MUNICIPAL CHARTERS IN OHIO

Ohio Municipal League

Our Cities and Villages ★ *Bringing Ohio to Life*

2015 **AN OML SOURCEBOOK**

Susan J. Cave, Executive Director
175 South Third Street, Suite 510
Columbus, Ohio 43215
614-221-4349

MUNICIPAL CHARTERS IN OHIO
A SOURCE BOOK

INTRODUCTION

The Ohio Municipal League has prepared this Source Book to provide information concerning Home Rule Charters for municipalities. It is a collection of articles and compilations of data from various sources.

Material from the Source Book should be reviewed by your legal advisor for its current applicability to your municipality's situation.

John E. Gotherman, Counsel
The Ohio Municipal League

September, 1997
Revised March, 2000
Revised July, 2001
Revised February, 2002
Revised February, 2004
Revised July, 2007
Revised February, 2008
Revised April, 2010
Revised April, 2013
Revised April, 2015

About the Author

John Gotherman, Counsel to the Ohio Municipal League and General Counsel to the Ohio Municipal Attorneys Association, is a leading authority on Municipal Home Rule and Charters. He has been engaged as an attorney-consultant in many engagements relating to adoption of a charter, charter revision commissions or charter review commissions, municipal councils and administrative officials on charter amendments (both as to the process and drafting of amendments), and advising legislative and administrative officials about the meaning and interpretation of charter provisions. Mr. Gotherman is entering over fifty years as a municipal lawyer. In the year 2000 he was awarded the "Charles S. Rhyne Lifetime Achievement in Municipal Law Award" by the International Municipal Lawyers Association at their annual meeting in San Francisco, California. His experience spans the full range of branches of municipal law, serving as bond counsel at Peck, Shafer & Williams, Cincinnati and Columbus, and Calfee, Halter & Griswold, Cleveland, and his practice as special counsel.

TABLE OF CONTENTS

CHAPTER 11

HOME RULE POWERS UNDER SECTIONS 2, 3, AND 7, ARTICLE XVIII, OHIO CONSTITUTION

CHAPTER 11

HOME RULE POWERS UNDER SECTIONS 2, 3, AND 7, ARTICLE XVIII, OHIO CONSTITUTION

Sec. 11.01 Purpose of Chapter

This chapter is designed to provide a simplified outline of municipal home rule powers under **Section 2, 3, and 7 of Article XVIII,** Ohio Constitution. It concisely presents the meaning of those provisions as interpreted by the Courts. It also highlights, in **Sections 10.10 through 10.15,** other constitutional provisions that limit powers granted by **Article XVIII, Sections 2, 3, and 7** to municipal corporations. While it may represent an oversimplification since it does not engage in a discussion of the intricacies of issues not yet presented to the courts or the scholarly but highly theoretical rationale for those sections as intended by the drafters, it is an accurate description of the existing law.

POWERS UNDER SECTION 2, ARTICLE XVIII, OHIO CONSTITUTION

Sec. 11.02 Incorporation and Government of Municipalities

Section 2 of Article XVIII, Ohio Constitution, authorizes the passage of general laws to provide for the incorporation and government of municipalities. **Section 2** also authorizes additional laws or special plans of government when approved by a majority vote of the people. The General Assembly has provided the following optional plans: 1) city manager plan; 2) commission plan; 3) federal plan See **Sec. 10.16** of this text. **Chapter 705, Revised Code.**

What is meant by "government" of municipalities? "Government" includes matters pertaining to the structure and organization of municipal government, i.e. the form of government for non-charter municipalities. Where a charter has been adopted under **Section 7**, the provisions of the charter control matters of structure and organization. **Fitzgerald v. Cleveland**, 88 Ohio St. 338 (1913). "Government" in **Section 2** includes matters pertaining to procedures for exercising powers of local self-government by non-charter municipalities. **Morris v. Roseman** 162 Ohio St. 447 (1954). Where a charter has been adopted under **Section 7,** the provisions of the charter control matters of procedure. **Morris v. Roseman**, 162 Ohio St. 447(1954).

POWERS UNDER SECTION 3, ARTICLE XVIII, OHIO CONSTITUTION

Sec. 11.03 Section 3 Powers

Section 3 of Article XVIII authorizes municipalities to 1) Exercise all powers of local self-government, and 2) adopt local police, sanitary and other similar regulations not in conflict with general laws.

Sec. 11.04 Powers of Local Self - Government

"Powers of local self-government" relate to the internal affairs of the municipality, *i.e*. matters purely of local concern. If the result of the exercise of the power affects only the municipality itself, with no extra-territorial effect, the subject is clearly within the power of local self-government. If the result affects more than the municipality, the courts balance the interests of the municipality with the interest of the state. If the municipal interests are predominant, the municipal action is upheld, but if the state's interests are paramount, the local exercise of power fails as a matter of statewide concern. Examples of matters **not of local concern** where general laws have been upheld are: 1) Sewage control. **Bucyrus v. Department of Health,** 120 Ohio St. 426 (1929); 2) Detachment of territory. **Beachwood v. Board of Elections**, 167 Ohio St., 369 (1958); 3) Intercity electrical transmission lines. **Cleveland Electric Illuminating Co. v. Painesville**, 15 Ohio St. 2d 125 (1968); 4) State prevailing wage law. **State ex rel. Evans v. Moore,** 69 Ohio St. 2d 88 (1982).

"All powers of local self-government" is a dynamic concept as evidenced by the following excerpt from the Opinion in **State ex rel. McElroy v. Akron,** 173 Ohio St. 189, at 192: "Due to our changing society, many things which were once considered a matter of purely local concern and subject strictly to local regulation, if any, have now become a matter of statewide concern, creating the necessity for statewide control." The term "statewide concern" has been used to describe matters that are broader than the local concern of a municipality. In order for general laws to prevail over a municipal enactment, it is not necessary for the specific matter to be of concern everywhere in Ohio, rather it need only to have a result that affects more than the municipality**. Beachwood v. Board of Elections,** 167 Ohio St. 369 (1968).

In **State ex rel. Evans v. Moore,** 69 Ohio St. 2d 88 (1982), the Ohio Supreme Court held a city ordinance declaring that it was the city's policy not to comply with the State's prevailing wage law to be invalid. In **Evans**, the Supreme Court held that the State's prevailing wage law was a matter of statewide concern.

Following **Evans**, the Ohio Supreme Court held that the state public sector labor relations law, as it pertained to the definition of "supervisors", was a matter of statewide concern, and a local ordinance defining supervisors for collective bargaining purposes was not a valid exercise of powers of local self-government under **Section 3 of Article XVIII**, Ohio Constitution. **Kettering v. State Employment Relations Board**, 26 Ohio St. 3d 50 (1986).

Municipalities won a temporary victory when the Supreme Court held that the establishment of compensation was a power of local self-government under the Ohio Constitution and that binding arbitration for municipal police and fire personnel was unconstitutional. **Rocky River v. State Employment Relations Board**, 39 Ohio St. 3d 196 (1988) ("Rocky I"). A motion for rehearing was denied on December 13, 1988 ("Rocky II"). A motion to reconsider the Rocky II decision to deny a rehearing was granted on February 10, 1989 ("Rocky III").

On May 10, 1989, the Ohio Supreme Court reversed Rocky I and held that the state law requiring mandatory and binding arbitration is valid and that the state law prevails over an exercise of power of local self-government since the statutory provision is within the General Assembly's authority to enact employee welfare legislation pursuant to **Section 34, Article II, Ohio Constitution**. **Rocky**

River v. State Employment Relations Board, 43 Ohio St, 3d 1 (1989) ("Rocky IV").

All decisions in Rocky I, Rocky II, Rocky III and Rocky IV were decided by a 4-3 vote of the Court. Between the decisions in Rocky I, Rocky II, Rocky III, and Rocky IV, an election occurred, and the Court's composition changed by one member. See **Sec. 11.11** for more information concerning Rocky IV.

Sec. 11.05 Powers of Local Self- Government: Charter v. Non-Charter Distinction; Substance v. Procedure Distinction

While municipalities (charter and non-charter) are granted powers of local self-government by **Section 3 of Article XVIII**, Ohio Constitution, the question of whether the power is a so-called substantive exercise of the power versus a procedural exercise of the power and whether a charter or non-charter municipality is involved are relevant to determining whether the local power prevails over the provisions of a state statute.

Where a municipality has adopted a charter pursuant to **Section 7 of Article XVIII,** Ohio Constitution, the municipality's exercise of either a procedural or substantive power of local self-government prevails over conflicting statutes. **Leavers v. Canton,** 1 Ohio St 2d 33 (1964), **Dies Electric Co. v. Akron**, 62 Ohio St. 2d 232 (1980).

Where a non-charter municipality exercises its powers of local self-government in a manner inconsistent with statutory provisions, the validity of the local action depends upon whether the non-charter municipality is engaged in an exercise of "substantive" or "procedural" powers of local self-government. Where a non-charter municipality's exercise of such local powers deals with procedural matters (such as procedures in the passage of ordinances or procedures to be followed in laying-off employees), the state law prevails**. Morris v. Roseman**, 162 Ohio St. 447 (1954), **Treska v. Truble**, 4 Ohio St. 3d 150 (1983). When the powers exercised by a non-charter municipality are "substantive" powers of local self-government (such as pay during a military leave of absence), the provisions of an ordinance will prevail over the state laws. **Benevolent Association v. Parma,** 61 Ohio St. 2d 375 (1980).

Sec. 11.06 Police Powers

Municipalities (charter and non-charter) are granted authority to adopt police, sanitary and other similar regulations as are not in conflict with general laws. Therefore, municipalities and the state exercise police powers concurrently, but the local exercise of a police power by a municipality is invalid where it is in conflict with a general law. A conflict exists where: 1) the municipality permits or licenses that which the state prohibits, or 2) the state permits or licenses that which the municipality prohibits. **Struthers v. Sokol**, 108 Ohio St. 263 (1923); **Auxter v. Toledo**, 173 Ohio St. 444 (1962); **Anderson v. Brown**, 13 Ohio St. 2d 53 (1968).

A conflict does not exist: 1) where certain acts are made unlawful by the municipality are not covered by the general law. **Struthers v. Sokol,** above; 2) where certain acts are omitted in an ordinance but covered by the general law. **Struthers v. Sokol,** above; 3) because there is a difference in penalties, **Struthers v. Sokol**, above; **Dayton v. Miller**, 154 Ohio St. 500 (1951); **Toledo v. Best,** 172 Ohio St. 371 (1961), except that in a criminal offense there is a conflict where there is a difference in the degree of the penalty, *i.e.*, felony vs. misdemeanor. **Cleveland v. Betts**, 168 Ohio St. 386 (1958).

Sec. 11.07 Conflict v. Preemption

Preemption of a regulatory field by the state has been held not to be an appropriate doctrine in reviewing the validity of municipal police powers **Cleveland v. Raffa,** 13 Ohio St. 2d 112 (1968). **Fondessy Enterprises v. Oregon,** 23 Ohio St., 3d 213 (1986). Preemption in the intergovernmental relationships of state and municipal government in Ohio has been limited to specific preemption of fields of taxation by an act of the General Assembly. However, the doctrine of implied preemption of a municipal tax if the state levies the same or a similar tax was abrogated in **Cinn. Bell Telephone Co. v. Cincinnati** (1998), 81 O.S. 3d 599. See Sec. 11.171 re: **American Financial Services V. City of Cleveland**, 112 Ohio St. 3d 170

Sec. 11.08 General Law Must Create Conflict

Not all statutes pertaining to municipal police regulations create a conflict. Only *general laws* can create a conflict. An effort by the state to *limit* or *prohibit* the exercise of police power by a municipality is not a general law and does *not* invalidate municipal use of police power due to conflict. When the state exercises its police power by setting forth substantive regulations, a municipal exercise of police power in conflict with the state exercise is invalid. **City of Canton v State of Ohio** (2002) 95 Ohio St. 3d. 149, **Youngstown v. Evans**, 121 Ohio St. 342 (1929); **West Jefferson v. Robinson**, 1 Ohio St. 2d 113 (1965).

POWERS UNDER SECTION 7, ARTICLE XVIII, OHIO CONSTITUTION

Sec. 11.09 Municipal Charter Powers

Section 7, Article XVIII, Ohio Constitution, authorizes any municipality to adopt a charter. This authorization is subject to or limited by **Section 3,** in that 1) the powers dealt with must be "powers of local self-government," and 2) police powers exercised by or under the charter must not conflict with general laws. Powers of local self-government of charter municipalities, are not subject to the substance versus procedure distinction discussed in **Sec. 11.05** herein which is applicable to non-charter municipalities, and in the case of a charter municipality the following powers of local self-government are not subject to control by the state:

1) Structure and organization, *i.e.*, form of government,
2) Procedures used by the municipal corporation,
3) Other substantive powers of local self-government.

