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Foreword

This handbook introduces citizens and local government officials to the meaning of Home Rule for Pennsylvania Local Governments.

Material in the Home Rule in Pennsylvania publication is for information purposes only. It does not constitute legal opinion and should not be construed as such. The Department of Community and Economic Development is prohibited by law from rendering legal opinions for local governments. Any legal question or uncertainty regarding purchasing should be brought to the attention of the municipal solicitor.

I. Home Rule for Pennsylvania Local Governments

Adoption of a new local government article to the Pennsylvania Constitution in 1968 guaranteeing the right of all Pennsylvania counties and municipalities to adopt home rule charters and exercise home rule powers was hailed as a watershed in the history of local government in Pennsylvania. Proponents of home rule saw local control as opening a new era of effective and responsive municipal government. Opponents warned of chancy experiments in untested legal areas. Twenty-seven years of experience has shown home rule to be neither a panacea nor a bane for local governments. Home rule has proven to be an effective tool for reorganizing local governments to increase effectiveness and citizen participation and has enabled a modest local initiative in procedural and substantive matters. Home rule has not revolutionized local government operation, nor has it entangled municipalities in legal difficulties or imprudent activities.

Meaning of Home Rule

The basic concept of home rule is relatively simple. The basic authority to act in municipal affairs is transferred from state law, as set forth by the General Assembly, to a local charter, adopted and amended by the voters.

This basic point has been explained by government study commissioners to their voters. "Home rule means shifting of responsibility for local government from the State Legislature to the local community .... a borough choosing home rule can tailor its governmental organization and powers to suit its special needs."[1] Commissions often liken a charter to a local constitution for the municipality. "It is a body of law, a framework within which the local council can adopt, adapt and administer legislation and regulations for the conduct of business and the maintenance of order and progress."[2]

But home rule does not set a municipality adrift from the rest of the state. It is subject to restrictions found in the United States and Pennsylvania constitutions and in state laws applicable to home rule municipalities. Local autonomy under home rule is a limited independence, but the thrust has been changed. Local governments without home rule can only act where specifically authorized by state law; home rule municipalities can act anywhere except where they are specifically limited by state law.

Enactment of the Home Rule Law in 1972 culminated a long movement toward increased local autonomy. It was concurrent with increased emphasis on delegating both federal and state programs to county and municipal governments. But this legislative trend toward increased local autonomy has been coincident with a countervailing trend – an increased legislative tendency to meet problems with uniform state laws overriding local discretionary authority. Recent examples have been in areas of local officials ethics, condominium conversion and energy conservation standards for buildings. Thus home rule is not a static concept. Local powers under home rule charters will expand and contract in the future with the course of state legislative activity and judicial interpretation.

References

1. *A Final Report and Proposed Home Rule Charter for the Borough of Edinboro*, February 18, 1974, p. 14.
2. *A Report on the Activities and Findings of the Youngsville Government Study Commission*, August 30, 1974, p. 12.

Development of Home Rule

Implementation of home rule in Pennsylvania has been a slow, lengthy process, generally lagging behind other states. Final adoption of the Home Rule Law in 1972 came almost a century after Missouri became the first state to grant constitutional home rule in 1875.

Pennsylvania Background. William Penn's Charter granted by Charles II in 1681 authorized the proprietor to create counties, towns, boroughs and cities. Early practice vested sovereign power over local government in the

provincial, and later, state government. Abuse of legislative interference in local matters in the nineteenth century led to prohibition of special and local laws in the Constitution of 1874.

The progressive movement of the early twentieth century spread the concept of a constitutional guarantee of home rule for municipalities across the country. Home rule first came to Pennsylvania in 1922 when the Constitution was amended to allow the General Assembly to grant cities the right to adopt home rule charters. But the legislature did not take action until 1949, and then only authorized home rule for Philadelphia.[1] Philadelphia citizens were quick to take action, and a proposed home rule charter was adopted by the voters in May 1951.

A second step by the General Assembly was the adoption of the Optional Third Class City Charter Law in 1957.2 This Law offered third class cities a selection of governmental forms provided in the law and granted a measure of home rule power. Between 1957 and 1972, seventeen cities adopted optional charters under the authority of this law. Thirteen still operate under their optional charters; Wilkes-Barre adopted a home rule charter in 1973, Johnstown in 1993 and Allentown in 1996.

Home Rule Law. Home rule for all local governments became an issue again in the studies of various commissions leading up to the Constitutional Convention of 1967-68. Home rule was one of the central points of the new local government article proposed to the voters and adopted in 1968.

"Municipalities shall have the right and power to frame and adopt home rule charters ... A municipality which has a home rule charter may exercise any power to perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time."[3]

The legislature met the constitutional mandate to enact implementing legislation within four years by adoption of the Home Rule Charter and Optional Plans Law [afterwards referred to as Home Rule Law] on April 13, 1972.[4] The Home Rule Law establishes the procedure for adoption of a home rule charter. The voters of a local jurisdiction elect a government study commission, charged with studying the existing form of government, exploring alternatives and deciding whether or not to recommend change. If the commission decides to recommend home rule, it drafts a charter that is presented to the voters for their decision. Adoption of a home rule charter comes only with the approval of a majority voting in a referendum.

The Home Rule Law also contains restrictions on the exercise of home rule powers. In certain subject areas, home rule municipalities are restricted to powers set forth in state law. In addition, home rule municipalities are subject to uniform state laws applicable in every part of the commonwealth.

The Home Rule Law had been amended fourteen times by September 1, 1999. In most cases, the amendments clarified procedures, but one significant amendment in 1974 placed home rule municipalities under the provisions of the Pennsylvania Municipalities Planning Code.[5] In 1996, the entire text of the Act was reenacted as part of Title 53 of the Pennsylvania Consolidated Statutes. This involved renumbering all the sections and restructuring the headings.

Optional Plans. The General Assembly chose to implement the constitutional mandates for home rule and for optional plans of government for municipalities in a single piece of legislation.[6] Adoption of an optional plan is through the same government study commission process as for home rule, except the government study commission merely selects one of the optional plans provided in Sections 2971 through 3171 of the Law. These include a council-manager plan, an executive-council plan with three variations and a plan for small municipalities where the elected executive doubles as president of council. Municipalities adopting optional plans gain no home rule powers; they remain subject to the provisions of their municipal code, except where it is superseded by the structural provisions of the optional plan.[7]

The optional plans have not proven very popular with Pennsylvania municipalities. As of September 1, 1999, only 22 government study commissions recommended optional plans to the voters, as opposed to 136 recommending home rule charters. Only 12 optional plans have been adopted, and one of those was repealed in 1981. Hampton Township found its executive-council optional plan politically unworkable and replaced it with a home rule charter.[8]

Municipal Consolidation or Merger Act. Enacted in 1994, this law permits an alternative procedure for adoption of a home rule charter or optional plan of government as part of the process of consolidating or merging municipalities.[9] For the first time, a home rule charter or optional plan can be adopted by action by the voters as part of the consolidation or merger process without the election of a government study commission. This law permits the proponents of a consolidation or merger to use an existing home rule charter or optional plan already in place in one of the municipalities, a new optional plan selected from the plans available in the Home Rule Law or a new home rule charter formulated and approved by the governing bodies of the municipalities. The option to draft a new home rule charter is available only in cases where the proposal is initiated by ordinance of the governing bodies. Any consolidated or merged municipalities whose government is determined by this process will have the same powers as those whose charters or optional plans are adopted under the procedures of the Home Rule Law.

The first three proposals using this act appeared on the ballot at the May 1995 primary election. Consolidation proposals which include a council-managers optional plan were disapproved by the voters in the DuBois and State College areas.

