



DEPARTMENT OF JUSTICE

100 STATE OFFICE BUILDING
SALEM, OREGON 97310
TELEPHONE: (503) 378-6368

December 17, 1976

No. 7368

This opinion is issued in response to a question presented by the Honorable Vern Cook, State Senator.

QUESTION PRESENTED

May a Multnomah County Commissioner, elected from the county at large, now be recalled by voters of the district within the county to which he has been assigned, for purposes of reelection and recall, by an amendment to the county charter?

ANSWER GIVEN

No.

DISCUSSION

We are asked whether a member of the Board of County Commissioners of Multnomah County, although originally elected by the county at large, may now be subject to recall by the voters of a district within the county.

The question arises because the charter of Multnomah County, adopted under Article VI, §10, Oregon Constitution, has been amended to provide that county commissioners shall be

elected by district, and that present commissioners are "deemed for all purposes, including the exercise of the right of recall," to be serving in a specified one of the five newly created districts.

Qualifying the quoted phrase and others are the words: "Except as may be prohibited by the Oregon Constitution. . ."

We conclude that the procedure for recalling a public officer as specified in Article II, §18, must prevail and that a county commissioner elected by the voters of the county at large can only be recalled by the same constituency.

Article II, §18 of the Oregon Constitution begins:

"Every public officer in Oregon is subject, as herein provided, to recall by the legal voters of the state or of the electoral district from which he is elected. . ." (Emphasis supplied)

The section then goes on to detail the recall procedure.

It further provides that the legislature shall enact "additional legislation as may aid the operation of this section" but the Oregon Supreme Court held the section to be self-executing in State ex rel Clark v. Harris, 74 Or 573, 144 P 109 (1914).

The Court said:

"This section sets forth a complete modus operandi for the recall. Nothing whatever is omitted that is necessary to effect the recall. Its provisions are absolute, not conditional. . ."

This is not to say that the legislature may not expand the recall to areas not covered by Article II, §18. For example, after this office pointed out in 33 Op Atty Gen 233 (1967) that a political party's precinct committeeman is not a "public officer" and thus not included in the constitutional provision,

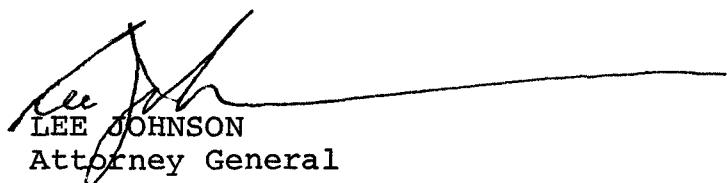
the legislature enacted ORS 248.049 to 248.055 providing for recall from such position. See also Wigley v. South San Joaquin Irr. Dist., 31 Cal App 162, 159 P 985 (1916).

But a county commissioner is unarguably a "public officer" and by the specific, self-executing terms of Article II, §18, Oregon Constitution, can only be recalled by the voters "of the electoral district from which he is elected."

Further, we cannot insert the words "to be" in the last-quoted phrase so that it would read "of the electoral district from which he is to be elected." Not only would it read like nonsense but it would be contrary to the concept of the recall, which is that an officer is re-called, that is, called back by the constituency which put him there. As was said in the Voters' Pamphlet in 1908 when Article II, §18, was adopted:

"To get the best service from all officers at all times, it is necessary that the people shall be able to discharge any of their public servants as it is that a farmer or any other employer should have power to discharge his hired man. . ."

We conclude that a county commissioner elected in a county at large, although later "deemed" to be serving in a single district of the county, can only be recalled by the constituency which conferred office upon him: the county at large. Article II, §18, of the Oregon Constitution does not permit otherwise.



LEE JOHNSON
Attorney General

LJ:WTL:da