> Through the adoption of a charter, municipalities *do not* gain additional police powers, compared to those of non-charter municipalities; however from a practical point of view courts often react more favorably when a charter is involved. The people, through their charter, may impose additional restrictions on the municipality's exercise of: 1) powers of local self-government 2) police powers 3) other powers not covered in this chapter such as the powers of taxation and debt. See **Chapter 12** of this text for a more detailed explanation of municipal charters and the powers derived from charters.

OHIO CONSTITUTIONAL PROVISIONS LIMITING POWERS GRANTED TO MUNICIPALITIES BY ARTICLE XVIII, OHIO CONSTITUTION

Sec. 11.10 Powers of Taxation and Debt

Powers granted to municipalities under **Section 2, 3, and 7** are limited by the power given to the General Assembly to restrict and regulate municipal tax and debt powers under **Section 6 of Article XIII,** and **Section 13 of Article XVIII** of the Constitution. **Section 2, Article XII** limits property taxing powers of state and political subdivisions to 1% of true value without a vote of the people, but allows additional levies: 1) under laws providing for voted levies, or 2) when provided for by a municipal charter.

Sec. 11.11 Laws for Welfare of Employees

Section 34, Article II, Ohio Constitution, provides that laws may be passed fixing and regulating hours of labor, establishing a minimum wage, and providing for the welfare of employees. A 1967 case upheld the validity of a statute creating a statewide police and fire pension fund based on **Section 34 of Article II; Board of Trustees of Pension Fund v. Board of Trustees of Relief Fund,** 12 Ohio St. 2d 105 (1967).

The Ohio Supreme Court has upheld the provisions of the public sector labor law mandating binding arbitration of municipal police and fire labor disputes based on a finding that the statute falls within the General Assembly's authority to enact employee welfare legislation pursuant to Section 34 of Article II, Ohio Constitution**. Rocky River v. State Employment Relations Board**, 43 Ohio St. 3d 1 (1989) (Rocky IV). Also see **Lima v. State of Ohio** and **Akron v. State of Ohio** 122 Ohio St. 3d 155 (6-10-2009; and **American Financial Services Association v. City of Cleveland,** 112 Ohio St. 3d. 170 (11-20-2000).

Sec. 11.12 Courts Excluded from Home Rule Powers

Municipalities have no power, by charter or otherwise, to create courts or appoint judges since that power is vested in the General Assembly by the **Constitution**, **Article IV**. **Cherrington v. Hutsinpiller,** 112 Ohio St. 468 (1925). The General Assembly's power over the courts includes the power to define jurisdiction and to provide for its maintenance. **State ex rel. Ramey v. Davis**, 119 Ohio St. 596 (1929). The General Assembly may limit the time in which an action may be brought and such statutes of limitation prevail over conflicting municipal ordinances. **Akron v. Smith**, 14 Ohio St. 2d 247 (1968).

Sec. 11.13 Merit System

Section 10 of Article XV, Ohio Constitution, requires that appointments in the civil service of cities be made according to merit and fitness. Therefore a charter city may not eliminate civil service, but it is not required to follow the statutes in defining a merit system that meets the requirements of **Section 10, Article XV**. Villages are not required to have civil service by the Constitution; however, statutes have been enacted giving certain village employees tenure subject to removal for specified causes. A village that has adopted a charter may provide for a civil service or merit system under its charter. In **Cincinnati v. Ohio Council 8, American Fedn. of State, County and Mun. Emp.,**

AFL-CIO, 61 Ohio St.3d 658 (1991), the Ohio Supreme Court held that pursuant to **R.C. Chapter 4117**, the provisions of collective bargaining agreements prevail over laws, including municipal charters, except for specifically exempted laws.

Sec. 11.14 Initiative and Referendum Powers

Section 11 of Article II, **Ohio Constitution**, reserves the right of initiative and referendum to the people of each municipality, to be exercised in the manner provided by law. In the case of charter municipalities, "charter law" controls the manner of exercise referred to above. **Bramblette v, Yordy**, 24 Ohio St. 2d 147 (1970).

In the case of non-charter municipalities, "statutory law" controls the manner of exercise referred to above. **Bramblette v. Yordy**, above. Where the charter is silent as to initiative and referendum, the "statutory law" controls the manner of exercise referred to above. **Dubyak v. Kovach**, 164 Ohio St. 247 (1955). A charter municipality may abolish its charter by initiative procedures**. Youngstown v. Craver**, 127 Ohio St. 195 (1933).

Sec. 11.15 Lending Credit and State Assumption of Debt

Section 5, Article VIII, **Ohio Constitution**, prohibits the state from assuming the debts of cities unless created to repel invasion, to suppress insurrection, or to defend the state in war. **Section 6, Article VIII** prohibits loaning the credit of cities to private business entities by municipalities.

The Ohio Supreme Court has upheld efforts by the City of Cleveland to issue special obligation bonds to construct houses for sale to individuals. Efforts were made to assure that fair market values were utilized and that business entities were not subsidized. The Court held that **Section 6 of Article VIII. Ohio Constitution** is not violated where a general welfare public purpose is served, even if individuals (as opposed to business entities) receive assistance. **State ex rel. Tomino v. Brown**, 470 Ohio St. 3d 119 (1989). This is an important case that clearly states governmental activities for public purposes which are not designed to assist business entities do not constitute a lending of aid or credit in violation of **Section 6 of Article VIII**, even though individual persons receive a direct benefit. It extends the reasoning of earlier decisions which have held it is not an unconstitutional lending of credit where a non-profit organization carries out a proper public purpose for a government even if there is an incidental benefit to private business entity. See **Bazell v Cincinnati, Hamilton County v. Cloud, Auditor of State**, 13 Ohio St. 2d 63 (1968)

In **C.I.V.I.C. Group v. Warren**, 88 Ohio St.3d 37 (2000), the Court ruled that "Where a city contributes to the payment for and financing of a residential subdivision development project, the city is taking action 'to raise money for,' and 'loan its credit to, or in aid of,' private corporations in violation of Section 6, Article VIII of the Ohio Constitution. The city's actions do not fall within the exception contained in Section 13, Article VIII of the Ohio Constitution." This case would appear to ignore the issue of incidental benefit discussed above in connection with the Bazell Case. See **Ryan v. Gahanna** 9 Ohio St. 3d 126 (2-1-1984)

Sec. 11.16 Public Purpose

Municipalities may expend tax money and effort paid for from, tax money only for proper public purposes. In fact, the test for municipalities is more restricted than the overall public purpose test since the expenditure of money or effort must for a proper municipal public purpose as opposed to a proper school, county or state public purpose.

Ohio's public purpose test is based solely on case law. The leading Ohio case is **State. ex rel. McClure v Hagerman** (1951),155Ohio St. 320. **Hagerman** establishes that the public purpose doctrine is dynamic and changes with the circumstances. A single broad rule cannot be constructed. Rather, each set of facts must be analyzed individually. In **State. ex rel Gordon, V. Rhodes** (1951), 156 Ohio ST. 81. the Ohio Supreme Court held that a municipal legislative body may determine what is a public purpose and that the courts will not interfere with that determination absent gross abuse of discretion. The Rhodes case involved issuance of revenue bonds for parking garages, which, prior to the time of the case, had been, considered a private business activity rather than a governmental proprietary function.

State, ex rel. Bruestle, v. Rich (1953), 159 Ohio St. 13, is a leading case in the United States with respect to public use versus private use. That case held urban renewal activities to be for a public purpose rather than for a private purpose, even though private interests were incidentally served. The **Bruestle** case represents the liberal view of public use with respect to eminent domain actions.

When viewing the authority to make expenditures of tax money or to provide effort financed by tax money, a municipal official must first determine that the expenditure or effort is for a municipal public purpose, and if so, then must determine that the process and procedures to be used in accomplishing the public purpose do not lend the credit of the municipality in violation of Section 6 of Article VIII, Ohio Constitution.

Sec. 11.17 Important Cases Impacting Home Rule

Sec 11.17.1 **American Financial Services Association v. City of Cleveland**, 112 Ohio St. 3d 170, (11-20-2000) held that Sec 1.63 of the Revised Code was a general law, that provision was in conflict with the Cleveland ordinance, and that the Cleveland ordinance was in violations of the Ohio Constitution. In point of fact, in this authors opinion, RC 1.63 preempted the authority o the city under Section 3 of Article XVIII; but the majority of the court found that RC 1.63 was a general law and in conflict with the Cleveland ordinance. Justice Alice Robie Resnick disagreed as did Justice Pfeifer in separate dissenting Opinions. Generally, preemption is not applicable, so this is an unusual result.

Sec. 11.17.2 C.I.V.I.C **Group v. City of Warren**, 88 Ohio St. 3d 37 held: "Where a city contributes to the payment for and financing of a residential subdivision development project, the city is taking action to raise money for", and "loan its credit to, or in aid of," private corporations in violation of Section 6, Article VIII of the Ohio Constitution. The city's actions do not fall within the exception contained in Section 13, Article VIII of the Ohio Constitution."

Sec. 11.17.3 **Norwood v. Horney**, **Norwood v. Gamble et al.** 110 Ohio St. 3d, 353 (7-26-06). In that case the Ohio Supreme Court held:

1. Although economic factors may be considered in determining whether private property may be appropriated, the fact that the appropriation would provide an economic benefit to the government and community, standing alone, does not satisfy the public use requirement of Section 19, Article I of the Ohio Constitution.

2. The void-for-vagueness doctrine applies to statutes that regulate the use of eminent-domain powers.

3. Courts shall apply heightened scrutiny when reviewing statues that regulate the use of eminent-domain powers.

4. The use of "deteriorating area" as a standard for determining whether private property is subject to appropriation is void for vagueness.

5. The use of the term "deteriorating area" as a standard for taking is unconstitutional because the term inherently incorporates speculation as to the future condition of the property to be appropriated rather than the condition of the property at the time of the taking.

6. The provision in R.C. 163.19 that prohibits a court from enjoining the taking and using of property appropriated by the government after the compensation fo the property has been deposited with the court but prior to appellate review of the taking violates the separation-of-powers doctrine and is therefore unconstitutional.

7. The unconstitutional portion of R.C.163.19 can be severed from the rest of the statute, and, accordingly, the remainder of the statute remains in effect.

Sec. 11.17.4 In the case **Cincinnati v. Baskin**, 112 Ohio St. 3d 279 (10-26-2006) the Ohio Supreme Court held that a City ordinance, which prohibits the possession of any semi automatic rifle with a capacity of more than ten rounds, is not in conflict with R.C. 2923.17 for purposes of Section 3, Article XVIII, Ohio Constitution. This was an unexpected result.

Sec. 11.17.5 The Ohio Supreme Court held that "A public employee alleging employment discrimination need not exhaust the administrative remedy of appeal to a civil service commission before pursing the civil action allowed in R.C. 4112.99. **Dworning v. Euclid**, 2008 Ohio 3318 (7-8-2008).

Sec. 11.17.6 The Ohio Supreme Court found the Clyde ordinance which prohibits licensed handgun owners from carrying concealed handguns in the city parks to be in conflict with the state statutes and therefore unconstitutional under the Ohio Constitution. **Ohio for Concealed Cary v. City of Clyde** 120 Ohio St. 3d 96 (4-09-2008).

Sec. 11.17.7 The Ohio Supreme Court found that the municipal taxing power is one of the "powers of local self-government". **Gesler v. Worthington Income Tax Bd. Of Appeals, 138 Ohio St. 3d 76 (2013)**

MUNICIPAL HOME RULE AND CHARTERS

The ability to carry out functions affected on a daily basis by the fact that cities and villages have or have not adopted a home rule charter pursuant to Article XVIII, Ohio Constitution. Even those municipalities that have adopted a charter discover that they may be disadvantaged in the operations because they have failed to update the charter's provisions.

This article is designed to cover just three areas: (1) To explain, briefly, the event leading to the adoption of the home rule amendment in Ohio; (2) to discuss the basic provisions of that amendment, other than municipal utility powers (since utility powers deserve an article of their own); and (3) the reasons why a charter will really make a difference in the operations of a city or village, as well as why it is essential to review and revise existing charter provisions to get the full benefit of home rule.

PRIOR TO HOME RULE

Dillon's Rule.

