsible parties, such as an insurance company or a parent with custody of the admitted person. ORS 426.241.

III. Duties and Services Relating to Land Use

Planning and Zoning

A county must exercise its planning and zoning responsibilities. ORS 197.175 (1). To do so, a county's governing body must designate a land use planning director, and that director must administer a county's land use plan. ORS 215.042. That plan must be comprehensive in scope, and a county must maintain copies of the plan for public reference. ORS 215.050. Further, the plan must comply with statewide land use goals. ORS 197.250. Otherwise, a county has discretion to conceive and administer its land use plan. A county even may create more than one planning commission. ORS 215.020.

In many instances, a county must conduct a land use hearing to exercise its responsibility. Land use hearings must be conducted by a hearings officer, a planning commission or the county's governing body. ORS 215.406.

Coordination with Cities

A county must enter into an urban service agreement with any city that has a population of more than 2,500 persons. ORS 195.065 (1). The county must abide by the terms of that agreement. Additionally, a county must convoke all cities and special districts that declare an interest in providing a service. ORS 195.065 (2)(a).

Coordination with Department of State Lands

County officials must provide the Department of State Lands with any information or assistance that the department needs to perform its duties. ORS 273.155.

Disposition of County Lands

A county is not required to retain a particular amount of land; however, a county must retain land that is being used for county purposes. ORS 275.030 (1). Further, a county must adhere to certain procedures when it sells land. For example, if a county acquires land by foreclosure because the previous owner did not pay property taxes, the county sheriff must publish notice of the sale and must conduct the sale between 10 a.m. and 4 p.m. ORS 275.030 (2), 275.120, 275.140. When a county sells other types of property, it may choose the procedures to which it will adhere. ORS 275.030 (1), 275.225.

Historical Properties

Historical properties may be either publicly or privately owned. If a county owns a piece of historical property, the county's governing body must institute a policy to preserve that property. ORS 358.653 (1). To institute its policy, the governing body must consult with the State Historic Preservation Officer. ORS 358.653 (1). If a private land owner owns a piece of historical property, the county assessor must assess that property's value according to the provisions in ORS chapter 358. ORS 358.505 to 358.565. Finally, ORS chapter 358 does not

require a county to establish a historical fund; however, if a county chooses to establish a historical fund, it must comply with the regulations in ORS chapter 358. ORS 358.171.

IV. Fiscal Duties and Services

Budgeting

A county's governing body must adopt a budget. To do so, the county's governing body must appoint a budget officer and a budget committee. ORS 294.331, 294.336. The county's governing body also must estimate the county's expenditures, revenue and resources, and the county must publish those estimates in a financial summary. ORS 294.352 to 294.386. On the basis of that summary, the budget committee must adopt a budget and publish a document that explains the rationale for the budget. ORS 294.391 to 294.435.

Levying of Taxes

In July of each year, a county's governing body must determine the county's expenses. ORS 310.010. Once the county's governing body does so, it must levy property taxes to pay for those expenses. ORS 310.020. To levy a property tax, the governing body must follow certain procedures. ORS 310.055 to 310.110. The governing body also must follow specific procedures when it collects property taxes, imposes property tax liens and forecloses on those liens. ORS chapters 311, 312.

Property Assessment

A county assessor must annually assess the value of all taxable property within the county. ORS 308.210 (1). Additionally, a county assessor must:

- (1) Keep a record of the county assessor's assessments;
- (2) Update that record to reflect changes in property ownership;
- (3) Write an annual report about the county's appraisal program;
- (4) Keep a record of property appraisals; and
- (5) Collect sales data to catalog the difference between each piece of property's selling price and fair market value. ORS 308.050, 308.210 (1) and (2), 308.234, 309.200 to 309.400.

Appraisal Appeals

If a county appraisal reduces the value of a piece of property, and if the property owner properly submits an appeal of that appraisal, then the county's board of property tax appeals must hear the appeal. ORS 309.026 (2) and (3). The board must publish public notice of when it will convene. ORS 309.025. Further, the board must keep a record of the hearing. ORS 309.024 (1). Finally, the board must complete its duties by April 15. ORS 309.026 (1). To establish a county board of tax appeals, a county clerk must appoint board members. ORS 309.020. The county clerk also must serve as the clerk of the board. ORS 309.024 (2).

Auditing

A county's governing body must conduct an annual audit of the county's fiscal affairs. ORS 297.425 (1). The county must audit the fiscal affairs of circuit courts, justice courts, officers

and employees of circuit and justice courts and all elected or appointed county officials. ORS 297.515. The county also must audit the cost account for county road work. ORS 297.525.

County School Fund

A county must create a county school fund. ORS 328.005. A county must apportion moneys among its school districts in proportion to the average daily membership in each district for the preceding year. ORS 328.015.

V. Duties and Services Relating to the Regulation of County Roads

A county must regulate county roads, local access roads and trails. ORS 368.016 (1), 368.021, 368.031. To do so, a county's governing body may adopt standards for maintaining and constructing roads. ORS 368.036. If a county's governing body does not do so, it must comply with the standards adopted by the Department of Transportation. ORS 368.036.

To finance road maintenance and construction, a county may seek assistance from the Department of Transportation. ORS 366.155 (1)(h). Otherwise, a county may finance road expenditures with a voter-approved tax levy, a local option tax or funds apportioned to the county by the state. ORS 368.705 (3), 368.720. The county treasurer must deposit these funds into a county road fund. ORS 368.705 (1). Further, a county official must keep a record of any moneys spent on road work. ORS 368.051.