Second Class County Charter Law. In 1997, the General Assembly enacted an amendment to the Second Class County Code providing for the one-time appointment of a charter drafting committee.[10] The committee was limited to drafting a home rule charter with an elected county executive, an appointed professional county manager and an elected county council. The drafting committee was appointed in July 1998 and submitted its report in February 1998. The proposed home rule charter drafted by the committee was approved by the voters of Allegheny County in May 1998. All provisions of this law expired when the first officials elected under the charter were sworn into office with the exception of sections, subsections relating to charter limitations and the time frame restriction for changing the adopted form of government.[11]

References

1. 53 P.S. 13101 *et seq ;* First Class City Home Rule Act.
2. 53 P.S..41101 *et seq ;* Optional Third Class City Charter Law.
3. Pennsylvania Constitution, Article IX, Section 2.
4. 53 Pa.C.S. 2901 *et seq.;* Home Rule Charter and Optional Plans Law.
5. 53 Pa.C.S. 2962(10); Home Rule Charter and Optional Plans Law, Section 2962(10).
6. Pennsylvania Constitution, Article IX, Section 3.
7. 53 Pa.C.S. 2971; Home Rule Charter and Optional Plans Law; Section 2971.
8. *Report of the Government Study Commission, Hampton Township,* August 27, 1981, p. 3.
9. 53 Pa.C.S. 731 *et seq ;;* Municipal Consolidation or Merger Act.
10. 16 P.S. 6101-C *et seq.;* Second Class County Code, Section 3101-C.
11. 16 P.S. 610 7-C, 16 P.S. 6111.C(c), Second Class County Code.

Citizen Involvement in Reorganizing Local Government

Through the government study commission process, Pennsylvania citizens for the first time have the power to make basic decisions about the shape of their local government. The government study commissions are elected by popular vote. Approximately 1,600 Pennsylvanians have actively served as members of commissions. Thousands more have served on committees, testified before commissions, answered questionnaires and campaigned for or against commission recommendations. The final decision on adopting or rejecting the proposed charter is in the hands of the local voters. Once adopted, home rule charters can be amended or repealed by action of the voters.

Since 1972, 233 government study commission questions have appeared on the ballot. These questions have appeared in 192 different jurisdictions, located in 44 different counties. The greatest activity occurred right after the passage of the Home Rule Law.

Government Study Commission Questions on Ballot

Years	Number
1972-75	140
1976-79	18
1980-83	22
1984-87	16
1988-91	15
1992-95	17
1996-98	5
1999-02	4

Government study commissions have made reports in 180 cases. The election of one commission was voided by a court case. Two commissions failed to file reports before their term expired. Nineteen commissions recommended no change. Twenty-two proposed optional plans; the voters approved 12 and defeated 10. One optional plan was later repealed and replaced by a home rule charter. One of the defeated optional plan proposals involved repeal of an existing home rule charter and its replacement by an optional plan. One hundred thirty-six commissions wrote home rule charters; 70 were approved by the voters and 66 defeated. One of the defeated charter proposals involved the repeal of an existing charter and its replacement by a new charter. Two commissions recommended a series of amendments to existing charters.

II. Beginning Government Study Commission Process

The decision of whether or not to study a municipal government and consider the advisability of change is made by the voters. At the same time this decision is made, the voters elect a group of citizens to conduct the study and report their recommendations back to the electorate for final decision. The entire process can be begun either by the governing body of the municipality, or by a group of citizens through the initiative process.

Placing the Government Study Commission Question on the Ballot

The Home Rule Law provides two alternate methods for placing the question of having a government study commission on the ballot. The question may be initiated either by (1) an ordinance of the municipal governing body or (2) a petition of the registered voters of the municipality. The ordinance or petition must designate one of the three questions permitted by the Home Rule Law.

Government Study Commission Questions. The Home Rule Law contains three questions — one must be selected to be placed on the ballot in drawing up the ordinance or petition. The choice of the question will restrict the government study commission to a consideration of an optional plan, a home rule charter, or allow it to choose either an optional plan or a home rule charter. The text of the questions as set forth in the Home Rule Law follows.[1]

(1) "Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government and to recommend whether or not an optional plan of government should be adopted?"

(2) "Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of a home rule charter; and if advisable, to draft and to recommend a home rule charter?"

(3) "Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government or a home rule charter; to recommend the adoption of an optional form of government, or to draft and recommend a home rule charter?"

In addition to choosing one of the three questions, the petition or ordinance must designate whether the proposed government study commission is to have seven, nine or eleven members.

Initiation by Ordinance. An ordinance to place a government study commission on the ballot must be adopted by the governing body of the municipality, that is, the county commissioners, city council, borough council, or township commissioners or supervisors. There is no required form for the ordinance, However, it must specify one of the three questions to be placed on the ballot and designate the number of members to be elected to the government study commission.

Within five days after the final enactment of an ordinance, the municipal clerk or secretary must file a certified copy of the ordinance with the county board of elections, together with a copy of the question to be submitted to the voters. The county board of elections will submit the question to the voters at the next primary, municipal or general election occurring not less than the thirteenth Tuesday after the ordinance is filed. The deadline for filing an ordinance to appear on the next election is thirteen weeks before the date of the election.[2]

Initiation by Petition. The question of having a government study commission may also be put on the ballot by petition. The petition must specify one of the three questions provided in the Home Rule Law and designate the number of members for the proposed government study commission. The petition must be signed by a sufficient number of registered voters of the municipality to equal at least five percent of the number of persons voting for the office of governor in the last gubernatorial general election within the municipality.[3] No petition may be signed or circulated prior to the twentieth Tuesday before the election.[4]

After the petition has been properly signed by one third of the number of registered voters required, written notice of this fact should be filed by the circulators in the office of the county election board and the office of the municipal secretary.[5] A copy of the notice is then posted in each of these offices.

Individuals signing the petition must give their place of residence and the date of signing.[6] Petitions may be composed of more than one sheet of paper. Each sheet must be accompanied by an affidavit of the circulator.[7] The referendum petition must be filed by the thirteenth Tuesday prior to the primary, municipal or general election where the question is to appear on the ballot.[8]

When Question Prohibited. No question for election of a government study commission may be initiated either by ordinance or by petition while proceedings are pending under any other ordinance or petition filed subject to the Home Rule Law. Proceedings are considered to have begun on the date of the governing body's final vote passing the ordinance or when one third of the required number of signatures for the petition have been obtained.[9]

A referendum on a question for election of a government study commission cannot be held on the same question within four years after the question has been defeated.[10] However, referendum on one of the other two questions may be held within the four year period. Also, a government study commission can be elected within five years after a proposed charter or optional plan proposed by a preceding government study commission was defeated at the polls.[11]

References

1. 53 Pa.C.S. 2901(a); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2911(e); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2911(b); Home Rule Charter and Optional Plans Law.
4. 53 Pa.C.S. 2911(e); Home Rule Charter and Optional Plans Law.
5. 53 Pa.C.S. 2911(c); Home Rule Charter and Optional Plans Law.
6. 25 P.S. 2868; Pennsylvania Election Code, Section 908.
7. 25 P.S. 2869; Pennsylvania Election Code, Section 909.
8. 53 Pa.C.S. 2911(e); Home Rule Charter and Optional Plans Law.
9. 53 Pa.C.S. 2927(b); Home Rule Charter and Optional Plans Law.
10. 53 Pa.C.S. 2927(a); Home Rule Charter and Optional Plans Law.
11. *Commonwealth ex rel. Baker v. Lackawanna County Board of Elections,* C.P. Lackawanna Co., No. 316, March Term, 1975.

Electing Members of the Government Study Commission

At the same election where the question of having a government study commission is on the ballot, voters are also asked to elect the designated number of members for the commission. Even voters opposing having a government study commission are to vote for members of the commission.