Like other states, Ohio's local governments, including municipal corporations, were governed by "Dillion's Rule." 1 Dillon, Municipal Corporations 449 (5th ed. 1911, Ravenna v. Pennsylvania Company (1887), 45 Ohio St. 118. Under Dillon's Rule, a municipal corporation possesses (i) powers that are expressly granted by statute, (ii) powers that may be implied from the express powers, and (iii) powers which are essential to carry out the express powers. Under the early common law, there was no inherent power. Except as to incidental powers such as are essential to the very life of the municipality, the presumption is that the state has granted all it intended to in clear and unmistakable terms. Doubtful claims to power were to be resolved against the exercise of power by the municipal corporation or other unit of local government.

Legislative Charters - Population Classifications.

Early municipal corporations were individually chartered by law by the Ohio General Assembly. Later, the individual charter practice gave way to classifications of municipal corporations by population. In any event, the Ohio General Assembly controlled local municipalities' powers and their structure and forms of government. As would be expected, abuses (political and otherwise) arose, at least in the view of municipal supporters and the people of the state. The Ohio Constitution of 1851 enacted Section 1 of Article XIII providing: "The General Assembly shall pass no special act conferring corporate powers." In addition, Section 6 of Article XIII of the 1851 Ohio Constitution ordained: "The General Assembly shall provide for the organization of cities and incorporated villages, by general law..."

Two cases decided in 1902, State, ex rel. Knisely, v. Jones, 66 Ohio St. 453, and State, ex rel. Attorney General, v. Beacom, 66 Ohio St. 491, set the stage for reform by declaring the municipal statutes that were based upon population classifications to be invalid as special acts.

Since many of the municipal statutes were invalidated by these cases, the Ohio Supreme Court suspended the execution of its order in Beacom for a little more than three months. During that period,

the municipal code of 1902 was adopted by the General Assembly. With extensive amendments, the 1902 municipal code serves as the basis for today's structure of government and procedures for non-charter municipal corporations.

THE HOME RULE AMENDMENT

The Constitutional Convention of 1912 - Adoption of Article XVIII

The second and most far reaching reform was brought about by a constitutional convention that resulted in the adoption of Article XVIII of the Ohio Constitution in 1912. Article XVIII is better known as the "home rule amendment." See Appendix A to this Chapter for the full text of Article XVIII. It is this amendment (amended only slightly over the years) that has persisted for 92 years. The reasons most often attributed for adopting the home rule amendment are:

1. To free municipalities from control by the General Assembly and state officials with respect local affairs (powers of local self-government);

2. To allow the adoption of municipal charters to provide for the structure and organization of the municipal government.

3. To facilitate the ownership and operation of utilities by municipalities.

The scope of this chapter will be to discuss the powers flowing from Sections 1, 2, 3, 4, 5, 6, 7 and 8 of Article XVIII. Those sections provide for (i) limited classifications into cities and villages (at the 5,000 population mark, the only population-based classification that is permitted), (ii) powers of local self-government, (iii) police power, and (iv) utility powers.

Home Rule Powers Self-Executing.

Ohio's home rule powers are self-executing and do not require implementation by statute or by adoption of a Charter. Perrysburg v Ridgway (1923), 108 Ohio St. 245.

POWERS OF LOCAL SELF-GOVERNMENT

Article XVIII. Section 3.

Article XVIII. Section 3 contains three clauses:

1. The power to exercise all powers of local self-government.

2. The power to exercise police powers concurrently with the state.

3. The conflict clause, which has consistently been held to modify only clause 2, the grant of police powers.

Therefore, clause 1 has generally been held to stand alone and is not modified by clause 3 (the conflict clause).

The Section 2-3 vs. the Section 3-7 Analysis: Procedural Powers of Local Self-Government vs. Substantive Powers of Local Government.

Section 2 of Article XVIII provides that "general laws shall be passed to provide for the incorporation and government of cities and villages..." Section 3 grants municipalities authority "to exercise all powers of local self-government...", Section 7 authorized the adoption of municipal charters and the exercise thereunder of local self-government powers. To reconcile these provisions the Ohio Supreme Court has adopted a charter vs. non-charter dichotomy with respect to powers of local self-government (clause 1 in §3.01 above). It may be summarized this way:

1) If a non-charter municipality is involved, you look to Section 2 of Article XVIII and the statutes enacted by the General Assembly with respect to "the government" of the municipality. In other words, powers of local self-government which are procedural (form or structure of government and procedures) are controlled by Sections 2 and 3 of Article XVIII and the state law prevails as to those procedural powers of local self-government granted to non-charter municipalities by Section 3 of Article XVIII. See Morris v. Roseman (1954), 162 Ohio St. 447.

2) On the other hand, if a charter municipality is involved, it is the charter adopted pursuant to Section 7 of Article XVIII, rather than he statutes, that prevails with respect to procedural power of local self-government (structure and form of government and procedures). See Morris v. Roseman (1954), 162 Ohio St. 447.

3) If a substantive power of local self-government is involved (not a matter of procedure or form or structure of government), then regardless of whether a charter or non-charter municipality is involved, the municipal exercise of "substantive" powers of local self-government prevails over the state laws. See Benevolent Assn. v. Parma (1980), 61 Ohio St. 2d 375.

4) Of course, if there is no collision between a municipality's exercise of procedural powers of local self-government and the state law, the non-charter municipality may exercise its procedural powers of local self-government as determined locally.

The Statewide Concern Doctrine.

A threshold question is whether the municipal exercise of power is a power of local self-government or a matter of statewide concern. Generally speaking, if the matter involved does not have extra-territorial impact, then the power is a power of local self-government. If there is extra-territorial impact, then a court will look to see if the municipality or the state has the predominant interest, and (i) will decide the matter to be a power of local self-government if the municipality's interests are predominate or (ii) determine the matter to be a matter of statewide concern if the state's interests are predominate. In other words, if there is extra-territorial impact, then the court will apply a balancing test, balancing the interests of the municipality against the interests of the state.

Examples of Powers of Local Self-Government.

The following are examples of matters the courts have held to be powers of local self-government under Section 3 of Article XVIII, Ohio Constitution" (i) power to tax, Angell v. Toledo (1950), 153 Ohio St. 179; (ii) power to incur debt State, ex rel. Gordon v. Rhodes (1952), 158 Ohio St. 129; (iii)

urban renewal, including eminent domain, State, ex rel. Bruestle, v. Rich (1953), 159 Ohio St. 13; and (iv) many others, including structure and form of government, Fitzgerald v. Cleveland (1913), 88 Ohio St. 338, and salaries, Mansfield v. Endly (1931), 38 Ohio App. 528. See Chapter 5 of the text of Gotherman and Babbit, Ohio Municipal Law (2nd ed. 1975).

Examples of Statewide Concern.

The following are examples of matters the courts have held to be matters of statewide concern: (i) sewage treatment, Bucyrus v. Dept. of Health (1929), 120 Ohio St. 426, (ii) detachment of territory, Beachwood v. Board of Elections (1958), 167 Ohio St. 369, (iii) cross-country electric transmission lines, Cleveland Electric Illuminating Co. v. Painesville (1968), 15 Ohio St. 2d 125; (iv) prevailing wage law, State, ex rel Evans v. Moore (1982), 69 Ohio St. 2d 88; and (v) labor relations generally, Kettering v. State Emp. Relations Bd. (1986), 26 Ohio St. 3d 50.

The Rocky River Case.

Following Evans the Ohio Supreme Court held that the state law enacted with respect to public sector labor relations, as it pertained to the definition of "supervisors", was a matter of statewide concern and, therefore, a local ordinance defining supervisors for collective bargaining purposes was not a valid exercise of powers of local self-government under Section 3 of Article XVIII of the Ohio Constitution. Kettering v. State Emp. Relations Bd. (1986), 26 Ohio St. 3d 50. Municipalities then won a temporary victory with respect to the collective bargaining law when the Supreme Court held that the establishment of compensation was a power of local self-government under Section 3 of Article XVIII of the Ohio Constitution and that a provision of the state public sector labor law that required binding arbitration for municipal safety employee compensation was unconstitutional. See Rocky River v. State Emp. Relations Bd. (1988), 39 Ohio St. 3d 196 ("Rocky I"). A motion for rehearing was denied on December 13, 1988 ("Rocky II"). A motion to reconsider Rocky II decision to deny a rehearing was granted on February 10, 1989 ("Rocky III"). May 10, 1989, the Ohio Supreme Court reversed Rocky I and held that the state law requiring mandatory and binding arbitration is valid and that the state law prevails over an exercise of powers of local self-government, since the statutory provision is within the General Assembly's authority to enact employee welfare legislation pursuant to Section 34, Article II, Ohio Constitution. See Rocky River v. State-Emp. Relations Bd. (1989), 43 Ohio St. 3d I ("Rocky IV"). All decisions, Rocky 1, Rocky II, Rocky III and Rocky IV were decided by a 4 to 3 vote of the Court. Between the decisions in Rocky I and Rocky II and Rocky III and Rocky IV, an election occurred and the Court's composition changed by one member. See §7.02 for more concerning Rocky IV.

The Municipal Residence Requirement Case

The cases of Lima v. State of Ohio and Akron v. State of Ohio 122 Ohio St. 3d 155 (6-10-2009) extended the Rocky River decision to include the residency of municipal employees, so that the state statutes have limited the ability to require that employees be resident of the city or village.

POLICE POWER

Police Power.

Article XVIII, Section 3. Ohio Constitution grants municipal corporations the right to exercise police powers concurrently with the state so long as the exercise of the local police power does not conflict with the state's exercise of its police powers. See Struthers v. Sokol (1923), 108 Ohio St. 263; Fondessy Enterprises, Inc. v. Oregon (1986). 23 Ohio St. 3d 213.

Conflict Test.

In. Struthers v. Sokol, the Court held that the usual test for conflict is a matter of "determining...whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." 108 Ohio St. 263, syl. para. 2. See also the following cases with respect to the conflict test: Auxter v. Toledo (1962). 173 Ohio St. 444; Cleveland v. Betts (1958), 168 Ohio St. 386; Toledo v. Best (1961), 172 Oh St. 371; Cleveland v.. Raffa (1968), 13 Ohio St. 2d 112; and Fondessy Enterprises, Inc. v, Oregon (1986), 23 Ohio St. 3d 213.

General Laws Must Create the Conflict.

Only general laws may create a conflict under Section 3 of Article XVIII, Ohio Constitution. Youngstown v. Evans (1929), 121 Ohio St. 342; West Jefferson v. Robinson (1965), 1 Ohio St. 2d 113. A law that purports to authorize or prohibit the exercise of police power is not a general law. To be a general law that will be recognized to create a conflict under Section 3 of Article XVIII, the state law must be a substantive exercise of the state's police power. The most recent and a leading case is City of Canton v State of Ohio (2002) 95 Ohio St. 3d 149.

MUNICIPAL CHARTERS - PROCESS

Constitutional Power to Adopt a Charter.

Section 7 of Article XVIII of the Ohio Constitution is of primary interest to those interested in charter government. It simply states that a municipality may adopt and amend a charter for its government, and subject to the provisions of Section 3 of Article XVIII of the Constitution, may exercise under the charter all powers of local self- government.

Action to Initiate a Charter.

Procedure for the adoption of a charter involves two steps. The first step is the placing of the question of whether or not a commission shall be chosen to frame a charter on the ballot. This is done by either a two-thirds vote of council, or the council must submit the issue upon a petition of ten percent of the electors.

Election to Select a Commission.

The question of selecting a charter commission is to be submitted at the next regular municipal election if one occurs not less than sixty nor more than one hundred twenty days after passage of the ordinance; otherwise it is to be submitted at a special election to be called and held within a period of not less than sixty nor more than one hundred twenty days after passage of the ordinance. The ballot is to be non-partisan and provides for voting on the question of whether or not a charter commission is to be chosen, and to provide for the election of fifteen members of the charter commission from the municipality at large. While the electors vote on both the question of wether or not a commission shall be chosen and for members of the charter commission, the members of the charter commission are

elected only if the vote on the question of whether a charter commission is to be chosen is favorable to the selection of a commission.

Election to Adopt a Charter.

The second step, after the work of the charter commission is completed and it has prepared a legal document known as the proposed charter, is the submission of the issue of whether or not the particular charter proposed by the charter commission shall be adopted. The election on the adoption of the charter will be held at a date fixed by the charter commission which may be a general, primary or a special election, but it must be within one year after the election of the charter commission.

NATURE OF CHARTER

The Charter as the Basic Law of the Municipality.

What is the nature of a charter? At this point, it is well to stop to consider just what a charter is and what it should attempt to do. The charter document is a legal instrument which may be compared roughly to a constitution. It will be the framework for the municipal government of the city for many years to come.