Finally, a county's governing body must process a variety of properly submitted petitions that pertain to roads, including:

- (1) Petitions to acquire land for roads;
- (2) Petitions for road vacations;
- (3) Petitions to improve streets and roads in unincorporated areas;
- (4) Petitions to form highway lighting districts;
- (5) Petitions to construct a road that accesses a county road;
- (6) Petitions for a way of necessity; and
- (7) Petitions by logging businesses to improve a forest road. ORS 368.073 to 368.131, 368.326 to 368.366, 371.065 to 371.660, 374.307, 376.155, 376.305 to 376.390, ORS chapter 372.

VI. Duties and Services Relating to Other Regulatory Functions

Regulation of County Civil Servants

A county's governing body must appoint three individuals to a civil service commission. ORS 241.065. That commission must investigate and report on the county's adherence to the regulations of ORS chapter 241. ORS 241.120. Additionally, the commission must conduct hearings that investigate the legitimate grievances of county employees, such as those who were dismissed without cause. ORS 241.440. Finally, the commission must establish rules for hiring, classifying and promoting county employees. ORS 241.215 to 241.290.

Regulation of Emergency Services

A county must establish an emergency management agency and appoint an executive officer to manage that agency. ORS 401.305 (1) and (2). The agency must coordinate with county personnel in planning and executing an emergency operations plan. ORS 401.305 (5)(a). The agency also must coordinate with the Office of Emergency Management to integrate federally required emergency preparedness practices. 401.305 (5)(c).

The sheriff of a county must adopt a search and rescue plan for the county. ORS 401.573 (1). That plan must comply with the Office of Emergency Management's search and rescue guidelines. ORS 401.573 (4). Also, county emergency personnel must participate in the state's 9-1-1 emergency reporting system. ORS 401.720 (2).

Finally, a county must develop a plan to provide for and coordinate ambulance services. As part of that plan, a county must establish one or more service areas. ORS 682.062 (1).

Regulation of Solid Waste Disposal

Local governments must take responsibility for the disposal of solid waste. ORS 459.017 (1)(b). Otherwise, a county is not required to perform any specific duty. To fulfill its responsibility, a county may operate its own disposal facility. To do so, it first must obtain a permit from the Department of Environmental Quality. ORS 459.205 (1). A county also may privatize the industry. To privatize the industry, a county may choose between issuing licenses to disposal companies or allocating franchises to those companies. ORS 459.085 (2). In either situation, a county may prescribe standards for waste disposal and establish an agency to ensure that those standards are met. ORS 459.085 (1)(a). Finally, if the Environmental Quality Commission orders a county-operated disposal site to implement a recycling program, the county must do so. ORS 459A.065. To achieve that goal, a county may allocate franchises to recycling companies. ORS 459A.085 (3).

Regulation of Other County Service Facilities

Service facilities include sewage plants, dikes, health care facilities, law enforcement facilities and a myriad of other facilities. ORS 451.010. A county is not required to establish any particular service facility; however, if the Director of Human Services determines that a county has a health hazard, the county must establish a service facility that combats the hazard. ORS 451.445 (1). To do so, a county's governing body must issue a construction order. *Id.* In that order, the governing body must explain how the county will finance the construction, operation and maintenance of the facility. ORS 451.485 (2) to (7). Within one year of issuing that order, the county must begin to construct or install the facility. ORS 451.445 (2).

Local Commissions on Children and Families

A county's board of county commissioners must establish a regional commission on children and families. ORS 417.760. A county may enter into an agreement with other contiguous counties to establish one of these commissions. ORS 417.760 (1). These regional commissions must develop, implement and monitor local policies that promote the wellness of children and their families. ORS 417.775 (1). Regional commissions on children and families also must inform citizens about the policies that they implement. ORS 417.775 (1)(a).

Before implementing a plan to promote the wellness of children, a regional commission must submit the plan to the county board of commissioners for approval. ORS 417.760 (1)(c). After approval, a commission must submit its plan to the State Commission on Children and Families, which determines the amount of state funds to transfer to a county to implement a plan. ORS 417.787 (1).

Public Health Services

As the local public health authority, a county must manage local public health services unless the county relinquishes its health authority to the state or contracts with private businesses or an agency to carry out its health-related duties. ORS 431.375 (2). A county's electorate may approve the establishment of a county board of health. ORS 431.412. If a county establishes a board of health, it must appoint a qualified public health administrator. ORS 431.418. Duties of a local public health authority include:

- (1) The administration and enforcement of rules promulgated by the Department of Human Services;
- (2) The practice of epidemiology and control of preventable diseases and disorders;
- (3) The provision of parent and child health services;
- (4) The collection and reporting of health statistics;
- (5) The dissemination of health-related information;
- (6) The referral of health-related services; and
- (7) The implementation of environmental health services. ORS 431.416.

Local health departments must make immunizations available at convenient times and places, and the departments cannot refuse service because of inability to pay. ORS 433.269. In addition, the county public health administrator must investigate and take steps to control each report of a communicable disease. ORS 433.269.

Every county health department must offer family planning and birth control services within the limit of available funds. The county may collect fees to pay for these services. ORS 435.205.

Dog Control

A county may declare that the county is a dog control district. ORS 609.030. If a county has a dog control program, every dog owner must pay a licensing fee to the county. ORS 609.100.

Operation of Public Libraries

A county is not required to operate a public library. If a county chooses to operate a public library, it must comply with the regulations in ORS chapter 357. To establish a public library, a county must follow either the procedures for creating a special district in ORS 198.705 to 198.955 or the procedures for creating a library district in ORS 357.216 to 357.286. ORS 357.221.

Homeless Removal Policy

A county must develop a policy to remove homeless people who are camping on public property. ORS 203.077.