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Implementing a municipal charter: Lessons from the front lines

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American politics at the national level frequently involve conflicts over federalism and the allocation of authority between the federal government and state governments. On a smaller scale, the Ohio Constitution contains tension between state authority and municipal home rule.

Section 3 of Article XVIII of the Ohio Constitution states, “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” These enumerated powers are commonly known as “home rule powers” or “home rule authority.”

Section 7 of Article XVIII of the Ohio Constitution goes on to provide that “[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.” A municipal charter is a legal document that establishes how a municipality is organized and operates, and it is often described as a constitution for a municipality.

The interplay between these two sections of the Ohio Constitution illustrates that a charter is not required for an Ohio municipality to have and exercise certain home

rule powers. The boundaries of municipal home rule are complex, are frequently litigated in Ohio courts and are beyond the scope of this article. However, it is important to note that a charter is required for Ohio municipalities to exercise some aspects of local self-government and home rule. The Ohio General Assembly's Legislative Service Commission summarized it this way: "[A] charter is not necessary in order to exercise a substantive power of local self-government, but the procedures used to exercise such a power require a charter if they vary from state law."

For example, a charter allows a municipality to choose its own plan of government without having to default to statutory options. There are currently three primary forms (or plans) of municipal charter government used in Ohio: (1) Mayor-Council, which can be in a "weak mayor" or "strong mayor" form, although this is often a matter of degree instead of clearly being one form or the other; (2) Council-Manager; and (3) Mayor-Council-Administrator, which is essentially a hybrid of the first two forms. Other examples of home rule authority that can be exercised under a charter include the freedom to create and organize the departments of the city or village government (or delegating authority to the municipal council to do so), wide latitude to customize legislative procedures in the municipality, and gaining more local control over contracting and the construction procurement process.

A municipality's reasons for implementing a charter can vary, but a common situation occurs when a village is nearing the population threshold of 5,000 residents for becoming a city pursuant to the Ohio Constitution. The transition to becoming a city is often indicative of a municipality that expects continued population growth with increasing demands on the municipal government. Many villages decide that the city transition is a good time to implement a charter and assume more control over its future.

The procedures for implementing a municipal charter are set forth in Section 8 of Article XVIII of the Ohio Constitution. The first step is to have an election on appointing a 15-member charter commission to draft the charter. The most common way of starting the election process on the charter commission is for a village or city council to pass an ordinance by a two-thirds vote, although ten percent of the electors in a municipality can also trigger a charter commission election by petition. Eligible residents interested in serving on the charter commission must file nominating petitions with the applicable board of elections. If a majority of the electors of the municipality approve the creation of the charter commission to frame a charter, the 15 candidates for the charter commission who receive the most votes are elected to the commission. The ballot question on whether or not a charter commission should be created is a separate ballot question from voting on who will become a member of the charter commission.

After a successful election on forming a charter commission, Section 8 of Article XVIII of the Ohio Constitution gives the charter commission only one year to draft the charter and schedule a second election, this time for the charter itself. When

residents ask about the charter election process, it is important to remind them that they still get an up-or-down vote on the charter after the charter commission has completed the drafting process. The board of elections filing deadline for a charter falls 90 days ahead of a regularly-scheduled election, which decreases the amount of time that the charter commission has to work on drafting the charter to about nine months. The reality is that scheduling issues and procedural requirements further limit the amount of time for the charter commission to complete its task. For example, the charter commission must submit the completed charter to the village or city council, which in turn needs time to pass legislation placing the charter on the ballot ahead of the filing deadline with the board of elections.

The difficulties a charter commission faces in completing its task in such a short time frame can be alleviated by engaging experienced legal counsel who can assist with the host of legal questions that arise during the charter drafting process. It is also advantageous to have counsel that has a deep bench of multi-disciplinary experience to successfully navigate the varied subjects that arise in different sections of the charter. For instance, debt and construction provisions benefit from input provided by experienced public finance and construction attorneys.

Another pressing issue facing a new charter commission is the question of who will be primarily responsible for drafting the charter. Attempting to draft a charter by committee is a cumbersome and frustrating process. It typically works better to have a small drafting team, or possibly designate the drafting process to one person. The drafting process is more efficient when the charter commission decides on objectives that it wants to see implemented in the charter. A drafts person (or small group) then crafts language designed to satisfy the goals of the charter commission, and the commission reacts to and makes any desired adjustments to the draft language. Some charter sections contain boilerplate language, while other sections (e.g., the provisions on the council and on legislative procedure) are more challenging and involve substantial deliberation by the commission and customized charter provisions. Most charter commissions will find the decision about which form of government to adopt to be their most challenging issue to resolve, due to the political ramifications inherent in the selection of a particular plan. Experienced legal counsel serving in a drafting role can add much value during the drafting process, and input provided by a village solicitor or a city law director can also provide practical insights that are critical to drafting a successful charter.

Like a constitution, charters work best when the charter commission avoids the temptation to become too detailed about the mechanics and requirements of municipal governance. It is impossible for a charter commission to anticipate every eventuality that municipal leaders will face years and even decades later, and overly detailed charter provisions run the risk of creating unexpected problems for future municipal officials. However, charter commissions also face the daunting task of determining when specificity is required in the charter and trying to anticipate how

problems may arise in the future, particularly with respect to the interpretation of the provisions that they are drafting. One humorous example of a charter veering off course is a dress code requirement for male members of a village council that “shall include all men on the Council dressing in a shirt and tie.”

Once the charter commission has submitted the completed charter to the village or city council, Section 8 of Article XVIII of the Ohio Constitution vests council with a ministerial duty to place the charter on the ballot for the electors of the municipality to approve or disapprove the charter. The village or city council has no authority to modify or rewrite the charter as submitted by the charter commission. If the charter is approved by the voters, it goes into effect on the effective date listed in the charter, and the municipality can begin preparing for the governance changes mandated by the charter.

A successful charter drafting process involves a team of dedicated charter commission members, input from current municipal officials and the assistance of experienced legal counsel. The end result provides for municipal governance tailored to the unique needs of a particular community.