Charter Specifies the Form of Government.

The charter will contain a form of government, whether it be a strong mayor, weak mayor, city manager or some other form of government. It usually does not attempt to solve all the detailed administrative or legislative policy matters forever; rather, it usually leaves a great deal of policy making power to council and gives it a degree of flexibility in meeting the needs of the municipality as they arise. A good charter, like a constitution, does not attempt to cover all situations specifically; rather, charters are usually a statement of fundamentals.

The Charter as a Means of Local Self-Determination.

Charters may be drafted to strengthen the democratic processes and to give a more efficient government than is available under the statutory form. Under Article XVIII, Section 3 of the Ohio Constitution, all municipalities have all powers of local self-government. So, we see that at least in theory that a charter does not confer power or enlarge the scope of municipal powers; rather, it distributes powers among the various elected and appointed officials and bodies and between the city officials and the citizens. In this respect, a charter should be more responsive to local needs and wants than the statutory form of government, since the citizens will provide for the distribution of municipal powers as they see fit, rather than relying upon the General Assembly as is the case under the general statutory form of government. As pointed out in Section 3.02 of the outline, a charter is necessary to have access to procedural powers of local self-government, i.e. relating to procedures, structure and form of government.

Charter as Expanding or Restricting Home Rule Powers.

Even though the theory of charter government is not to enlarge substantive municipal powers, recent court decisions in Ohio appear to confer greater power upon charter municipalities as contrasted with non-charter cities and villages. However, a charter may expressly restrict municipal powers, and often is used for that purpose. Some scholars believe that all home rule powers under Article XVIII should exist without respect to the presence of charter. Under that view, a charter is purely an instrument of limitation. This author's view is not so naive as to believe that our courts will subscribe to such a view, and therefore, this author believes that as the cases are decided over time, the charter will continue to be

a source of expanded home rule powers.

WHY A CHARTER

The Size Issue.

Often village officials do not consider a charter because they believe: the village is too small; they like to keep village government simple; it will cost too much to have a charter; they don't want to change the structure of government; a charter means political parties; and many other ideas which are not accurate. Let's examine some of the reasons village officials don't consider a charter.

Population size has nothing to do with efficient operations. In many respects the smaller villages suffer because of a lack of clean-cut authority and lines of demarcation. The village statutory plan of government is full of unanswered questions. If the village is large enough to undertake municipal functions, then it needs a structure of government that will clear up what powers the mayor and council have and who exercises them. The charter can decide the questions of a separate council clerk, fiscal officer (including both the functions of chief financial manager and treasurer.) No doubt population size will control the structure required, but to be sure, a charter can be clearer and more flexible than laws passed by 99 House members and 33 Senators in Columbus.

Keep the village government simple. That is exactly what a charter can do. Ask any village solicitor whether the statutory law governing villages is clear and simple. I believe they will agree with this author that the application of "village law" is a murky matter, full of uncertainties. A charter can fix that problem. By the way, if the people don't like the charter they can change by a simple vote. Compare that process to convincing the General Assembly to make a change in the law.

The argument is often made that it will not cost too much to have a charter. I submit that you can't afford to be without a charter. Money mishandled, programs not completed, personal battles among the officials without clear answers to their respective responsibilities result in ineffective governmental operations and citizen dissatisfaction. The cost of a charter is small compared to inefficiency. You get what you pay for.

If you don't want to change the structure of government, you don't have to; but you can tweak it so that it is more responsive to the citizens, so that it answers the question of who is clearly responsible for the functions to be performed and to make sure that your officials have the ability to take the simplest, most effective course of action. A charter can give you the necessary guide posts to cause the current or slightly modified structure to function better.

When you have a charter you have the choice as to whether you have a partisan or non-partisan primary and election to choose municipal officials. Regardless of what a charter provides, political parties exist. The nature of the municipality will decide if you have one or more active political parties at the municipal level.

One final comment, statutory plan cities would be better off if they adopted a charter, even if they don't change any part of their government structure. Court decisions often, no, nearly always treat municipal powers better if a charter is involved. Besides the people will control their government since they, not the General Assembly, will have final decisions on many issues by way of the charter and the

ability to amend the charter.

WHY CHARTER REVIEW AND REVISION

It's tempting to answer the question of "why do we need charter review and revisions" with a simple statement that "things change," and to stop right there. If you operate a computer, you must update your programs to achieve the best results. If you are operating your city or village with a 1918 charter you probably have some serious problems. But the charter can be of a much later vintage and need revisions.

Most charters did not entirely reinvent the municipal "wheel" when the charter was adopted. For example, many charters simply took the statutory procedures and installed them as a part of the charter. Later the General Assembly revised the procedures to ease restrictions and to facilitate more efficient government. At an earliler time statutory plan cities and villages were required to read ordinances and resolutions in full three times unless the rule was dispensed with. The current state law allows for readings by title only. A big time saver for legislative bodies. Another example is when the nature of the municipality changes. It may well be that because of the changed characteristics of the community, the people will be better served by at-large rather than ward council members or visa versa Things change with the passage of time, and so should charters.

Many charters provide for a formal charter review or revision commission or committee to be appointed from time to time (every five to ten years for example). The Constitution allows either the people or the legislative authority to place charter recommendations on the ballot for their approval or rejection.

Often the mayor and/or the council will appoint a committee to review and recommend changes in the charter either where the charter does not call for a review commission, or as an additional review. Sometimes a particular area of the charter, such as civil service is singled out for review. This author has worked with all the possible alternatives for charter review. These reviews are just as good as the persons who serve as the reviewers. All can be extremely useful. Occasionally a review body will recommend truly unusual changes. If the review body is formalized through the charter, it may be that the charter directs that "recommendations shall be placed on the ballot" or that recommendations are merely made to the council and that body decides whether to place the issue on the ballot.

This author had the privilege of representing the City of Bedford in the case of State ex.re. Bedford vs. Cuyahoga Cty. Bd. Of Elections, 62 Ohio St. 3d 17, 577 N.E. 2d 645, (1991). Bedford's review commission recommended that the city manager form of government be changed to a mayor/council form. The city council decided to approach the issue on a two-step basis. They proposed to first place the following question on the ballot: "Should subsequent charter recommendations be made for the submission to the voters which change the Charter of the City of Bedford, Ohio to a Mayor-Council Form of Government from a Manager-Council form of government? The Board of Elections refused to place the issue on the ballot. The City of Bedford filed a mandamus action to compel an advisory election on an amendment to the Bedford Charter. The Supreme Court of Ohio allowed the Writ of Mandamus since it agreed with Bedford that the council had the power to call the advisory election without a specific enabling charter provision or statute because—"municipal elections on matters of local concern are within the powers of local self-government conferred by Section 3, Article XVIII of the Ohio Constitution, and — these powers are self-executing." The

election was held and the issue passed. The city then proceeded to draft specific amendments to the charter to change from a City Manager Form to a Mayor-Council form of government. Those amendments were placed before the voters and they failed to pass. Local self-government at its best.

CONCLUSION

The argument set forth in this article is twofold:

(1) Cities and villages who have not adopted a charter are missing out on the ability to have local autonomy, and (2) cities and villages that have adopted a charter need to review and revise, if desirable, the charter document to keep current with the municipality's needs.

CHAPTER 12

MUNICIPAL CHARTERS

BACKGROUND

PROCEDURE TO ADOPT A CHARTER

CHARACTERISTICS OF A CHARTER

CHARTER FORMS OF GOVERNMENT

OTHER CONSIDERATIONS IN DRAFTING A CHARTER

COMMON MISCONCEPTIONS ABOUT CHARTERS

FINAL CONSIDERATIONS ABOUT CHARTER ADOPTION

CHAPTER 12

MUNICIPAL CHARTERS - CONSIDERATIONS FOR THE SELECTION OF A CHARTER COMMISSION AND THE ADOPTION OF A CHARTER

BACKGROUND

Sec. 12.01 General Statutory Plans of Government

Before discussing considerations that may contribute to the decision of whether or not the question should be submitted to the voters to choose a charter commission, it is necessary to understand the existing law pertaining to the organization and government of municipal corporations. The **Ohio Constitution**, **Article XVIII,** provides that the General Assembly shall provide general laws for the organization of municipal corporations.

Title 7 of the Ohio Revised Code sets forth a general statutory plan of government for cities and another for villages that do not adopt a charter or do not choose one of the optional forms to be discussed later. Statutes for the organization of cities are different from those providing for the organization of villages.

See **Chapter 10** of this publication for a more complete explanation of the general statutory plans of government.

Sec. 12.02 Optional or Special Statutory Plans of Government

The Constitution also permits the General Assembly to provide optional statutory plans which may be utilized upon a vote of the electors. **Chapter 705 of the Ohio Revised Code** provides three such optional plans:

A) City Manager Plan

B) Federal Plan, or a stronger mayor form of government

C) Commission Plan

The same disadvantage remains in these optional statutory plans as in the case of the general statutory plan for cities and villages; that is, they are inflexible. They cannot be adjusted for the size of the city nor may they be tailored due to the peculiar economic, political or social needs of the community. They must be amended by action of the General Assembly and cannot be amended by the electors of the municipality so as to affect only the form of government in that particular city. Currently there are no optional or special statutory plans in use in Ohio.

Sec. 12.03 Constitutional Power to Adopt a Charter

Section 7 of Article XVIII of the **Ohio Constitution** is of primary interest to those interested in charter government. It simply states that a municipality may adopt and amend a charter for its government and, subject to the provisions of **Section 3 of Article XVIII** of the Constitution, may exercise under the charter all powers of local self-government.

PROCEDURE TO ADOPT A CHARTER

Sec. 12.04 Action to Initiate a Charter

The procedure for the adoption of a charter involves two steps. The first step is the placing of the question of whether or not a commission shall be chosen to frame a charter on the ballot. This is done by either a two-thirds vote of council, or the council must submit the issue upon a petition of ten percent of the electors.

Sec. 12.05 Election to Select a Commission

The question of selecting a charter commission is to be submitted at the next regular municipal election if one occurs not less than sixty nor more than one hundred twenty days after passage of the ordinance; otherwise, it is to be submitted at a special election to be called and held within a period of not less than sixty nor more than one hundred twenty days after passage of the ordinance. The ballot is to be non-partisan and provides for voting on the question of whether or not a charter commission is to be chosen, and to provide for the election of fifteen members of the charter commission from the municipality at large. While the electors vote on both the question of whether or not a commission shall be chosen and for members of the charter commission, the members of the charter commission are elected only if the vote on the question of whether a charter commission is to be chosen is favorable to the selection of a commission.

Sec. 12.06 Election to Adopt a Charter

The second step, after the work of the charter commission is completed and they have prepared a legal document known as the proposed charter, is the submission of the issue of whether or not the particular charter proposed by the charter commission shall be adopted. The election on the adoption of the charter will be held at a date fixed by the charter commission which may be a general, primary or a special election, but it must be within one year after the election of the charter commission.

CHARACTERISTICS OF A CHARTER

Sec. 12.07 The Charter as the Basic Law of the Municipality

What is the nature of a charter? At this point it is well to stop to consider just what a charter is and what it should attempt to do. The charter document is a legal instrument which may be compared roughly to a constitution. It will be the framework for the municipal government of the city or village for many years to come.

Sec. 12.08 Charter Specifies the Form of Government

The charter will contain a form of government, whether it be a strong mayor, weak mayor, city manager or some other form of government. It usually does not attempt to solve all the detailed administrative policy matters forever, rather it usually leaves a great deal of policy-making power to council and gives them a degree of flexibility in meeting the needs of the municipality as they arise. A good charter, like a constitution, does not attempt to cover all situations specifically. Rather charters are usually statements of fundamentals.

Sec. 12.09 The Charter as a Means of Local Self-Determination

Charters may be drafted to strengthen the democratic processes and to give a more efficient government than is available under the statutory form. Under **Article XVIII, Section 3** of the **Ohio Constitution** all municipalities have all powers of local self government. So, at least in theory a charter does not confer power or enlarge the scope of municipal powers, rather it distributes powers among the various elected and appointed officials and bodies and between the city officials and the citizens. In this respect a charter should be more responsive to local needs and wants than the statutory form of government since the citizens will provide for the distribution of municipal power as they see fit, rather than relying upon the General Assembly as is the case under the general statutory form of government.

Sec. 12.10 Charter as Expanding Home Rule Powers

Even though the theory of charter government is not to enlarge municipal powers, recent court decisions in Ohio confer greater power upon charter municipalities as contrasted with non-charter cities and villages. (See **Chapter 11** of this publication.)

