

February 9, 2012

HAND DELIVERED

Oregon House of Representatives
Committee on Agriculture and Natural Resources
Hon. Sal Esquivel, Co-Chair
Hon. Brian Clem, Co-Chair
900 Court Street, NE
Salem Oregon 97301

Re: House Bill 4090-6 (2012)

Dear Co-Chair Esquivel and Co-Chair Clem:

Thank you for the opportunity to speak with you today about HB 4909-6 and the process for city annexations and special district boundary changes. I am an attorney in private practice, although all of my clients are municipal governments so I have extensive experience with municipal authority and local boundary issues. Also, prior to entering private practice, I served for six years with Legislative Counsel and in 2005 served as Special Counsel to the Senate Environment and Land Use Committee, where we spent a great deal of time considering city annexation issues.

As you know, HB 4090-6 arises out of the City of Keizer's attempts to remove territory from one fire district and annex it to a separate fire district, despite the fact that the city does not itself provide fire services. The city does not deny that the statutes it relies on – ORS 222.520 and 298.866 – have never been used this way before. Based on my research of the history of the statutes as well as my experience in this areas, I believe this is because the statutes were never intended to be used in this way and, therefore, the city's actions are unlawful. Be that as it may, it is the Legislature's prerogative in the first instance to clarify its intent, in this case by amending the text of the statute.

For the following reasons and policy considerations, I encourage the Committee to approve HB 4090-6:

1. ORS 222.520 was first enacted in 1947. It authorizes a city to withdraw territory from certain special districts when the city annexes an area and will provide the service to the area. The statute has been revised and expanded since then but the structure and purpose remain the same.

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In 1971 the Legislature enacted the District Boundary Procedure Act to provide a comprehensive and systematic process for creating, amending and merging special districts. It has been revised since then but the structure and purpose of the Act remain the same. The Act is codified in ORS chapter 198.

With these two enactments, as modified over the years, the Legislature has established a uniform and carefully balanced system for amending city and special district boundaries. City boundaries, including incorporation and annexation are governed by ORS chapter 222, and special district boundaries are governed by ORS chapter 198. The city's decision in this case ignores this statutory structure and the clear legislative intent inherent in it.

2. A city is a corporation that provides services in return for payment through property taxes. When a city annexes territory, it may remove the area from certain special districts that provide those same services in order to avoid double taxing the residents. Conversely, if the city does not provide the service, it will leave the territory in the district.

Here, the City of Keizer does not provide fire service, does not collect revenue for fire service and does not otherwise have authority to determine the boundary and tax base of two separate and independent local governments. In order to reach a predetermined outcome, the city is interpreting the statutes in a way that has never been done before and asserting authority where it doesn't have an interest. In doing so, the city is simply acting as a self-appointed boundary commission without inherent or delegated authority to do so.

3. A city decision under ORS 222.520 is emphatically not an exercise of city home-rule authority. It is exercising authority granted to it *by statute* to alter the boundary and tax base of another local government. It is not authority that should be taken lightly or exercised with slight justification.
4. Finally, HB 4090-6 is not intended to and does not affect a city's ability to provide service directly or by contract. As long as the city controls the "purse strings" by collecting tax revenue for the service, it is and should be considered the service provider. Note, this also allows the city to continue to certify the service as a city function for purposes of receiving state shared revenue under ORS 221.760.

For these reasons, we encourage the committee to approve the -6 amendment to HB 4090.

Sincerely,



Christopher D. Crean