

**Review of San Juan County's Home Rule Charter
By Richard Ward**

Introduction

San Juan County's Home Rule Charter was proposed by elected freeholders in 2005 and approved by voters that same year. It replaced the commissioner form of county government that is the standard, or "code," form prescribed by the Revised Code of Washington for those counties that do not adopt Home Rule charters.

San Juan County's charter requires periodic reviews, the first after five years of adoption and subsequent reviews every ten years thereafter. The first such review is being undertaken by the San Juan County Charter Review Commission (CRC), whose twenty-one members were elected in November of 2011. What follows is an analysis of the Charter, with recommendations, by Richard Ward, a member of the CRC writing solely on his own behalf, not for the CRC as a body.

Overview

The preamble to San Juan County's Home Rule Charter states the following:

We, the citizens of San Juan County, in order to secure the benefits granted to a Home Rule Charter under the laws of Washington State and to assert greater control over the actions of County government, adopt this charter.

One of the benefits granted to a Home Rule Charter County is the opportunity to review the charter periodically to examine whether it can be improved. After six years of experience with the charter, citizens and their elected Charter Review Commissioners need to ask whether the charter has allowed them "to assert greater control over County government."

But first it would be instructive to examine the law regarding the commissioner form of government as it pertains to San Juan County. Essentially the law provides that in a county composed of islands, with a population of fewer than 35,000, the commissioner districts may be of unequal population provided that the primary and general elections for all commissioners be county-wide.

The pertinent language of the statutes is as follows: **". . .the commissioners of any county composed entirely of islands and with a population of less than thirty-five thousand may divide their county into three commissioner districts without regard to population" (RCW 36.32.02), and "Where the commissioners of a county composed entirely of islands with a population of less than thirty-five thousand have chosen to divide the county into unequal-sized commissioner districts pursuant to the exception provided in RCW 36.32.020, the qualified electors of the entire county shall nominate from among their own number who reside within a commissioner district, candidates for the office of county commissioner of such commissioner district to be voted for at the following general election" (RCW 36.32.040).**

This means that all voters in the county get to vote for candidates in all districts, in both primary and general elections, with some deference to the interests of different districts. This system preserves the one-man-one-vote rule and ensures that each commissioner is electorally accountable to all of the voters in the county. It can be applied in the same way to a charter

county. (The constitutionality of this sort of voting was upheld by the United States Supreme Court in *Dallas County v. Reese* – 421 U.S. 477 1975; see also <http://www.atg.wa.gov/AGOOpinions/Opinion.aspx?section=archive&id=6052>.)

Prior to the adoption of the Home Rule Charter, San Juan County commissioners were elected in this manner. Each citizen voted for all of the County Commission, not just a portion of it, and each voter, as an individual, regardless of where he or she resided, had equal influence over the outcome of each election. Moreover, the County Commission had both legislative and administrative authority. And citizens voted county-wide for other county officials, such as auditor, treasurer, and assessor. Thus, the voters had great control over who ran their county government.

Commissioners were full-time employees of the county and were paid accordingly. They passed regulations and appointed county managers, over whose work they had oversight. Accountability therefore ran from the voters through their elected commissioners to those who performed the functions of government.

Voters also could expect transparency in the conduct of the County Commission. With three commissioners, any meeting of two commissioners created a quorum and therefore called into play the provisions of the Open Meetings Law.

Analysis

A question before voters is whether the Home Rule Charter has allowed citizens “greater control over the actions of County government.”

The Charter replaces the three commissioners who were elected county-wide with six councilpersons elected from districts. The argument was made that this arrangement provided each voter with a representative identified with his or her district and accountable to the voters in that district. It could be argued that this allowed each citizen greater access to the government. It also provided equality among the districts, as it was perceived that former District 3 (now District 6), the smallest of the commissioner districts, had one-third of the vote on the Commission with only one-sixth of the population. (More on this argument later.)

Also, the Charter places administrative authority in a division of government separate from the elected council. It provides for a county administrator “with all the executive powers of the County that are not vested in other specific elected officers by this Charter.” This administrator is not elected by voters. The Council, its staff, and individual councilpersons are forbidden to “interfere in the administration of the Executive Branch. They shall not give orders to, or direct, either publicly or privately, any officer, or employee subject the direction and supervision of the County Administrator, Executive Branch, or other elected officials.” This so-called “firewall” between the elected council and those who operate the government was included to prevent perceived abuses by elected commissioners under the previous form of government.