CHARTER FORMS OF GOVERNMENT

Sec. 12.11 Determination of Form of Government under Charter

One of the most important considerations of a charter commission is the selection of the form of government. The commission, composed of residents and electors of the municipality, are in the best possible position to weigh local political, social and economic values and then shape them into a structure of municipal government which will meet the needs of your community. The form of government under a charter may be tailored to meet the particular political, social and economic needs of the community. It is flexible and can be changed as the needs of your municipality change. Under the statutory forms of government, it is necessary to convince members of the General Assembly that a particular change, even though it may affect the community differently than other non-charter municipalities, is good for all non-charter municipalities in the state.

Sec. 12.12 Alternative Forms of Government Available

There are usually four standard forms of government from which the commission would choose:

A) Strong mayor-council form of government.
B) Weak mayor-council form of government.

C) City manager form of government.
D) Commission plan.

Of course, modifications of these standard plans to suit local conditions may be incorporated in a charter. That is the function of the charter commission.

Sec. 12.13 Strong Mayor Form

The use of the word "strong mayor" depicts the power situation of the mayor's position and not the personal traits of the individual holding the position. The mayor is usually elected and usually appoints department heads and members of boards and commissions without the council concurring in the appointments. Another usual attribute of a strong mayor form of government is the fact that the mayor is granted veto power. Perhaps the most attractive feature of the strong mayor form lies in the fact that with only a few elected officials (the mayor and council), responsibility for the municipality's operations is pinpointed to a small number of individuals.

Sec. 12.14 Weak Mayor or Split Executive Form

Under a weak mayor form of government the mayor is elected; however, so are other executive officers, such as the law director, auditor and treasurer. Often under the weak mayor form, the mayor's appointments to boards and commissions must be confirmed by the council, or the appointments may be made by the council in the first instance. The mayor is not given the veto power in a weak mayor form.

Proponents argue that by having several separately elected administrative officials, a system of checks and balances is maintained and that an undue concentration of power is avoided.

Sec. 12.15 City Manager Plan

Under the manager plan, the council is the primary policy body. Council appoints the manager as the executive head of the municipality. The manager usually serves at the pleasure of council. The manager usually appoints major department heads such as the director of law, finance, service and safety; however, it is not uncommon for a charter to provide that council is the appointing authority for boards and commissions under the manager form, or that some department heads appointed by the manager require council approval. Of course, the manager does not vote upon matters coming before the council and is not given legislative veto power.

The president of council is almost always elected by the council from its membership and is usually given the title "Mayor" and serves as mayor for ceremonial purposes. The argument in support of the manager plan stresses the professional qualifications of the manager and the increased efficiency that is available under the plan, at least in theory.

Sec. 12.16 Commission Plan

The commission plan is presently not in use by municipalities in Ohio. Under the commission plan, the number of members or commissioners is usually limited to three to five. The city commission is the legislative body of the city, but each commissioner is also given the responsibility for directly administering

a particular city department (commissioner of public works, commissioner of police or fire, etc.).

While the job of administering individual departments is given to a particular member of the commission, the overall responsibility for the conduct of city affairs rests with the commission as a whole. Under the commission plan, both administrative and legislative responsibilities are merged under one group of officials. Ohio has not used this plan extensively, although it has been used in the southern part of the United States. But even there the trend is away from the commission form of government. The County Commissioners and Township Trustees are examples of a commission plan as modified and used in Ohio.

Sec. 12.17 The Trend in Charter Municipalities

Charter commissions and citizens interested in charters are often interested in the forms which are being followed by the Ohio municipalities adopting charters. It is the author's opinion that the trend is away from the weak mayor or split executive form of government, such as the one provided for general statutory plan cities, and toward either the strong mayor form or the manager plan.

OTHER CONSIDERATIONS IN DRAFTING A CHARTER

Sec. 12.18 Additional Safeguards for Citizens may be Provided

Additional safeguards and limitations may be placed upon municipal officials through a charter, if circumstances require. Tax and debt limitations can be liberalized or made more restrictive than presently exist.

Sec. 12.19 Procedural Matters may be Made More Efficient

Civil service may be simplified and made more effective under a charter. Election procedures may be changed to provide for nonpartisan elections, or partisan elections may be retained.

The number of council members may be increased or decreased. Council members may be elected from wards or at-large, or there can be a combination of at-large and ward members.

The procedure for enacting and publishing ordinances may be modified. Procedures which differ from the state statutes in regard to initiative and referendum may be provided. For example:

A) The number of signatures may be changed.

B) Presently, elections on ordinances initiated or subject to referendum may be voted only at general elections. This often delays important decisions. A charter may authorize such elections at a primary, at a general election, or at
a special election.

C) Councils of non-charter municipalities presently do not have the power to submit ordinances to a vote on their own initiatives, except tax levies and bond issues. Under a charter, such a procedure can be authorized.

D) Assessment procedures which differ from and are less complex than those contained in the general

statutes may be provided.

COMMON MISCONCEPTIONS ABOUT CHARTER

Sec. 12.20 Common Misconceptions

Municipal officials may be curious about the experiences of other communities in regard to anti-charter arguments, or what could be referred to as common misconceptions about charters. Officials may hear that a charter automatically means a manager form of government. This is simply not so. The commission elected by the voters will eventually decide upon either a mayor-council, manager, or commission form of government, or some modified form, such as Mayor-Administrator-Council form of government.

Sec. 12.21 The Anti-Civil Service Argument

Groups of city employees have feared that their status under civil service will be jeopardized. Again this is a misconception. The Ohio Constitution requires all cities to have a merit system. A charter may simplify procedures and make the civil service system function more effectively, but it cannot and will not abolish civil service.

Sec. 12.22 The Ins vs. The Outs Argument

Other municipalities have heard the claim that the charter is an attempt by the party that is out to get into office, or that it is a means by which business or labor interests hope to take over city hall. If the composition of the commission is balanced to represent various interests of the community, including civic, business, labor and political leaders, such a claim is not likely to be true.

Sec. 12.23 The Cost and No Repeal Arguments

Some opponents of charters have claimed that once a charter is adopted it is costly to change and there is no way to get rid of it. An election to amend a charter is no more costly than other elections, and if amendments are submitted at a primary or general election, the additional costs are slight. Furthermore, the Ohio Supreme Court has ruled that municipal charters may be repealed through an election on the issue to abolish the charter.

FINAL CONSIDERATIONS ABOUT CHARTER ADOPTION

Sec. 12.24 The Charter as a Means to Local Flexibility

There are many factors that could be discussed relating to charters. One important point to remember is the fact that whether a charter commission or a charter is adopted is a matter of local determination. The purpose of **Article XVIII, Section 7** is to permit local citizens to provide their own form of government and their own procedures which meet their approval and meet their needs in a manner that may be different from those provided under the state laws.

The chief advantage of a municipal charter is the fact that it is flexible. It is flexible in that it may be amended from time to time as circumstances and the values of the community change. It is certainly more

flexible than the state statutes since changes are made upon a vote of the electors of the municipality. Changes need not come before the members of the General Assembly who represent other districts whose problems are not necessarily the same nor are their opinions and values closely oriented to your community's needs.

Sec. 12.25 Charter Adoption - A Local Decision

Whether or not a charter is to be adopted is a decision that deserves the careful attention of all leaders in each community. A well-balanced charter commission represents all points of view within the community, and a carefully drafted charter document can produce an organization of municipal government for your city or village that is far superior to that contained in the state law. However, if the decisions contained in the charter and if the procedures and language to implement those decisions are poorly formed, a charter may provide less effective government than the municipality may now enjoy. The decision obviously remains with the citizens and leaders of each community to decide the course of action to be taken.

TABLES

Table A: Ohio Municipalities with Charters

Municipality	County	2010 Census	Year
Akron	Summit	199110	1918
Amberley	Hamilton	3585	1954
Archbold	Fulton	4346	1997
Ashland	Ashland	20362	1914
Ashtabula	Ashtabula	19124	1914
Aurora	Portage	15548	1959
Avon	Lorain	21193	1961
Avon Lake	Lorain	22581	1951
Barberton	Summit	26550	1973
Bay Village	Cuyahoga	15651	1949
Beachwood	Cuyahoga	11953	1927
Beavercreek	Greene	45193	1981
Bedford	Cuyahoga	13074	1930
Bedford Hts	Cuyahoga	10751	1958
Bellbrook	Greene	6943	1971
Berea	Cuyahoga	19093	1960
Bergholz	Jefferson	664	
Bexley	Franklin	13057	1931
Blanchester	Clinton	4243	1982
Blue Ash	Hamilton	12114	1961
Bowling Green	Wood	30028	1972
Brecksville	Cuyahoga	13656	1956
Broadview Hts	Cuyahoga	19400	1961
Brook Park	Cuyahoga	19212	1966
Brooklyn	Cuyahoga	11169	1951
Brooklyn Hts	Cuyahoga	1543	1995
Brookville	Montgomery	5884	1978
Brunswick	Medina	34255	1974
Bryan	Williams	8545	1941
Buckeye Lake	Licking	2746	2003
Campbell	Mahoning	8235	1970
Canal Fulton	Stark	5479	2001
Canal Winchester	Franklin	7101	1995
Canfield	Mahoning	7515	1968
Carlisle	Warren	4915	1987
Castalia	Erie	852	1980
Centerville 45458	Montgomery	23999	1968
Chagrin Falls	Cuyahoga	4113	1962

Chardon	Geauga	5148	1978
Chatfield	Crawford	189	
Cheshire	Gallia	132	
Chesterville	Morrow	228	
Cincinnati	Hamilton	296943	1917
Clayton	Montgomery	13209	1999
Cleveland	Cuyahoga	396815	1913
Cleveland Hts	Cuyahoga	46121	1922
Clifton	Greene	152	
Clyde	Sandusky	6325	1957
Coldwater	Mercer	4427	1999
Columbiana	Columbiana	6384	1971
Columbus	Franklin	787033	1914
Conneaut	Ashtabula	12841	1990
Cortland	Trumbull	7104	1980
Cuyahoga Falls	Summit	49652	1959
Cuyahoga Hts	Cuyahoga	638	1920
Dayton	Montgomery	141527	1913
Deersville	Harrison	79	
Defiance	Defiance	16494	1983
Delaware	Delaware	34753	1951
Dublin	Franklin/Delaware	41751	1979
East Cleveland	Cuyahoga	17843	1916
East Palestine	Columbiana	4721	1990
Eastlake	Lake	18577	1953
Eaton	Preble	8407	1961
Elyria	Lorain	54533	1965
Englewood	Montgomery	13465	1970
Euclid	Cuyahoga	48920	1951
Evendale	Hamilton	2767	1952
Fairborn	Greene	32352	1946
Fairfield	Butler	42510	1979
Fairlawn	Summit	7437	1971
Fairview Park	Cuyahoga	16826	1958
Forest Park	Hamilton	18720	1968
Fostoria	Hancock/Seneca/Wood	13441	2007
Franklin	Warren	11771	1984
Gahanna	Franklin	33248	1961
Gallipolis	Gallia	3641	1917
Garfield Hts	Cuyahoga	28849	1956
Gates Mills	Cuyahoga	2270	1972
Geneva	Ashtabula	6215	1957
Germantown	Montgomery	5547	1976

Glenwillow	Cuyahoga	923	1958
Golf Manor	Hamilton	3611	1947
Grafton	Lorain	2634	1967
Grandview Hts	Franklin	6536	1931
Granville	Licking	3500	1964
Green	Summit	25699	1992
Greenhills	Hamilton	3615	1988
Grove City	Franklin	35575	1958
Groveport	Franklin	5363	1990
Hamilton	Butler	62477	1926
Harrison	Hamilton	9897	1981
Harrod	Allen	417	
Heath	Licking	10310	1964
Higginsport	Brown	251	
Highland Hills	Cuyahoga	1130	1966
Highland Hts	Cuyahoga	8345	1991
Hilliard	Franklin	28435	1963
Holland	Lucas	1764	1983
Huber Heights	Montgomery	38101	1983
Hudson	Summit	22262	1957
Hunting Valley	Cuyahoga	705	1968
Huron	Erie	7149	1960
Independence	Cuyahoga	7133	1958
Indian Hill	Hamilton	5785	1941
Ironton	Lawrence	11129	1980
Johnstown	Licking	4632	1997
Kent	Portage	28904	1963
Kettering	Montgomery	56163	1955
Kirtland	Lake	6866	1970
Lakewood	Cuyahoga	52131	1913
Lebanon	Warren	20033	1960
Lexington	Richland	4822	1976
Lima	Allen	38771	1920
Louisville	Stark	9186	1960
Loveland	Clermont/Hamilton/	12081	1961
Lyndhurst	Cuyahoga	14001	1951
Macedonia	Summit	11188	1971
Madeira	Hamilton	8726	1959
Mansfield	Richland	47821	1982
Maple Hts	Cuyahoga	23138	1931
Marshallville	Wayne	756	
Marysville	Union	22094	1960
Mason	Warren	30712	1969