The Home Rule Charter and Optional Plans Law establishes a detailed procedure for simultaneously presenting to the electors two related questions – the first, whether a home rule study should be undertaken and secondly, the election of members to a study commission if the vote is favorable to such a study.[1]

Eligibility. The only eligibility requirement for candidates for the office of study commissioner is that they be registered voters of the municipality.[2] Current officeholders, including local, school, county and state officials are eligible to serve as members of government study commissions. As the office is nonpartisan, persons covered by local or state civil service regulations are also eligible to serve.

Nomination Papers. Candidates are nominated by filing nomination papers. The nomination papers must include the name and address of the candidate, identify the person as a candidate for the office of government study commissioner, and state the signers are legally qualified to vote for the candidate.[3] The nomination papers may not carry any political party designation or slogan.[4]

Nomination papers may be circulated and signed within a time period between the thirteenth and the tenth Tuesday before the election. Candidates must obtain signatures of registered voters equal to at least two percent

of the number of votes cast for governor in the last gubernatorial general election within the municipality, or two hundred registered voters whichever is less.[5] Each voter signing a nominating paper must list their residence, including street number and post office address. Each voter may sign nominating papers for as many candidates as the number of members proposed for the government study commission.[6]

Each nomination paper must be accompanied by an affidavit of one or more of the signers, affirming the paper was signed by each signer in their proper handwriting, that to the best of the signer's knowledge all signers are registered voters of the municipality, and that the purpose of the paper is to endorse the candidate named for the office of government study commissioner.[7]

Filing Nomination Papers. Nomination papers must be filed no later than the tenth Tuesday prior to the date of the election.[8] Each nomination paper must have attached an affidavit signed by the candidate, consenting to stand as a candidate at the election, and promising to take office and serve, if elected.[9] Candidates filing nomination papers for government study commissioner do not have to pay a filing fee since they serve without compensation.[10]

Ethics Law Disclosure Statement. The State Ethics Commission has ruled candidates for government study commission must file ethics law disclosure statements.[11] Forms are available from the county board of elections.

Campaign Finance Reports. Candidates for government study commissioner are subject to campaign finance reporting requirements.[12] Most candidates for government study commission will have minimal, if any, campaign receipts or expenditures. Candidates spending less than $250 are required only to file a notarized statement attesting that fact with the county board of elections. When candidates file their nomination papers, they will be given the appropriate form by the board of elections.[13]

References

1. 53 Pa.C.S. 2914; Home Rule Charter and Optional Plans Law; *Reese v. County Board of Elections of Lancaster County,* 308 A.2d 154, 10 Pa.Cmwlth. 448, at 453, 1973.
2. 53 Pa.C.S. 2913(a); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2913(b); Home Rule Charter and Optional Plans Law.
4. 53 Pa.C.S. 2912(b); Home Rule Charter and Optional Plans Law.
5. 53 Pa.C.S. 2913(a); Home Rule Charter and Optional Plans Law.
6. 53 Pa.C.S. 2913(c); Home Rule Charter and Optional Plans Law; 25 P.S. 2911(c).Pennsylvania Election Code, Section 951.
7. 53 Pa.C.S. 2913(d); Home Rule Charter and Optional Plans Law.
8. 53 Pa.C.S. 2912(b); Home Rule Charter and Optional Plans Law.
9. 53 Pa.C.S. 2913(b); Home Rule Charter and Optional Plans Law.
10. 25 P.S. 2873; Pennsylvania Election Code, Section 913.
11. 65 Pa.C.S. 1104(b); State Ethics Commission Opinion #80-029.
12. 25 P.S. 3246; Pennsylvania Election Code, Section 1626.
13. 25 P.S. 2912; Pennsylvania Election Code, Section 952.

Election Procedures

All elections held under the authority of the Home Rule Charter and Optional Plans Law are to be conducted in accordance with the Pennsylvania Election Code.[1] Provisions of the Election Code are to be followed unless specifically superseded by the Home Rule Law.

Advertising Elections. Both the county board of elections and the municipal clerk or secretary must legally advertise the election on the question of a government study commission. The county board of elections must include the question in its official notice of the election.[2] In addition, the municipal clerk or secretary must post a notice of the election in each polling place on the day of election and publish a notice in at least one newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of 30 days prior to the election.[3]

Courts have held notice requirements in election laws are mandatory rather than directory. In a case involving Unity Township, the Westmoreland County Court of Common Pleas held failure to give notice as required by the

Home Rule Law constituted sufficient grounds for striking a question on electing a government study commission from the ballot.[4] A referendum on a government study commission in the City of Meadville was invalidated for failure to give proper notice. In this case, the court directed the question to be placed on the ballot at the next available election without the need to recirculate and refile petitions. However, candidates interested in serving on the commission were required to refile nominating petitions.[5] The Pennsylvania Supreme Court has upheld the right of courts to keep questions off the ballot for failure to comply with advertising and notice requirements.[6]

For each referendum appearing on a county or municipal ballot, the county board of elections is to prepare an explanation of the ballot question.[7] This statement must be in plain English. It is to indicate the purpose, limitations and effects of the ballot question to the people. The statement is to be included in the notice of the election and three copies are to be posted at each polling place.

Ballot Instructions. Voters are to be instructed to vote for members of the government study commission, regardless of how they voted on the question of having a study commission.[8] Each voter is to vote for the designated number of members of the commission. The Commonwealth Court has held placing these instructions on the ballot is a mandatory procedure. Because of the failure of the board of elections to put required instructions on the ballot, it invalidated the election of a government study commission in Lancaster County.[9]

Election Contests. The Commonwealth Court also held that elections of government study commissioners are subject to election contests under the Pennsylvania Election Code.[10] No contest provision exists for a referendum question, but the validity of a referendum may be challenged in equity if some material requirement of the law is ignored.

Results. Results of the voting are canvassed in the same manner as for other municipal offices and questions. If a majority of those voting on the question of having a government study commission approve the proposal, then the designated number of commissioners receiving the largest number of votes are elected and constitute the government study commission. If two or more candidates for the last seat draw an equal number of votes, then they must draw lots to determine whom is elected. If the voters do not approve the question of establishing a government study commission, then no study commissioners are elected and the procedure is ended.[11]

If an insufficient number of persons have filed nominating papers by the deadline to fill all the positions on the government study commission, the question is still placed on the ballot. However, if additional persons are not elected to the study commission by receiving at least as many write-in votes as signatures required for the nomination paper, then the question is deemed to be defeated.[12] Even if a majority approve having the commission, a full slate of commission members must be elected before the question is considered approved.

Certification. The county board of election must certify the results of the election to the municipal governing body, the Secretary of the Commonwealth and the Secretary of Community and Economic Development.[13]

References

1. 53 Pa.C.S. 2912(b); Home Rule Charter and Optional Plans Law.
2. 25 P.S. 3041; Pennsylvania Election Code, Section 1201.
3. 53 Pa.C.S. 2952; Home Rule Charter and Optional Plans Law.
4. *Chenet v. County Board of Elections of Westmoreland County,* 56 West. 195, 1974.
5. *Early v. Board of Elections of Crawford County,* 3 D.&C.4th 98, 1988, C.P. Crawford Co.
6. *Mount Lebanon v. County Board of Elections of Allegheny County,* 368 A.2d 648, 470 Pa.317, 1977.
7. 25 P.S. 2621.1; Pennsylvania Election Code, 201.1.
8. 53 Pa.C.S. 2911(c); Home Rule Charter and Optional Plans Law.
9. *Reese v. County Board of Elections of Lancaster County,* 308 A.2d 154, 10 Pa.Cmwlth. 448, 1973.
10. *Ibid,* at 455.
11. 53 Pa.C.S. 2914; Home Rule Charter and Optional Plans Law.
12. 53 Pa.C.S. 2912; Home Rule Charter and Optional Plans Law.
13. 53 Pa.C.S. 2951; Home Rule Charter and Optional Plans Law.