The Charter also provides for initiative and referendum, a feature not allowed under the commissioner form of county government.

And finally, the Charter allows for periodic review of its provisions, with any amendments to the Charter to be voted on by the people.

How does the Home Rule Charter compare with the commissioner form of county government?

The Home Rule Charter preserves the offices of auditor, treasurer, county clerk, sheriff, and assessor as elected positions (prosecutors and judges are cannot be made appointive under state law). In this regard the two modes of government are identical: voters get to determine who serves in these positions.

The Home Rule Charter provides for initiative and referendum. In this regard the charter has allowed voters “greater control over the actions of County government.”

In separating the elected council from executive functions and giving these functions to an unelected administrator, the Home Rule Charter has effectively distanced the voters from those who operate the government in those departments not under the control of the elected officers (auditor, treasurer, etc.). Elected councilpersons are now required to address concerns and inquiries about government departments solely through the administrator. It can be argued that the Home Rule Charter in this regard has significantly reduced voters' control over the actions of County government. As noted above, under the commissioner form of county government, administrative authority was vested in the elected commissioners.

The Home Rule Charter, by creating six separate districts from which councilpersons are elected only by the voters in each of those districts, provides voters with “someone from the neighborhood” to represent them on the council. This would seem to give the voters greater control, but it removes from voters any control over the other five councilpersons. Between a voter in a district and the councilpersons from other districts there is no electoral accountability. Effectively, the voter gets to vote on one-sixth of the council, whereas under the commissioner form he or she voted on the entire council, both in primary races and in the general election. There was electoral accountability between all commissioners and all voters.

On the matter of transparency, the Home Rule Charter further reduces voters' access to the process of government. Under Washington's Open Meetings Law any meeting at which a quorum of an elected body meets must be announced to the public and open to citizens and the press. The Home Rule Charter effectively allows subcommittees of three persons (less than a quorum) to meet and prepare legislative proposals in private. There is no public scrutiny of the “sausage making.” When subcommittee recommendations are brought before the council, only one more councilperson's vote is required for passage. Full discussion of the reasoning and facts behind the proposal can become unnecessary, especially since a private discussion between a subcommittee member and a non-member councilperson can ensure passage. Significantly, should a subcommittee of three agree in private to oppose legislation, in open council those three can block any action by the council. Under the commissioner form of County government, a meeting between any two commissioners constitutes a quorum and must be public. By isolating voters from important steps in the legislative process, the Home Rule Charter would appear to reduce voters' “control over the actions of County government.”

Recommendations

How might the Home Rule Charter be amended to strengthen government accountability and transparency?

There are three changes to the Home Rule Charter that would significantly strengthen accountability and transparency in San Juan County governance.

The first of these would be to **return to county-wide elections for members of the county council**, both in primaries and in general elections. This change would be both legal and democratic.

Concerning legality: RCWs 36.32.020 and 36.32.040 clearly permit such an arrangement; indeed, San Juan County is the only Washington county eligible to use the county-wide voting system authorized by these statutes.

It is democratic: every voter votes for all of the council. Of course the present charter is democratic as well, but it greatly reduces the individual voter's authority over the county government as a whole.

County-wide voting from unequal districts has been upheld elsewhere, as noted above, so long as the system is not used to diminish or overwhelm the voting rights of minorities.

The second change would be to **restore the elected council's (formerly commission's) authority over the operations of government**. An amended charter could strike or alter the language of sections 2.31 and 3.43 to effect this change. The accountability of county managers to the representatives of the people would be thus clarified and strengthened. It may be prudent to retain some aspects of a firewall, but not the rigid strictures the Charter now requires.

The third change would be to **reduce the number of councilpersons from six to three**. A number of reasons support this change.

First, **six councilpersons are not necessary**. San Juan County operated with a three-person commission for more than one hundred years. Testimony from former commissioners strongly supports returning to three, not only because six are more than are necessary but also because a smaller elected board or council works better. Decision-making is more efficient, they argue, and with only three members there is a stronger tendency to achieve consensus instead of settling for a split vote.