Maumee	Lucas	14286	1951
Mayfield	Cuyahoga	3460	1974
Mayfield Hts	Cuyahoga	19155	1951
McArthur	Vinton	1701	
Medina	Medina	26678	1952
Mentor	Lake	47159	1960
Mentor-On-Lake	Lake	7443	1966
Miamisburg	Montgomery	20181	1966
Middleburg Hts	Cuyahoga	15946	1961
Middletown	Butler	48694	1913
Midway	Madison	322	
Milford	Clermont	6709	1970
Minerva	Stark	3720	1979
Mogadore	Portage/Summit	3853	1964
Monroe	Butler/Warren	12442	1974
Montgomery	Hamilton	10251	1970
Montpelier	Williams	4072	1995
Moraine	Montgomery	6307	1966
Moreland Hills	Cuyahoga	3320	1979
Munroe Falls	Summit	5012	1976
Murray City	Hocking	449	
N Canton	Stark	17488	1960
N College Hill	Hamilton	9397	2006
N Olmsted	Cuyahoga	32718	1959
N Ridgeville	Lorain	29465	1961
N Royalton	Cuyahoga	30444	1950
Napoleon	Henry	8749	1950
Nelsonville	Athens	5392	1995
New Albany	Franklin	7724	1992
New Athens	Harrison	320	
New Carlisle	Clark	5785	1980
New Franklin	Summit	14227	2007
New Lebanon	Miami	3995	1978
New Lexington	Perry	4731	1980
Newton Falls	Trumbull	4795	1966
Northfield	Summit	3677	1981
Northwood	Wood	5265	1981
Norton	Summit	12085	1962
Norwalk	Huron	17012	1972
Oakwood 44146	Cuyahoga	3667	1968
Oakwood 45419	Montgomery	9202	1968
Oberlin	Lorain	8286	1954
Olmsted Falls	Cuyahoga	9024	1972

Orange	Cuyahoga	3323	1977
Oregon	Lucas	20291	1958
Orrville	Wayne	8380	1975
Orwell	Ashtabula	1660	1985
Ottoville	Putnam	976	
Oxford	Butler	21371	1960
Painesville	Lake	19563	1962
Parma Hts	Cuyahoga	20718	1953
Pataskala	Licking	14962	1997
Pepper Pike	Cuyahoga	5979	1966
Perrysburg	Wood	20623	1960
Pickerington	Fairfield/Franklin	18291	1980
Piqua	Miami	20522	1929
Portsmouth	Scioto	20226	1928
Powell	Delaware	11500	1989
Ravenna	Portage	11724	1971
Reynoldsburg	Franklin/Fairfield	35893	1979
Richfield	Summit	3648	1970
Richmond Hts	Cuyahoga	10546	1959
Rittman	Medina/Wayne	6491	1960
Riverside	Montgomery	25201	1995
Rocky River	Cuyahoga	20213	1960
Rossford	Wood	6293	1970
Rutland	Meigs	393	
S Bloomfield	Pickaway	1744	
S Charleston	Clark	1693	1917
S Euclid	Cuyahoga	22295	1953
S Salem	Ross	204	
Sandusky	Erie	25793	1914
Sebring	Mahoning	4420	1979
Seven Hills	Cuyahoga	11804	1966
Shaker Hts	Cuyahoga	28448	1931
Shawnee	Perry	681	
Sheffield Lake	Lorain	9137	1961
Shelby	Richland	9317	1921
Sidney	Shelby	21229	1954
Silver Lake	Summit	2519	1926
Silverton	Hamilton	4788	1959
Solon	Cuyahoga	23348	1954
Springboro	Warren	17409	1978
Springdale	Hamilton	11223	1964
Springfield	Clark	60608	1913
St Bernard	Hamilton	4368	2003

St Clairsville	Belmont	5184	1978
Steubenville	Jefferson	18659	1984
Stow	Summit	34837	1958
Streetsboro	Portage	16028	1971
Strongsville	Cuyahoga	44750	1958
Sylvania	Lucas	18965	1961
Tallmadge	Summit	17537	1995
Thurston	Fairfield	604	
Tiffin	Seneca	17963	1977
Tipp City	Miami	9689	1968
Toledo	Lucas	287208	1914
Trenton	Butler	11869	1971
Trotwood	Montgomery	24431	1964
Twinsburg	Summit	18795	1957
Union	Montgomery	6419	1981
University Hts	Cuyahoga	13539	1941
Upper Arlington	Franklin	33771	1919
Upper Sandusky	Wyandot	6596	1966
Urbana	Champaign	11793	1978
Valley Hi	Logan	212	
Vandalia	Montgomery	15246	1959
Vermilion	Erie/Lorain	10594	1961
W Carrollton	Montgomery	13143	1967
W Jefferson	Madison	4222	1990
W Leipsic	Putnam	206	
W Milton	Miami	4630	1965
Waite Hill	Lake	471	1985
Warrensville Hts	Cuyahoga	13542	1958
Washington CH	Fayette	14192	2003
Waterville	Lucas	5523	1966
Wauseon	Fulton	7332	1981
Waverly	Pike	4408	1970
Waynesville	Warren	2834	1995
Westerville	Franklin/Delaware	36120	1964
Westlake	Cuyahoga	32729	1956
Whitehall	Franklin	18062	1966
Whitehouse	Lucas	4149	1992
Wickliffe	Lake	12750	1951
Willard	Huron	6236	1958
Willoughby	Lake	22268	1951
Willoughby Hills	Lake	9485	1970
Willowick	Lake	14171	1952
Woodlawn	Hamilton	3294	1992

Woodmere	Cuyahoga	884	1983
Wooster	Wayne	26119	1972
Worthington	Franklin	13575	1956
Wyoming	Hamilton	8428	1949
Xenia	Greene	25719	1917
Yankee Lake	Trumbull	79	
Yellow Springs	Greene	3487	1950
Youngstown	Mahoning/Trumbull	66982	1923

TABLE B

CHARTER PROVISIONS SUMMARIZED

I INTRODUCTORY

1.01 The purpose of this portion of the publication is to describe the provisions that are found in municipal charters in Ohio. Each charter will usually have several matters included that are found in many other charters, but the policies announced in even those commonly included provision will vary. No two charters are alike, nor should they be closely similar. Charter decisions and therefore charter provisions are based on many factors. Some are listed below:

First of all charter provisions are based on decisions which are the product of value judgments. The collective value judgment of at least a majority of the Charter Commission's members. There is no right or wrong decisions, rather decisions that are made based upon opinion forged by the following factors: each member: personal view points; personal experiences; what a Commission Member believes to be the best approach; personal dislikes of Commission Members and any number of other factors including self-interest and what the Commission Member believes to be best for the municipality generally.

The Charter Commission's role is to discuss all of these views in order to find a common ground for at least a majority of the members of the Charter Commission. This process involves their collective views as to what choice is best for the municipality tempered with their collective view of what the Commission Members believe will be either supported or opposed by the voters.

Most charters, if not all charters contain compromises that have been negotiated after discussion and debate. Remember there is no right or wrong view. Of course provisions are restricted to (1) matters pertaining to municipalities (not the county, township or schools), (2) Conforming to Ohio and the Federal Constitution and certain Ohio statutes that apply due to Ohio's Constitution or federal statutes; i.e. its provisions must be legally valid. The services of an experienced and knowlegible lawyer to advise the Commission and to assist in drafting the Charter's provisions is required.

1.02 This summary is not offered as legal advise on Charter drafting, it merely pulls together or summarizes the issues and the answers to those issues which often are involved in the charter process.

II CHARTER DECISIONS - GENERAL RULES

2.01 Consideration for Charter Drafting

Municipal charters are legal documents that may be roughly compared to a Constitution. The Charter will determine the structure and procedure of government. It will determine to the extent

possible under Ohio law, the degree of local autonomy exercised by the municipal officials. It may also prescribe limitations upon municipal powers. The charter will allocate powers granted under Ohio's home rule provisions between the various municipal agencies and the people of the community, and among municipal officials.

Some policy decisions will be required with respect to the approach taken in drafting. It is possible to include in the Charter document as many specific answers to questions that may reasonably be expected to arise. This approach has the advantage of certainty, but will at the same time be less understandable to the average citizen. A more concise and general approach may be utilized in drafting that would have the advantage of being more understandable to the citizenry, but less certain in its subsequent legal interpretation. It is unlikely that a firm decision can be made at the beginning of the Charter study process on which approach will be followed. That decision will emerge as a Charter Commission accomplishes its work. But it should be remembered that either approach entails a "trade-off". "Certainty for Brevity" or vice versa. A Charter consultant can draft with either of these goals in mind, but the effect of the approach utilized should be understood by the members of the Charter Commission.

2.02 Use of this Summary

This summary is suggested as a "guide". It is not intended to be so rigid as to preclude consideration of other approaches. Every effort has been made not to insert purely personal views or to favor one alternative over another in this summary.

III FORMS OF GOVERNMENT

3.01 Forms of Municipal Government

3.01.1 Classifications of Forms of Municipal Government

Municipal government in the United States has usually taken one of five forms:

1. Mayor-Council-Strong Mayor Form
2. Mayor-Council-Weak Mayor Form
3. Council-Manager, or City Manager Form
4. The Commission Form
5. Mayor-Council-Administrator Form

There have been other less popular forms of government such as the Town Meeting and the Representative Town Meeting.

3.01.2 Strong Mayor Form

The Strong Mayor Form of government has found acceptance on the principle that it provides strong leadership and pinpoints responsibility and the public eye on a relatively few number of elected officials. Proponents argue that policy formulation and execution is expedited since the Mayor has control over all administrative departments.

Opponents would argue that this form of government places too much responsibility in one man-the Mayor, and that since the Mayor is elected there is no assurance he will have professional administrative ability. To meet this objection, and to give some degree of continuity in the face of partisan politics, some cities have used a City Administrator who is answerable to the Mayor but charged with overseeing the administration of important line operating departments.

The Strong Mayor Form is characterized by the election of only a Council(usually small in number) and the Mayor. The Mayor is usually given the veto power over legislation of the Council and appoints all administrative department heads and members to boards and commissions.

3.01.3 Weak Mayor Form

Under the Weak Mayor Form of government the Council usually shares in the exercise of powers to a greater degree than under the Strong Mayor Form. The Mayor, while designated as the chief executive is in a much weaker position of power. While he may appoint some department heads and member of boards and commissions, his appointments are often subject to confirmation by the Council. The Weak Mayor Form of government usually produces several other elected officials who share in the administration of city affairs, such as an elected finance officer, law officer, treasurer and others. Proponents would argue that this system of checks and balances is wise so that too much power will not fall into the hands of one person. They also say that this prevents a covering up of mismanagement, incompetence and frauds and also gives the electorate more direct control over city operations.

Opponents to the Weak Mayor Form argue that with many persons to be elected and with divided responsibilities, the electorate cannot discern the truth of who in fact is responsible for inefficiency, that fighting and political bickering among elected administrators retards the efficiency and progress of city affairs, and that there is a lack of strong leadership.

The Weak Mayor Form, which might be better described as a “split executive form” is characterized by larger councils, restricted appointive power in the mayor, numerous independently operating boards and commissions and more numerous elective offices. The Mayor is not given a veto power over Council legislation.

3.01.04 City Manager Plan

The concept of the City Manager is borrowed from industry and commerce where the board of directors, the Policy making body, hires Professional managers to handle detailed administrative matters.

Of all the forms of government this form should most clearly pinpoint the overall responsibility on the usually small council elected, usually from the city at large. Yet, a criticism is often voiced that there is a lack of a leadership image, with the electors not being able to vote approval or disfavor on things in general since there is no elected chief administrative officer, i.e. no political leadership.

The City Manager is appointed and removed by the Council which is elected by the voters (comparable to the private corporation where the stockholders elect a Board of Directors who select the firm's management). Proponents argue that this puts a professional in charge of the city government to conduct city affairs in a business-like manner. This form of government stresses clear cut lines of authority and administrative efficiency. Opponents might counter that in fact the manager is often a stranger to the community who will move on to a better position soon and who does not fully understand the heritage and mores of the community.