III. Operations of a Government Study Commission

Once elected, the members of the government study commission serve as representatives of the community at large in examining the current local government, considering alternatives, reaching decisions on how the local government might best be run, and presenting their recommendations to the voters. The process is a local process; although outside help is available, local citizens do the bulk of the work, and the decisions reached are their responsibility. The process is also a citizen process. The commissioners are elected by the citizens and are to conduct their affairs with the maximum feasible public involvement and discussion.

The role of the government study commission has been summed up very aptly by the Ferguson Township Government Study Commission.

1. To conduct an in-depth study of municipal government.
2. To probe deeply into procedures and inter-relationships of different parts of government so as to discover weaknesses or defects.
3. To look outside the municipality to discover improved practices that might be applied and adopted.
4. To evolve from its studies an arrangement for better government.
5. Upon the development of the major elements to set them down in a clear, logical and consistent form as a Charter.
6. To conduct its affairs in a manner which will win the respect of the citizens and educate and stimulate citizens groups and officials to get the Charter adopted.

Membership in a Study Commission does not necessarily imply expertness. Wisdom, practical judgment and amateur enthusiasm are as fundamental to a successful Charter Commission as are legal, social and political expertise.[1]

Role of the Government Study Commission

Candidates elected to a government study commission have an important and serious task to perform. In some ways, commission members will be performing for their community many of the functions traditionally exercised by the General Assembly. Pennsylvania courts hold home rule charters have the force and status of legislative enactments.[2] The seriousness and commitment the commissioners bring to their deliberations will greatly determine the impact of their recommendations.

The commissioners must be aware their work is likely to have a long-term influence on the affairs of their community. They are not being asked to examine trivial matters relating only to a narrow scope of activity, nor are they making recommendations with no direct opportunity for implementation. They are charged with the task of comprehensively reviewing, studying and analyzing the very governmental structure for their own community. But it is not just a study, because the commission's recommendations are promptly placed before the voters for decision.

Governments do not ordinarily subject themselves to comprehensive self-examination; they are too busy with daily activities. The government study commission process affords municipalities the opportunity to initiate the kind of governmental review not otherwise possible. Divorced from needs to operate the government or to position for partisan advantage, the citizen members of the government study commission can turn their full attention to the improvement of governmental machinery.

Pennsylvania local government structures are based in the distant past, embellished by accretions mandated over the years by the General Assembly or created locally to meet a pressing need. The government study commission often makes the first complete review of this structure. The results of their study, analysis and decision making will form a proposal to be either ratified or rejected by the voters. Seen in this perspective, the work of the government study commission may be one of the most formative acts in the life of the community.

Government study commissions have often been likened to constitutional conventions. Just as state conventions are occasionally called to revise, amend or rewrite the basic body of law for the state government, so also are municipal government study commissions charged with reviewing the governmental structure of their municipality and making recommendations for basic change.

In this role, study commissioners are asked to "represent" all citizens in the community. Since each voter cannot take the time to study the complete governmental operation of their municipality, the study commission plays an important representative role. In a true sense, the commissioners are acting not for themselves, or their colleagues on the commission, but for all citizens living within the community.

Each government study commission assumes a character unique to itself, and the operations of one are not strictly comparable to the work of another. Such variability is inevitable, for commissions will differ according to types of individual member, organizational style, community values and the kinds of problems unique to each municipality. Government study commissions will work within the community's municipal traditions, the local political culture and the vision for the future. Communities will employ different attitudes and resources in coping with physical, social or economic change. The very size and breadth of governmental activity will greatly determine the scope of the commission's work.

Study. The first substantive task of the government study commission is a thorough review of the structure and operation of the existing form of government. Each commissioner must gain familiarity with the current administrative organization and methods of operation. The initial fact-finding process is important, for the commissioners should not begin their deliberations with any preconceived notions. They should neither support change for the sake of change, nor oppose change simply because it is change. The commissioners must base their deliberations on the information they gather, and the initial fact-finding process is an important stage in their work. Part of the information gathering is examining alternative approaches used in other areas or new structural proposals to meet emerging needs.

Deliberation. The Home Rule Law specifies the kinds of questions the study commissioners ought to ask as they collect information on the existing form of government.[3] The commission is charged with comparing the municipality's government with other forms available under law. The commission has the duty to judge whether or not the municipality's government could be strengthened and made more clearly responsible or accountable to the people, or whether its operation could become more economical or efficient under a changed form of government. Definition of these terms, and thus definition of their charge, is left to the members of each commission. Local values will determine the definition of a strong, responsible, accountable, economical and efficient local government.

In meeting this responsibility, the commission must look for structural and operational weaknesses and review those areas where improvement appears desirable. In this process, the commission can look to other municipalities whose experiences may provide some useful guides. In all cases, the commission must try to determine the kind of government which will best suit the unique needs of their own community. It must balance the desirability of change against the advantages of continuity and familiarity.

Drafting. As elected delegates to the functional equivalent of a municipal constitutional convention, the study commissioners drafting a home rule charter undertake a task likely to have long-range implications for the functioning of their community. With only eighteen months to accomplish their work, the study commissioners are

charged with producing the single most important document regulating the government of their municipality. The work of study commissioners is not easy. They are forced to make choices to ultimately determine their municipal government's capability to operate and respond to the wishes of its citizens.

The success of the study commissioners in meeting their task greatly depends on the amount of information and assistance they seek. The study commissioners cannot hope to write a home rule charter without tapping the resources and information others have to offer. The Department of Community and Economic Development, the local government associations and local educational institutions provide in-formation resources the study commission can tap. The study commissioners should consider engaging the services of local government and legal experts early in their deliberations. A consultant can advise on what a sound charter should contain, and also on the pace and schedule of work for the commission if recommendations are to be made before the statutory deadline. The study commissioners should always actively seek out the judgments of present and past municipal officials, as well as the views of all individuals and groups wishing to make a contribution to the charter drafting process. Often, neighboring communities contain individuals with valuable experience in the study commission process.

The commissioners are being asked to recommend a system of local government designed to serve its citizens more efficiently and responsibly than the existing system. Since each community is likely to have its own unique needs and traditions, the precise shape of a charter will differ from all other charters, even though basic elements are common to many. The real task the study commissioners face is to produce a workable home rule charter to enable the local government to respond to the needs of its own citizens with flexibility and economy. Drafting the charter will be a challenging task, but the rewards municipal self-government offer will more than compensate the efforts of the study commission. The Youngsville Borough Government Study Commission has ably stated the nature of this task.

Our aim has been to ensure that our form of municipal government is modern, able to assume all the powers available to it, and organized in such a way that it can use those powers to the fullest extent necessary to maintain democratic, efficient, economical and progressive action consistent with the needs and will of the community.

We recognize that what we are proposing is in fact a blueprint of the machinery of government for tomorrow. Although we have no crystal ball to tell us what changes and problems may arise in the next ten, twenty or fifty years, we have attempted to develop a formula that is flexible, adaptable, broad without being vague, and precise without being restrictive.[4]

References

1. *Ferguson Township Local Government Study Commission Final Report,* March 14, 1974, p. 6.
2. *Mount Lebanon v. County Board of Elections of Allegheny County,* 368 A.2d 648, 470 Pa. 317, at 320, 1977; *Commonwealth v. Bellis,* 472 A.2d 194, 324 Pa.Super. 506, at 518, 1984.
3. 53 Pa.C.S. 2918; Home Rule Charter and Optional Plans Law.
4. *A Report of the Activities and Findings of the Youngsville Government Study Commission and a Proposed Home Rule Charter for the Borough of Youngsville,* August 30, 1974, p. 2.