Second, **San Juan County has a very high ratio of elected councilpersons to total population**. Among Washington's 39 counties, 34 have three-member commissions or councils. Almost all of these counties are considerably larger in population than San Juan County. For example, Spokane, Clark, Thurston, Kitsap, and Yakima counties, with populations ranging from 244,700 to 472,650, all have three-member boards. Of Washington's six charter counties, San Juan County is the smallest. The next largest, Clallam County has four and one-half times the population of San Juan County but only three elected commissioners. The ratio of councilpersons or commissioners to population is much higher in San Juan County than in any of the other charter counties and indeed is higher than in all but the smallest four of Washington's 39 counties. **It is difficult to argue that San Juan County's governance requires six elected councilpersons when much larger counties are governed by boards of three.**

Third, **San Juan County would be better served by full-time councilpersons**. Making the positions full-time would mean the positions would pay enough to attract candidates who are not retired or of independent means. Some of the present councilpersons devote full-time to the positions, while others do not or cannot. Councilpersons are the senior policymakers of the

county and should function as leaders. Their work means many meetings, trips to Seattle and Olympia, and committee work and research. Moreover, returning executive authority to the council adds to the responsibility carried by individual councilpersons. Leaders who devote so much time to public service should get full-time pay. In these times, when career county employees are being laid off, San Juan County cannot ask its voters to give full-time pay to six persons, making the number three more reasonable yet.

Fourth, **having three councilpersons elected at large instead of six elected by district would mean a larger pool of potential candidates for each position.** The full-time salary for each position would mean persons who need to work for a living could consider serving as councilpersons without depriving their families of needed income, thus further enlarging the pool of potential candidates. Indeed, with larger districts and full-time salaries available, the likelihood of uncontested races would diminish.

An objection to having three councilpersons instead of six is that it necessitates unequal-population districts. But as has been pointed out before, the candidates from all three districts must be elected at large in both primaries and general elections. The councilpersons thus elected truly have the entire county as their constituencies. Requiring that candidates be residents of districts merely insures that the interests of smaller districts are more likely to get consideration by the council instead of being overwhelmed in the county-wide voting by the largest district, which, without the three-district residence requirement, could conceivably provide the successful candidates for two or even all three positions. It might be argued that it was a county-wide election after all, with every voter's individual influence being equal, but the viewpoints of the smaller districts, especially those of the former District 3 (present District 6), would not be directly expressed on the commission.

In this connection, one hears the argument that it was "unfair" under the commissioner system to allow the old District 3 to contribute one commissioner while District 1 (present districts 1, 2, and 3), with almost three times the population, contributed only one commissioner as well. (One hears even today that this was a violation of the one-man-one vote rule, when in fact it was nothing of the kind, as all voters voted for all three positions.) We might call this the "Lopez problem," because Lopez Island typically produced candidates for the old District 3 on the commission.

Looked at objectively, the "fairness" issue is actually the reverse. The Lopez candidate could by no means expect to prevail in a county-wide election solely with support from voters in the old District 3. Five-sixths of all voters resided in other districts. For this reason a Lopez candidate had to spend much of his or her time campaigning on San Juan and Orcas. Indeed, with approximately half of the voters residing in the old District 1, that district alone could greatly influence which candidates from the old District 3 were successful. Conversely, despite their having equal votes as individuals, voters in the old District as a group had relatively little influence on who won from San Juan and Orcas. In any case, **Lopez did not, and could not, elect a commissioner. The entire county elected a commissioner whose place of residence was in the old District 3.**

Fifth, **having a council of three ensures that the Open Meetings Law would apply to any meeting of even only two of the councilpersons.** Two would constitute a quorum and closed meetings would be unlawful (except of course for executive sessions to discuss some contract issues and personnel matters, as the law allows). Closed subcommittee meetings, though regarded as convenient by some councilpersons now, would become a thing of the past, and the possibility of three councilpersons agreeing in a closed meeting to block legislation by the full council would be eliminated.

Conclusion

San Juan County is fragmented by geography. Changing to a three-member council, with administrative authority restored, and county-wide elections required, would avoid the further fragmentation created by the system of districts now in use. **Accountability of every councilperson to all voters and full transparency for all proceedings would indeed serve the Charter's goal of permitting citizens “to assert greater control over the actions of County government.”**