3.01.5 Commission Form

The Commission Form of government attempts to combine administrative and legislative functions in one body of elected officials. The number of Commissioners is usually small. While the overall responsibility for administration is retained in the Commission as a whole, each Commissioner usually assumes direct administrative responsibility for one or more administrative departments. Those who favor this plan point out that its organization is simple and there is little or no delay in the making and execution of policy. Critics of this form point to the fragmentation of responsibility and authority with the likelihood of little coordination and cooperation among departments. The lack of a check between the legislator who raises taxes and the administrator who oversees their expenditure and a lack of leadership and efficiency is often alleged as defects in this plan.

3.01.06 Administrator Form

The use of a "City Administrator" is an effort to combine the advantages of the Strong Mayor and City Manager forms of government. Proponents would argue the Mayor serves a needed role as a political leader, a single person against whom or for whom the citizenry can register their approval or dissatisfaction at the polls; while at the same time providing a method of securing a trained and experienced person as an administrator to provide continuity and efficiency in the operations of the municipal government. Opponents may counter with the questions "Whose man is the Administrator? Is he loyal to the Mayor or to the Council?" The difficult job of defining the relationships between the Mayor, Administrator, Administrative Departments, and the Council is the key to either the success or failure of the City Administrator Form.

3.01.07 Forms of Municipal Government in Ohio

Under Article XVIII of the Ohio Constitution, municipal corporations may adopt a charter by a vote of the electors specifying the form of government, may adopt by a vote rigid alternative or optional forms of government (there are three - the City Manager Plan, the Federal Plan-modified Strong Mayor Plan, or the Commission Plan). In the absence of the adoption of a charter or an optional form, cities and villages must follow the "general statutory form of government" which is basically a Weak Mayor Form in the case of both cities and villages.

3.01.8 Choice of Form of Government

1. The Charter Commission has wide range of choice in structuring the government of the municipality, as outlined above.

2. The choice of the form of government should be made as early as possible, since many of the other decisions (particularly drafting problems) will depend to a great extent upon the form of government.

3. The form or plan of government may be the single most important decision the Charter Commission makes. It should be fully discussed by the entire Commission. The Commission should also consider the acceptability of each of the forms of government to the citizenry, the political leaders (including incumbents in city offices) and various other vested interest groups (whether business, labor, civic or public employee organizations) in arriving at its decision.

4. There really is no pure scientific method to evaluate issues related to the form of government. These decisions will probably be made on a value judgment basis-the experiences and opinions of the members of the Commission adjusted to accommodate what the community will accept.

5. The history, traditions, existing political systems and in general, the community mores are important considerations in deciding upon the form of government.

3.02 The Mayor

The Following Decisions Are Required:

1. Term of Office: Fix the term of the Mayor. Under the statutory plan of government the Mayor has a four year term. Some charters provide for a two year term and others give the mayor a four year term.

2. Qualifications: Qualifications of the Mayor, including a requirement that he or she be an elector of the municipality at the time of filing for office; whether he or she may hold other public office, and if not, list any specific offices that he or she shall not be prohibited from holding.

3. Veto Power: Either yes or no.

4. Determine who succeeds the Mayor in case of vacancy or disability.

a) President of Council?

b) Law Director or some other administrative official

c) To be filled for unexpired term or until an election to fill a vacancy is held.

5. Enumerate the powers to be exercised by the Mayor over the municipality's administrative

operations, contracting, personnel appointment, discipline and removal of officers and employees for cause.

6. Removal of Mayor for cause.

3.03 The City Manager

1. Who appoints, usually the Council.

2. Tenure - by contract, at will of Council.

3. Powers - Administrative control of municipality, Exceptions?

4. Council - Manager Relationship; ability or prohibition of Council's dealing with administrative officials or employees?

3.04 The Council

1. Elected - at large or from wards.

2. How many members as to both at large and wards.

3. Options are: all from wards; all at large; some at large, some from wards.

4. Wards - how many, if any; how to be established, by Council or by an appointed or elected Commission. Usually Council established wards.

5. Qualifications - elector; may or may not hold other public office or employment, or may represent the municipality on intergovernmental agency boards - spell it out in the Charter.

6. Establish a President of Council and a President Pro Tem of Council? Determine how selected, term of office, and powers and functions (usually to act in the absence or disability of the Mayor - will succeed where a vacancy exists?

7. Clerk of Council - how selected; tenure (term or at the pleasure of Council)

8. Powers of Council -

a) Legislative - if any administrative powers granted, spell out the parameters.

b) A general description or a more specific listing of Council powers.

9. Council meetings - regular and special; how determined, Ohio Open Meeting Law.

3.05 Removal for Cause - how and for what reasons.
Charter may not conflict with police power (criminal laws most common problem of conflict).

3.06 Fixing compensation - prior to term and no change during term of office; or some other approach like allowing change every two years to avoid council members having different compensation due to when they were elected.

3.07 Abolition of Statutory Offices

1. A smooth transition - designate to serve under the charter until term ends.
2. Immediate abolition of office

3. Obviously # 1 above avoids opposition to charter and law suits.

4. An early decision is desirable to facilitate drafting and to eliminate changes in the draft being required late in the game.

3.08 Legislative Procedure

1. How action is taken- ordinance, resolution -motion. Most charters provide for all three with:

a) Local laws and important matters that maybe subject to initiative or referendum by ordinance or resolution (not motion)

b) Some procedures for adoption of ordinances and resolutions is desirable to preserve validity of council action.

2. Vote required for passage of:

a) Emergency measure - usually ⅔ of members - could be a majority or ¾ of members.

b) Items, if any that are not to be passed as an emergency (care should be exercised because there are often real emergencies that affect the municipalities and require prompt action.

c) How many times (meetings) the title (or full text) must be read? How many votes required to waive readings - majority, ⅔ or ¾ of members of council.

3. Provisions are often included to allow amendments without requiring additional readings.

3.09 Whether any special procedure is required for zoning measures (emergency - yes or no) (Special majority to pass over the adverse recommendation of planning commission - majority, ⅔ or ¾ of members of council.

3.10 Allow adoption of technical and standard codes by reference

1. Provide for required periodic codification of ordinances and resolutions.

2. Methods of publishing ordinances, resolutions and notices. Important since failure to publish is a complete defense to actions taken.

3. By newspaper (brief description) or posting.

3.11 Contracting

1. Designate contracting authority - usually Mayor or City Manager. Some provide for Council approval.

2. Amount which requires bidding - The practice varies. Options are: the state law, specific amount in Charter (which will be difficult to update later), let Council set the amount, or some combination of the foregoing.

3.12 Fiscal Officer (Finance Director or City Auditor - or in Villages, the Village Clerk or Fiscal Officer)

1. Qualifications, if any. Usual is training or experience, which is usually not included if the person is elected.

2. Appointed or elected official
a) If appointed, by whom, for how long.

b) If elected, how long is the term.

3. Powers.

a) Usually as provided by statutes and ordinances and charter.

b) Fiscal officers certificate. See RC 5770.41.

4. Provide for Acting Fiscal Officer if office is vacant or in the temporary absence or disability.

3.13 Legal Officer

1. Elected or appointed.

a) If elected 2 or 4 year term

b) if appointed, by whom and for a term or at pleasure of appointing authority.

2. Powers - as set forth in the Charter and statutes, and as authorized by Council or Administrative head, or both.

3.14. Administrative Departments

a) As determined in or pursuant to the Charter

b) Heads of Department or division - as established in the charter, with consideration of the form of government discussed earlier i.e. Strong or Weak Mayor or City Manager Form of government.

3.15 Boards and Commissions - The following boards and commissions are usually provided for in the Charter. Others may be created by ordinance.

a) Planning Commission

b) Board of Zoning Appeals

c) Park and Recreation Board

d) Civil Service Commission or in the alternative a Personnel Director and a Board of Appeals. Only cities are required to have Civil Service.

e) Charter Review Commission to review Charter every so many years.

f) The powers will be determined in the Charter and detailed by ordinance or resolution.

3.16 Nomination and Elections

1. May be determined by Charter as to many of the procedures, or

2. May adopt state law by reference.

3.17 Initiative, Referendum, Recall

1. Many charters adopt state's general laws for general statutory plan cities or villages. Recall is not applicable under these laws.
2. Charter may establish different procedures

3. Ohio Constitution requires that municipal corporation's legislative actions be subject to initiative and referendum (but not recall), and if not in the Charter, the general laws (statutes) apply.

3.18 Taxation and Debt

1. Background Information: The sections of the charter that deal with the power to levy taxes and

incur debt are most important. By the careful drafting of these provisions it is possible to liberalize or to make more restrictive the ability to finance municipal operations. In order to properly understand the procedures involved some background information is essential.

(a) Under the Ohio Constitutional provisions relative to home rule, Ohio municipalities have all powers of local self-government, which as been held to include the power to levy taxes. However there are various other sections of the Constitution which place limitations on this power. Article 18, Section 13 of the Ohio Constitution provides as follows: "Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities." (Adopted September 3, 1912) Article 13, Section 6 reads as follows :< "The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power."

(b) These sections of the constitution constitute the basis on which much of the statutory law relative to taxation, debt limitations and budget procedures rest. The courts have interpreted these sections together with the fact that the state legislature had enacted provisions of the Revised Code pre-empting the power of municipalities to impose certain taxes. The constitutional provisions quoted above allow the state legislature to regulate the tax and debt powers of municipalities. The general assembly has enacted Chapter 718 of the Revised Code - regulates municipal income taxes.

(c) <u>Constitutional Property Tax Limitations</u>
Article XII, Section 2 of the Ohio Constitution places a ten mill limitation (1% of assessed value of property) on all property taxes, whether such taxes are for state, county, school, township or municipal purposes; unless additional taxes are approved by the electors or unless a different tax rate is provided in a duly adopted charter. The applicable part of this Section reads as follows:

" No property, taxed according to value, shall be so taxed in excess of one percent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation"

(d) Prior to the adoption of the ten mill limitation the Ohio law placed a 1.5% or fifteen mill limitation on the taxation of property for state and local purposes. Since it was necessary to reduce the overall inside tax levies from 15 to10 mills after the adoption of he "ten mill" limitation in 1933, the general assembly decided upon a formula which provided such of the then existing subdivisions with a minimum property tax levy inside the ten mill limitation as would equal ⅔ of each subdivision's average millage inside the prior 15 mill limit during the years 1929 through 1933., inclusive, rounded to the nearest tenth of a mill.

(e) Statutory Debt Limitations: Because of the constitutional provisions allowing the state legislature to limit the power of municipalities to incur debt the city is subject to two statutory debt limitations:

(1) Unvoted Debt Limit: Section 133.05 of the Revised Code provides that the net indebtedness incurred or created by a municipality without a vote of the electors shall never exceed 5½% of the total value of all property
in the municipality as listed and assessed for taxation.

(2) Total Debt Limit: The net indebtedness incurred by a municipality, including unvoted and voted debt, shall never exceed10½% of the total value of all property in the municipality as listed and assessed for taxation.

(3) You will notice the reference is to "net debt". The statutory debt limitations define "net debt" by exempting from the computation of the debt limits certain types of debt set forth in the Ohio Revised Code.

(4) It should be remembered that the debt limits provided by statute and discussed above may be specifically increased by the charter.

(f) Indirect Ten Mill Debt Limit: Article XII, Section II of the Ohio Constitution proscribes the incurring of debt by the state or its political subdivision unless taxes are provided to repay said debt. This section taken with the constitutional provision limiting the taxation of property to 1% of value without a vote results in an "indirect ten mill or 1% debt limit for all unvoted general obligation debt". The charter cannot expand this limitation directly, but if care is not exercised, a tax limit for all municipal purposes can create by accident a debt limit which is more restrictive than the above mentioned constitutional ten mill debt limit.

2. Decisions to be Made by the Commission

(a) The Commission may elect to retain the existing tax limitations.

(b) The Commission may elect to increase the authority of council to levy property taxes by placing authority for additional tax levies in the charter.

(c) The Commission may elect to further limit the power of council to levy property, income or other taxes, although such a step should be thoroughly investigated since the "inside" millage and other tax resources of most municipalities are extremely scarce, and in most cases a further limitation would impair the ability of the municipality to operate.

(d) The Commission may provide different procedures for special assessments in the charter, however the statutory procedures have proven adequate for the needs of most municipalities.

(e) The author suggests that the general law relating to budgets, finances, and assessments be adopted by reference in the charter to avoid possible conflicts with the general laws in those areas where the general law will prevail over the charter.

Since these matters are highly technical, it is suggested that the Commission simply communicate the general decisions and policies it wishes to place in the charter to the professional person working with the Commission.