Organizing the Government Study Commission

Oath. Within ten days after official certification of their election, members of the government study commission must make an oath or affirmation to support the Constitution of the United States and the Constitution of Pennsylvania, and to perform the duties of their office with fidelity. Those elected to a county government study commission must take the oath before a judge of the court of common pleas. Municipal study commission members take their oath before a district justice.[1] This ceremony can be done either at the organization meeting or at the office of the district justice or judge.

The Home Rule Law requires the commission to organize and hold its first meeting as soon as possible and no later than fifteen days after certification of its election.[2] The law does not specify who is to call the meeting, but the elected members should work this out with the municipal secretary. The first meeting should be advertised as required by the Sunshine Law, and the municipal secretary is the appropriate person to do this.[3]

Officers. The Home Rule Law does not provide much detail on the organizational arrangements for a government study commission. At the organizational meeting, one of the members is to be elected chairman and one vice-chairman. Additional offices have been those of secretary and treasurer. There should be no problem choosing officers in a small town, but in a large municipality or county, some effort should be made by the members to become acquainted with their colleagues before officers are chosen.

The specific duties of officers are left to the discretion of the study commission. Commissions generally follow precedents set by other organizations within their communities. In the case of the secretary, duties greatly depend on the amount of paid help available. Generally, personnel expenditures rise with the size of the local government being studied. One of the first costs incurred for even the smallest communities is employment of stenographic and typing assistance, so no member of the commission is saddled with these tasks.

Procedural Rules. At the same organization meeting, commission members should agree on procedural rules to guide their work. While some rules are necessary, no set of procedures will guarantee smooth operation. Mutual courtesy, tact and common sense are essential to lubricate the deliberative process. Formal votes may be taken on major issues, but the commission will find informal cooperation among the members is a necessary ingredient for productive work. In general, rules should reflect familiar local patterns set by other community organizations.

A majority of the members constitutes a quorum for the conduct of the commission's business, and the law further requires the recommendation of the commission to be adopted by a majority of the whole number of the members of the commission.[4] Workshop sessions, research activities and committee meetings can be conducted with less than a quorum of the full commission.

Vacancies. If any vacancy occurs in the commission, the remaining members must fill it by appointing a properly qualified voter to the position.[5] If a vacancy does occur, the remaining members should fill the position as promptly as possible so the work of the commission can continue without interruption.

Vacancies have occurred in more than one out of five government study commissions, with commissions replacing up to four of their original elected members due to deaths, resignations and persons moving out of the community. The Baldwin Borough Government Study Commission filled its two vacancies by advertising them in the local paper, then selecting new members from the applications received.[6] Other commissions chose persons who had run for the office and received the next highest vote after those elected.

A number of government study commissions appointed alternates. Alternates attended meetings and took part in the commission's activities, but did not vote. Alternates were then available to fill any vacancies, providing the commission a replacement with experience and knowledge of the commission's work.

References

1. 53 Pa.C.S. 2915(b); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2916(a); Home Rule Charter and Optional Plans Law.
3. 65 Pa.C.S. 709; Sunshine Act.
4. 53 Pa.C.S. 2916(b); Home Rule Charter and Optional Plans Law.
5. 53 Pa.C.S. 2917; Home Rule Charter and Optional Plans Law.
6. *Home Rule Charter, Report of the Government Study Commission, Baldwin Borough,* May 2, 1974, p. iii.

Meetings

At the organization meeting, the government study commission is required to fix its hours and place of meeting.[1] A regular and well-publicized time and place for commission meetings is important for encouraging citizen attendance. Commissions usually meet in the municipal building or some other public place with adequate facilities. Public hearings are often scheduled for a sizeable hall or are held at scattered locations throughout the community to facilitate attendance.

In drawing up a time schedule for meetings, tentative plans must be made for the commission's work. At the initial meeting or another early date, the commission should hear an expert explain its powers and duties and the scope of its activities. The Department of Community and Economic Development regional offices can provide such individuals, or veteran members of government study commissions may be available from neighboring communities.

Meeting frequency varies with the manner each commission organizes its work. Weekly or biweekly meetings are most commonly chosen. If a commission chooses to do much of its work through committees, monthly formal meetings may suffice. Often commissions have found it necessary to alter the frequency of meetings, especially meeting more often during the charter-drafting phase.

The time for meetings should be set for the maximum convenience of members. Accessibility for the public should also be considered. Evening meetings are most usual. The commission can consider definite time limits to meetings. Commissions usually experience little difficulty in carrying their business forward from one meeting to the next. Concern for getting through a meeting agenda should be balanced against the desirability of full discussion of issues to each member's satisfaction and allowing for maximum input from the public.

Meetings of the government study commission must be advertised; it is an agency within the meaning of the Sunshine Law.[2] All deliberations and formal actions must be taken at a previously advertised public meeting. The Home Rule Law requires the commission to provide for the widest possible public information and discussion on the purpose and progress of its work.[3]

Government study commissions must hold at least one public hearing. Public hearings are used to explain the commission's activities to the public and obtain public reaction, comment and suggestions. At least three useful occasions arise for a public hearing. The first is early in the commission's life to gather citizen views on the existing government and generate public support and attention for the commission's activities. The second is at the point the commission is ready to make a decision on the nature of its recommendation — whether to proceed to draft a charter, select an optional plan or recommend no change. The third arises with the formulation of the final recommendation, whether an optional plan or a preliminary draft of a home rule charter. About half the commissions have held one or two public hearings. Three to five public hearings are the most usual range. Some commissions have held more than twenty public hearings in an effort to bring their activities to all parts of a county or large municipality.

Meetings should be planned in advance, either by one of the officers or a program committee. Each meeting should have a worthwhile activity — speakers, interviews, special reports, policy debates, reviews of drafts or public presentations. The work of the study commission is considerable. Skillful planning can help ensure the time spent by the commission is productive. Past government study commissions have averaged around fifty meetings, with some holding up to one hundred. Commission members will be required to devote hundreds of hours of their time to meetings, workshops and hearings with many more spent in private study and research.

References

1. 53 Pa.C.S. 2916(a); Home Rule Charter and Optional Plans Law.
2. 65 Pa.C.S. 703; Sunshine Act.
3. 53 Pa.C.S. 2920; Home Rule Charter and Optional Plans Law.

Committees

Government study commissions have the choice of operating as a single group or delegating some of their tasks to committees composed of several members. In most cases, commissions have operated without formally organized committees, although tasks may have been assigned to individuals or ad hoc groups. In some cases, citizen members were added to committees to gain expertise or broaden community involvement in the process.

Committees were established on both a permanent and temporary basis. In Scranton, subcommittees for bylaws and finance operated briefly in the initial period of the commission. The Plymouth Township Government Study Commission employed two separate sets of committees. During the research phase, subcommittees were assigned for studying the current government, optional plans, home rule charter, New Jersey optional forms experience and financial affairs. After the commission voted to draft a home rule charter, three committees were formed: charter drafting, transitional plan and report drafting. A citizen advisory committee of 27 members was appointed to help review initial charter drafts. During the charter drafting process, both Bellevue Borough and Radnor Township Government Study Commissions assigned the task of drafting preliminary articles of the charter to subcommittees whose work was then reviewed by the full commission.

Committees used by study commissions fall into three broad areas. Administrative committees deal with the operations of the commission in areas such as program, budget, personnel, auditing and public relations. Research committees study various governmental forms and options open for recommendation. Charter drafting committees have responsibility for furnishing initial drafts of particular parts of charters.

Because most commissions are small, the most frequent size being only 7 members, the majority did not work through committees. In this way, all members of the commission participated in all facets of its activity. In larger jurisdictions, hiring of professional staff or retaining consultants was the preferred method of dealing with the burden of the workload.