3.19 General and Transitional Provisions

1. Transition: Usually charters provide that the adoption of the charter will not prejudice any rights of the municipality or other parties involved in litigation or in pending proceedings involving the municipality; and that the ordinances and resolutions in effect at the time of the adoption of the charter continue in effect until they are repealed unless they are in conflict with provisions of the charter. Sections regarding franchises and the method for granting franchises are sometimes included within charters. The questions of whether or not municipal officials and employees may have any interest in contracts with the municipality is often treated in the charter, but care should be exercised to be sure no conflicts exists with the Ohio Criminal Code.

2. Charter Amendments: Since amendments to charters must be made in accordance with the constitution, it would seem that a simple statement to the effect that the charter may be amended as provided by the Ohio Constitution would be sufficient.

3. Retirement Systems - Health Districts: It is not unusual to find that a charter indicates retirement systems of the state affecting municipal employees are not changed by the charter nor are health districts affected by the charter. The charter may, due to statutory authority, modify city health district organization.

4. Effective Date: The charter should provide for the effective date of the charter, if approved by the voters; and should fix the date for the submission off the charter to the electors for approval or rejection. The charter must be submitted within one year after the date the Commission was elected.

CHAPTER 33

OHIO'S OPEN MEETINGS LAW

NOTICE

The case law pertaining to the meaning of **R.C. 121.22** continues to expand at an ever increasing rate. It is beyond the purpose of this Chapter 33 to provide an exhaustive explanation of all developments with respect to the application of Ohio's "Public Meeting Law" to Ohio municipalities. This Chapter 33 simply introduces the subject matter and provides a general overview. Municipal officials need to consult with the village solicitor, city law director, or other legal counsel with respect to the application of **RC 121.22** to specific circumstances.

CHAPTER 33

OHIO'S OPEN MEETINGS LAW

Sec. 33.01 Requirement for Open Meetings

Ohio is one of several states to have a so-called "sunshine" or open meeting law, requiring, with some exceptions, that meetings of public bodies be open to the public. **Section 121.22, R.C.,** contains Ohio's open meeting law.

Under **Section 121.22, R.C.**, all meetings of any public body must be open to the public at all times, except to the extent executive sessions are permitted thereunder. A member of a public body must be present in person at an open meeting to be considered present, to be a part of a quorum or to vote at the meeting.

Rules may not prohibit the audio and video recording of meetings, but they may require recording equipment to be silent, unobtrusive, self-contained, and self-powered. **O.A.G. 88-087**.

Minutes of regular and special meetings of public bodies must be promptly recorded and open for public inspection. However, minutes for authorized executive sessions need only reflect the general subject matter discussed. **State, ex rel. The Fairfield Leader v. Rickets**, 56 Ohio State St. 3d 97 (1990).

The primary purpose of Ohio's open meetings law is "to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically accepted by law." Furthermore, the Act is to be "liberally construed" to effect that stated purpose. **Sec. 121.22 (A), R.C.**

Sec. 33.02 Definitions of "Public Body" and "Meeting"

The terms "public body" and "meeting" are defined in **Section 121.22 (B) (1) and (2), R.C.,** as follows:

A) "Public body" means either of the following:

1) any board, commission, committee, or similar decision making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

2) any committee or sub-committee of such body described above in 1).

B) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

The governing board of a community improvement corporation organized under **Sections 1702.04** and **1724.01** to **1724.10, R.C.,** does not constitute a public body for the purposes of **R.C. 121.22,** unless such corporation has been designated an agency of a county, a municipal corporation, or any combination thereof. **O.A.G. 79-061.**

The statutory definition of "meeting" as well as the common law meaning has been adopted by the Ohio Supreme Court. **Fox v. Lakewood,** 39 OS (3d) 19,528 NE (2d) 1254 (1988). A common pleas court has held that a memorandum circulated to a board of education recommending that nothing be done about an asbestos problem and concluding "let me know if you have a different opinion" constituted a meeting in violation of the statute. **Signal Publishing Co. v. Northwest Bd. of Ed.,** No. 87-1116-OT-3 (CP, Stark, 9-1-88).

Sec. 33.03 Committees of Public Bodies

One of the most troublesome issues has been resolved by the enactment of **Sub. H.B. 111** by the 120th General Assembly, when committees and sub-committee, regardless of whether they are decision-making or not, were specifically included as a public body.

Sec. 33.04 Statutory Exceptions to Open Meetings Law

The open meetings law does not apply to grand juries, an audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit, the organized crime investigations commission established under **Section 177.01, R.C.,** and certain hearings of the adult parole authority, the state medical board, the state nursing board, and the executive committee of the emergency response commission. **Sec. 121.22 (D), R.C.**

The state controlling board, development financing advisory board, industrial technology and enterprise board and minority development financing commission, under circumstances explained in the law, may by a unanimous vote of members present consider specifically enumerated confidential information at a closed meeting. **Sec. 121.22 (E), R.C.**

Sec. 33.05 Executive Sessions

"Executive session" is a euphemism for private session. **Sec. 121.22 (G), R.C.** permits executive sessions only after a majority of a quorum of the public body determines by a roll call vote at a regular or special meeting to hold such a session for the sole purpose of considering one or more of the following approved matters, which must be stated in the vote as the basis for the session:

A) Unless the public employee, official, licensee, or regulated individual requests a public hearing, to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual. (No names need to be stated

in the motion and vote for such an executive session). Except as otherwise provided by law, no public body may hold an executive session for the discipline of an elected official for conduct related to the performance of official duties or for removal from office.

B) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of a public body may use this reason as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with **Section 121.22, R.C.,** any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property is conclusively presumed to have been executed in compliance with **Section 121.22, R.C.**, insofar as title or other interest of any bona fide purchasers, leases, or transferees of the property is concerned.

C) Conferences with an attorney for the public body, concerning disputes involving the public body that are the subject of pending or imminent court action. (Note that merely meeting with an attorney for the public body is insufficient.)

D) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment.

E) Matters required to be kept confidential by federal law or rules or state statutes.

F) Specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.

G) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets or personal financial statements of an applicant for economic development assistance or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724. or 1728. Or sections 701.07, 3735.67 to 3735.70. 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that

are directly related to an economic development project.

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant of the possible investment or expenditure of public funds to be made in connection with the economic development project.

Sec. 33.06 Notice Requirements

Section 121.22 (F), R.C., requires that the following kinds of notice must be given under rules established by each public body:

A) Notice of the time and place of all regularly scheduled meetings; and

B) Notice of the time, place, and purpose of all special meetings. A special meeting may not be held unless at least twenty-four hours advance notice is given to the news media that have requested notification. In the event of an emergency requiring immediate official action, the member or members calling the meeting must notify the news media (that have requested notification of special meetings) immediately of the time, place, and purpose of the meeting. The statute provides that violation of these notice requirements will invalidate actions of the public body. **Sec. 121.22 (H), R.C.**

The rules must provide that any person may, upon request and payment of a reasonable fee, obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

Sec. 33.07 Effect of Violations, Remedies

A) Violation invalidating action. **Section 121.22 (H), R.C**. states:

A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) of this section and conducted at an executive session held in compliance with this section. A resolution, rule or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule or formal action violated division (F) of this section.

Accordingly, it is important to the municipality and its citizenry that care be exercised to prevent later invalidation of actions taken by council, and other boards and commission. While all action at a meeting is invalidated for a violation of the notice requirements, there must be a causal connection between closed meeting deliberations and the resolution rule or formal action

adopted at the public meeting in order to have the resolution invalidated. **Greene County Guidance Center, Inc. v. Green-Clinton Community Mental Health Bd.,** 19 App. 3d 1, 19 OBR 46 ,482 NE2d 982 (Greene 1984).)

Further, absence of discussion on a particular issue does not mean the matter must have been discussed privately. **DeVere v. Miami University Bd. of Trustees,** No. CA85-05-065 (CA, Butler, 6-10-86). See also **Kandell v. City Council of Kent,** No. 90-P-2255 (CA, Portage, 8-2-91). for discussion of the effect of meetings of staff before deliberation by council, Inadvertence or mistake which result in failure to comply with the open meetings law is not excusable. **State, ex rel. Randles v. Hill,** 66 08 3d 32 (1993).

B) Civil remedy

Any person may bring an action in the common pleas court to enjoin a violation or threatened violation of the open meetings law. **Vlach v. Kent State University,** 70 App. (3d) 407 (Portage 1990). Upon proof of violation or threatened violation, the court must issue an order compelling members of the public body to comply with **Section 121.22, R.C. Section 121.22, R.C.,** further provides that a member who knowingly violates such an injunction may be removed from office by action brought by the prosecuting attorney or attorney general in the common pleas court. **Sec. 121.22 (1), R.C.** Civil actions must be brought within two years after the alleged violation or threatened violation. **Sec. 121.22 (I)(1), R.C.**

Upon issuance of an injunction, the court shall award court costs and reasonable attorney's fees and assess a civil forfeiture of $500; if no injunction is issued and the court determines that the bringing of the action was frivolous, the court shall award court costs and reasonable attorney's fees to the public body. **Sec. 121.22 (I)(2), R.C.** Attorney's fees to the plaintiff may be denied or reduced in the discretion of the court if the court determines both of the following (i) if, based on existing law at the time, a well informed public body reasonably would believe that it was not violating the open meeting law, and (ii) a well-informed public body reasonably would believe that the conduct forming the basis of the injunction serve the public policy that underlies the authority that is asserted as permitting the conduct or threatened conduct.

C) Criminal liability

It has been suggested that a criminal charge of dereliction of duty could be filed against public officers under **Section 2921.44 (E), R.C.** Violation of this section is a misdemeanor of the second degree and conviction is punishable by imprisonment up to ninety days or a fine up to $750, or both. **Sections 2921.44 and 2929.21, R.C.**

Sec. 33.08 Effect of R.C. 121.22 on Charter and Non-Charter Municipalities

A) Charter municipalities

A charter municipality has the right to determine by charter the manner in which meetings will be held. **State, ex rel. Bond v. Montgomery,** 63 App. 3d 728 (Hamilton, 1989); **State, ex rel. Plain Dealer Publishing Co. v. Barnes,** 38 OS 3d 165 (1988); **Hills & Dales, Inc. v. Wooster,** 4 App. 3d 240, 4 OBR 432, 448 NE 2d 163 (Wayne 1982). Where charter contains provisions concerning the meeting of public bodies, compliance with those provisions is mandatory. **State, ex. rel. Craft v. Shisler,** 40 OS 3d 149, 532 NE 2d 719 (1988); **State, ex. rel. The Fairfield Leader v. Ricketts,** 56 OS 3d 97 (1990).

In **Fox v. Lakewood,** 39 OS 3d 19, 21, 528 NE 2d 1254 (1988), the court held that the charter provision, "all meetings of the council or committees thereof shall be public," prevailed over the provisions of the state statute. **Sec. 121.22, R.C.** Whether the court would uphold a charter provision permitting the holding of executive sessions for any purpose whatsoever is problematic, however, in such case, the Court could hold that the integrity of the political process is a matter of statewide concern, and the corrosive effect on the body politic of closed meetings has extraterritorial effect.

The typical charter provision, "all meetings of the Council and of committees thereof shall be public," has been interpreted as meaning no exceptions are possible; no executive sessions may be held for any purpose. **State ex rel. Plain Dealer Publishing Co. v. Barnes,** 38 OS 3d 165,527 NE 2d 807 (1988); **State ex rel. Craft v. Shisler,** 40 OS 3d 149, 532 NE 2d 719 (1988).

However, violation of a municipal charter-based sunshine law (to which **Section 121.22, R.C.,** does not apply) that has no provision for remedies has no consequences. **Fox v. Lakewood,** 39 OS 3d 19,528 NE 2d 1254 (1988). A writ of mandamus compelling that future meetings be open may be issued, however**. State, ex rel. Plain Dealer Publishing Co. v. Barnes,** 38 OS 3d 165 (1988).

B) Non-charter municipalities

As to non-charter municipalities, courts would doubtless hold that the open meetings law affects "procedural" powers of local self-government, rather than "substantive" powers, and would thus strike down any attempts by non-charter municipalities to ignore **Section 121.22, R.C.**

Non-charter municipalities that have adopted one of the statutory plans under **Chapter 705, R.C.,** are subject to **Section 705.22, R.C.,** which states in part: "All meetings of the legislative authority or committees thereof shall be public, and any citizen of the municipal corporation shall have access to the minutes and records thereof at all reasonable times."

Note: Any Matter pertaining to open meeting laws should be reviewed by the municipality's legal counsel or special counsel.