Work Schedule

In addition to electing officers and determining rules of procedure, the commission at its first meeting ought to start planning out a tentative schedule of its work. In all probability, this schedule will have to be refined as the work progresses and the commission settles on a mutually agreeable pace. Adhering to a written schedule or outline of activities is a good idea so the commission does not get bogged down in any particular phase of its work. It also helps keep the commission's ultimate purpose in the forefront. Time limits for commission activity are established in the Home Rule Law.[1] Schedules must be fitted within these deadlines.

If the referendum question has limited the commission to examining optional plans, it has nine months to complete its work. It might spend the first two months reviewing the existing governmental structure and gathering information on areas needing improvement. The next several months the commission can consider each of the optional plans and weigh their desirability for the community. By the seventh month the commission should have completed the major portion of its review and come to the point of making its recommendation so it can designate one or more members to begin work on writing the report. None of these tasks can be neatly sealed off from the others, and the exact form of scheduling may vary with each study commission. The tentative schedule established by the commission at the beginning should become increasingly specific as the deadline date for the recommendation approaches.

For commissions drafting home rule charters, the work is much more complex. Even though such commissions are given 18 months to complete their work, they must be aware writing a charter is a time-consuming task. After initial study and review, the commission ought to begin drafting a rough version of the charter by the sixth month or so of its deliberations. To provide sufficient time to make necessary revisions, public hearings on a tentative draft ought to be held by about the twelfth month. Scheduling work will depend on the way the commission chooses to write the charter, but some tentative timetable will be necessary to guide the commission's work.

The activities of government study commissions fall into a general pattern, although variation is the rule rather than the exception. The first step is orientation. This includes the organization meeting, learning its powers and duties, working out a budget and planning its work.

The second step is research. The existing form of government is studied and local officials are interviewed. The commission also explores potential alternatives. They may interview officials from other types of municipalities, attend workshops and training courses on local government, visit other communities and study literature on local government structure.

The third step is a decision of direction – home rule, optional plan or no change. Testing public opinion through public hearings, citizen questionnaires or sample surveys may precede this decision.

The fourth step (assuming home rule is chosen) is drafting a charter. This may involve retaining local government experts or legal counsel. Drafts or sections are reviewed and placed in a tentative charter.

The fifth step is review and public discussion on the draft charter. This usually involves public hearings for citizen input, meeting with officials, submission to legal or local government experts and review by the members themselves.

The sixth step is writing the final report, printing and proofreading the charter and report, and submitting the report to the municipal secretary and the voters.

The final step is the period of voter education up to the time of the referendum. The commission has a duty to maximize public information and discussion on its work.[2] It is not finally discharged until after the referendum.

In Cambridge Springs Borough, the Government Study Commission organized its work in four stages. For the first five months they gathered information on the structure and operation of the present government, investigated the adequacy and workability of the Borough Code, explored the meaning and implications of the Home Rule Law and weighed the attitudes and opinions of borough residents on local government. The next two months were a period of deliberation when they evaluated their information, considered the options and decided to write a home rule charter. The next seven months were consumed with the task of writing the charter. The final two-month period was occupied with proofreading and printing the charter and drafting and printing the final report.[3]

The Ferguson Township Government Study Commission began its work with a two-month training period learning state laws and local government in general. For the next two months, they interviewed elected and appointed officials and representatives of civic groups. Three public meetings were held to gather citizen views before the commission decided to write a home rule charter. Preparation of the charter draft consumed six months. During the next three months the draft was viewed by a retained consultant, the commission's legal advisor and Department of Community and Economic Development staff and the final report was written. Another series of public hearings was held on the final version of the charter. The final three months were occupied in publication and distribution of the charter and voter education prior to the referendum.[4]

The first months of the government study commission in Hermitage were spent in organizing and orientation. For the next two months, members studied forms of local government by interviewing officials of other municipalities, attending workshops and meeting with other government study commissions. Township officials were interviewed for the next two-month period, and members studied printed materials. A series of weekly work meetings was held to draft the charter. For the next month, the commission reviewed the charter. For two more months the commission met with township officials for their reaction, and a second series of open meetings gathered public reaction on the draft. During the last three months, the charter was finalized and the report prepared and submitted.[5]

References

1. 53 Pa.C.S. 2921(a); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2920; Home Rule Charter and Optional Plans Law.
3. *Final Report of Government Study Commission of Cambridge Springs, Pennsylvania,* March 16, 1974, pp. 2-3.
4. *Ferguson Township Local Government Study Commission Final Report,* March 14, 1974, pp. 2-4.
5. *Township of Hickory Government Study Commission Final Report,* March 13, 1974, pp.4-5.

Finances

Funding the operations of the government study commission is the responsibility of the local governing body.[1] The Home Rule Law does not provide any specific guidelines for the amount of expenses, merely employing the terms necessary and reasonable. It is the responsibility of the commission to work up a budget and present it to the governing body. The amount finally appropriated is subject to negotiation between the two groups. It is important to remember the activities of a commission writing a home rule charter will be spread over at least two fiscal years of the local government.

Often the municipality will offer the commission services without charge. This almost always includes a meeting room or office, and sometimes includes telephone service, office supplies or clerical assistance. School districts, churches or fire companies will also provide places for public hearings in outlying neighborhoods.

Members serve without compensation, but have the right to be reimbursed for necessary expenses. These can include registration fees for training courses and workshops, travel expenses, study materials and meals in certain instances. In a commission writing a charter, the members will contribute hundreds of hours of their own time and the use of their personal talents over a two-year period.

Major expenses for a commission will fall in the areas of secretarial assistance, legal fees and printing costs. Minor expenses will be incurred for office supplies, postage, telephone, advertising and member expenses. Commissions may retain local government experts as consultants for the charter drafting process. In the largest jurisdictions, full-time professional staff has been hired for the duration of the commission's existence.

The Home Rule Law allows the commission to accept privately contributed funds and services. Where these occur, they are usually in the form of donated services such as consulting activity, office supplies or meeting rooms. Cash donations have been rare indeed.

The commission must keep a strict accounting of its funds. The Home Rule Law requires the final report of the commission to include a sworn statement by the members listing in detail the funds, goods, materials and services, both public and private, used by the commission in the discharge of its duties.[2] Since the report is filed before the final discharge of the commission, the financial statement should include all encumbered and anticipated expenditures. A final financial report should be made to the municipality upon the termination of the commission.

Costs of Government Study Commissions. In a study conducted in early 1981, the Department of Community and Economic Development examined the financial reports of 120 government study commissions. While financial figures are not strictly comparable, they do offer some idea of the cost of operating government study commissions. Amounts are stated in current dollars; no effort has been made to account for inflation. Please be aware that between 1972 and 1980 the consumer price index increased 97.1% and between 1980 and 1999 it went up another 99.4%. A number of the financial reports failed to include final printing costs, somewhat lowering total average figures.

Average Expenditures of Government Study Commissions, 1972-80

Population Range	Average Number of GSCs	Expenditure
under 5,000	26	$ 979.66
5,000 - 9,999	19	2,027.85
10,000 - 14,999	18	3,464.54
15,000 - 24,999	15	5,199.32
25,000 - 39,999	13	6,455.83
40,000 - 99,999	11	8,637.68
100,000 - 399,999	11	24,719.76
over 400,000	7	70,914.75

Expenditures clearly escalated with the size of the jurisdiction involved. Expenditures within the same population bracket tended to be higher in the Philadelphia and Pittsburgh metropolitan areas than in other parts of the state.

Expenditures were classed into six major categories. Average expenditures for each category, separating county and municipal government study commissions, is shown below.

Average Expenditure of Government Study Commissions, 1972-80

Classification	101 Municipal GSCs	19 County GSCs
Legal assistance	$539.34	$2,468.37
Clerical assistance	1,052.85	3,093.72
Consultants/research	988.05	14,320.72
Travel/training	78.45	1,567.81
Operational expenses	916.08	4,910.02
Printing	1,234.67	11,606.20
TOTAL	**$4,809.47**	**$37,966.86**

References

1. 53 Pa.C.S. 2919; Home Rule Charter and Optional Plans Law; *McDermott v. Board of Commissioners,* 74 D.&C.2d 167, at 174, 1974.
2. 53 Pa.C.S. 2921(b); Home Rule Charter and Optional Plans Law.

Consultants

One of the first actions of the government study commission will be to look about for help. Help is readily available in various degrees and kinds. The Home Rule Law specifically allows a commission to retain consultants.[1] Available local resources and the complexity of the government being studied help determine the need for outside assistance.

In large jurisdictions with complex administrative structures, it has been the practice for government study commissions to hire full-time professional staff. The Pittsburgh Government Study Commission hired a staff of six; executive director, solicitor-legislative drafter, office manager, clerk-typist, organizer-researcher and public information consultant. The Erie County Government Study Commission paid staff consisted of an executive director, two secretaries, three interns and legal consultants.

In cases where full-time staff is unnecessary or undesirable, a commission may retain a consultant or firm for specific tasks. Six months into its operation, the Upper Darby Township Government Study Commission retained the Fels Center of Government at the University of Pennsylvania as consultant. Staff from Fels conducted a study of the existing government, helped with discussion of alternatives and assisted in drafting the charter. Haverford Township Government Study Commission engaged the Pennsylvania Economy League to assist in drafting their charter. The vast majority of study commissions paid legal advisors to assist in drafting or to review their charter drafts.

For communities where financial limitations or small size preclude professional staff or paid consulting assistance, considerable help is available to allow the commission members to discharge their duties on their own. Assistance is sometimes free; a college professor served the Mansfield Borough Government Study Commission as a free consultant and the borough solicitor acted as legal counsel at no cost. For purposes of orientation, the Department of Community and Economic Development has expert staff in its central and regional offices to outline the duties of the commission and explain the nature of its work. Members of government study commissions who served neighboring communities can also give valuable assistance.

During the period of study and research, much help is available. Past and present officeholders can provide invaluable information on the actual operations of the existing government. Colleges or universities in the region may have experts on municipal government. Local chapters of the League of Women Voters may have studied facets of the governmental structure or operations. Local librarians can research bibliographies and help commission members obtain printed materials on local government. Officials from municipalities with differing structures can be interviewed on their experiences.

In drafting and review of home rule charters, commissions usually pay for some legal advice. Sometimes the municipal solicitor provides it or a firm with local government expertise is retained. Both the Department of Community and Economic Development and the Pennsylvania Economy League have assisted in reviewing drafts. College faculty members specializing in local government have also assisted, sometimes donating their services and sometimes working on a retainer. The Upper Providence Township Government Study Commission enlisted the aid of resident attorneys to help evaluate charter drafts.

The record of government study commissions elected in Pennsylvania is testimony to the fact citizens elected by their neighbors can adequately discharge their duties, usually with a minimum of assistance. The Home Rule Law provides each commission flexibility to arrange its operations to fit its own needs and meet community expectations.

Reference

1. 53 Pa.C.S. 2919(b); Home Rule Charter and Optional Plans Law.

Records

Handling and organizing written material will be a major concern for government study commissions. Members should be provided with folders or binders to hold minutes, reports, studies and drafts of charter articles in an organized fashion

Minutes must be taken of all public meetings of the commission and promptly recorded.[1] These minutes are classified as a public record and must be open for inspection by any citizen.[2] Many commissions make copies of their minutes available to local news media, send copies to local officials or place them in the library or municipal building for easy access by citizens.

After the discharge of the commission, all records, tapes, minutes of meetings and written discussions of the commission must be turned over to the municipal clerk or secretary for permanent safekeeping.[3] Under the Records Retention and Disposition Schedule for Municipalities, government study commission hearing transcripts and reports must be preserved for a minimum of five years.[4] Minutes and formal records, including the final report and recommendation of the commission, are permanent records.

Accuracy is important, especially in dealing with various drafts of a home rule charter. The commission should be sure the final version of the proposed home rule charter is letter perfect and all copies are identical. Varying versions of the McKeesport Home Rule Charter raised difficulties when it came time to implement the charter by electing officers.[5]

References

1. 65 Pa.C.S. 706; Sunshine Act.
2. 65 P.S. 66.2; Open Records Act.
3. 53 Pa.C.S. 2921(d); Home Rule Charter and Optional Plans Law.
4. 46 Pa.Code 15.53.
5. *Winters v. Papadakos,* Allegheny County Court of Common Pleas, GD 75-2478, 1975.

Public Relations

Communication with the public is necessarily a critical element of the government study commission's activities. Because the commission is to study the local government and consider recommendations for change, the widest possible input of citizen opinion and information will be needed to help guide the commission's work. If the commission's recommendations are to receive a fair and informed hearing, they must keep the voters apprised of their ongoing activities. The Home Rule Law requires each commission to hold at least one public hearing and to provide for the widest possible public information and discussion on the purpose and progress of its work.[1]

Regular meetings of commissions are open to the public and efforts are made to encourage attendance. These include publicizing meetings in the local papers, sending requests to community organizations asking for representatives to testify and setting aside a time period for the general public to offer comments. In geographically large jurisdictions, meetings are sometimes rotated into different neighborhoods. In spite of these efforts, commissions usually experience very low attendance from the general public.

Public hearings and public forums are usually better attended, but here again turnout is usually disappointing. Sometimes preliminary material is either mailed to households or printed in local newspapers immediately before public hearings. Public hearings should include a planned presentation along with a discussion period. Outside speakers, local officials and representatives of organizations can be invited to speak.

Except in the very smallest communities, government study commissions will have to rely on the media to reach out to the public. Often local newspapers or broadcasting stations are supplied with agendas of upcoming meetings and copies of minutes. Many commissions report very substantial coverage by the media. Some public hearings in Pittsburgh were even televised live. In Carbondale, the commission made weekly five-minute reports on local radio and members appeared on three half-hour radio shows. Establishing and maintaining satisfactory relations with the local media is the basis for fulfilling the commission's mandate to maximize public information and discussion.

Additional methods of public contact have been employed by several commissions. In Peters Township, commission members participated in nineteen neighborhood coffees where the informal setting encouraged citizens to express their views. Plymouth Township Government Study Commission appointed citizens to membership on subcommittees. In Coatesville, Marple, Haverford and Radnor, citizen advisory boards were appointed to assist the commissions in reviewing charter drafts and participate in public information efforts.

Questionnaires and voter surveys were used in a large number of cases. They serve a dual purpose, gathering citizen opinion on local government and generating public interest in the government study commission's activities. Questionnaires printed in newspapers had the lowest return rates. Mail-out and mail-back surveys had somewhat better response. The best response occurred when there was personal contact through individual interviews or where community organizations assisted in delivering and collecting questionnaires.

Copies of the final report are usually mailed or delivered to every household in small communities. In larger jurisdictions, they are sometimes printed as a supplement to newspapers or summaries are mailed with instructions on how to obtain the complete report.

Warren Borough Government Study Commission held two public hearings. They published a synopsis of the present form and options for change in the local paper before the first hearing. The completed charter draft was published before the second hearing. Commission members appeared in over 20 speaking engagements before local organizations. A questionnaire printed in the paper elicited 150 responses.[2]

The Chester County Government Study Commission conducted an extensive public relations program. Commission members wrote articles on aspects of their work in a regular program of weekly press releases to county newspapers. Public hearings were held in each of the county's 11 school districts. A brochure on the meaning of the Home Rule Law and the work of the commission was written and more than 23,000 copies were distributed. The commission conducted 4 separate public opinion surveys. A newspaper survey asked for citizen input on basic issues. Questionnaires were distributed to those attending public hearings. The West Chester University Department of Political Science conducted a random telephone poll. A survey of planning issues was sent to local elected officials, planning commission members and planning officers. Student projects or presentations by commission members were conducted in 8 senior high schools.[3]

In Murrysville, a questionnaire asking opinions on all phases of local government was mailed to 12% of the registered voters and printed in the local paper. Two public hearings were held. The preliminary draft of the charter was printed and delivered to all households before the second public hearing. To help the commission keep the public informed on the progress of the charter, a citizen advisory commission was appointed, composed of 42 people representing local civic, social, political and religious organizations. Commission members spoke to civic organizations and high school social studies classes.[4]

References

1. 53 Pa.C.S. 2920; Home Rule Charter and Optional Plans Law.
2. *Final Report and Proposed Home Rule Charter, Warren Borough Government Study Commission,* March 10, 1975, pp. 7-8.
3. *Final Report and Recommendation of the Chester County Government Study Commission,* February 13, 1974, pp. 11-13.
4. Home Rule Charter and Report for the Municipality of Franklin, February 17, 1976, p. 45.

Final Report

The most critical element of the commission's relationship with the public is writing and distributing the commission's final report. The final report is the summation of the commission's work. Because the public will consider the commission's recommendations, the importance of this document cannot be overemphasized. The commissioners will spend most of their time considering various viewpoints, discussing the advantages and disadvantages of various governmental mechanisms and deliberating on the recommendations they will make. The final report constitutes the end result of this activity.

The final report is important for at least two reasons. The first stems from the very purpose for the study commission. Since the study commissioners represent the voters, the commission has a responsibility to report its activities to the people. A second reason for the report springs from the necessity for the voters to consider the commission's recommendations. If the commission's recommendations are to go into effect, the voters must first give their approval. This means the commission's final report plays a central role in informing the voters on the choice they must make.

The commission's final report should be a document of information and explanation. Before making their recommendations, the commissioners will have spent months reviewing the present government and gathering information on possible changes. The final report should summarize the commission's experience in this process. Since the voters themselves cannot assume the task of gathering information on the local government, the commission's final report is the tool to transmit this information to the voters.

Since it is meant for wide distribution among the community's residents, the commission's final report should be written with this audience in mind. Above all else, the report should be written in a style easily readable to the average voter. Communities include people with many different backgrounds, occupations and interests. The commission should strive to reach as many of these individuals as possible with the final report.

Most voters do not have the time or patience to wade through a massive, complex document. The final report should be logical, clear, readable and as brief as possible without ignoring essential elements. After reading the report, local voters should have sufficient knowledge and information to make an informed decision on the recommendation to be placed before them.

Contents of Final Report. The study commission recommending a home rule charter must produce two documents.[1] The first is the home rule charter itself, and the second is the commission's accompanying report explaining its findings and the reasons for its proposal to change the local government. The commission recommending an optional plan of government or no change need produce only a final report. In any event, the final report should follow a basic format. The study commission may want to review final reports produced by commissions in other municipalities as examples. The basic elements appearing in most reports are listed below.

1. A table of contents.
2. A cover letter from the study commissioners to the voters and the local governing body.
3. The summary of the commission's recommendations including the date for the referendum on the recommended change and the effective date of the new form if it is approved by the voters.
4. A brief explanation of the purpose of the commission under the Home Rule Law.
5. The organization and activities of the study commission, including the date of the commission's election and a listing of the commissioners. The report on the commission's activities can include the number and types of meetings, organization of the commission and its style of operation, and the individuals and groups tapped for advice.
6. A summary of the commission's findings on the present form of government.
7. Organization charts of both the present governmental form and the structure recommended by the commission.
8. An explanation of the recommended form and the advantages it will confer.
9. A survey of the areas of municipal government to remain unchanged under the new form.
10. Recommendations for establishing a committee to review problems of transition to the new form of government.
11. Relevant extracts from the Home Rule Law.
12. The required statement of the funds, materials and services used by the commission, and the suppliers of such resources.

These elements do not have to appear in the order listed, but the final report should give sufficient attention to each of them to give the voters a comprehensive review of the commission's work and an explanation of its recommendations.

The opening letter of transmittal should be a brief statement from the commission to the voters and the members of the governing body. The letter should outline the general purpose of the commission. Following this opening letter should be a summary of the commission's recommendations and an explanation of the values forming the basis for the commission's decisions.

The report should include the text of the question, as specified by the Home Rule Law, to be placed on the ballot and the date of the election. If the study commission wants to put an interpretive statement explaining the question on the ballot, then it should also be added. The interpretive statement should succinctly describe the new form of government resulting from a ''Yes" vote. A "No" vote is to retain the existing form of government. The report should also specify the date the new form of government will go into effect if the change is approved by the voters.

Subsequent sections of the report should describe the activities of the commission, as well as offer justifications or the recommendations the commission proposes. As background to the commission's work, the report might briefly discuss the Home Rule Law. The report should then outline the establishment of the commission and list the commission members.

The way the commission arrived at its recommendation may be as significant as the recommendations themselves, so the final report should give sufficient attention to the organization and activities of the commission. A discussion of matters such as the number, frequency and types of commission meetings and the methods of deliberation will increase the voter's knowledge and appreciation of the commission's work. The commission will have spent much time searching for information; and the procedures and sources used in this search should be discussed in the final report.

The commission's conclusions concerning the present form of government and the reasons for suggesting a change will constitute perhaps the most important section of the report. The commission must justify any change it recommends to the voters. The commission should outline in detail what it considers are the shortcomings in the present governmental form and the way they will be remedied if a change is approved.

If the commission recommends a home rule charter, the final report should clearly outline the advantages this charter will offer over the present form of government. The report should clearly define the nature of home rule and indicate changes the home rule charter will allow and why such changes are desirable. If the commission recommends an optional plan of government, the final report should discuss the advantages of the recommended plan over the present form of municipal government. The final report should contain organization charts of both the current and the recommended structure of government. Accompanying text should clearly indicate the differences between both structures and a reasoned analysis of the advantages found in the recommended form.

The final report should also note those areas of municipal government to remain unchanged if the commission's recommendations are accepted by the voters. Voters should know the legislated limitations on home rule powers as well as limitations written into the charter. In addition, many charters continue a large percentage of current governmental arrangements.

If the voters approve the recommended change, plans will have to be made for transition to the new form. For example, an administrative code should be drafted before the newly adopted plan goes into effect. In its final report, the study commission should recommend the governing body appoint a committee to deal with matters of transition to the new form.

Two additional elements must be included in the final report. The Home Rule Law requires the final report to contain the complete plans as recommended. For example, if a council-manager optional plan is recommended, the report must contain those excerpts from the Law in any way relating to the operation of the plan. These excerpts would include the text of the plan itself, the general provisions and limitations for optional plan municipalities, and the general provisions common to optional plans. If a home rule charter is recommended, the final report should include the complete text of the proposed charter.

Finally, the Home Rule Law requires the commission's report include a financial statement, sworn to by members of the commission.[2] It must list in detail the funds, goods, materials and services, both public and private, used by the commission in the performance of its work and the preparation and filing of the report. The list must specifically identify the supplier of each item noted.

Other Recommendations. The language of the Home Rule Law authorizes the government study commission to recommend "... such other action as it may deem advisable consistent with its function...."[3] This clause is used most commonly to recommend creation of a transition committee if the voters approve change. It has been used by government study commissions recommending no change. These commissions feel change to home rule or an optional plan is not necessary. However, their study of the present form of government has disclosed areas where changes are desirable and can be accomplished within the present system.

Most frequent among such recommendations have been hiring a professional manager or expanding the manager's duties, establishing better communications and response to the public, adopting administrative codes and personnel policies, and including long-range capital planning in the budgeting process. Admittedly, these steps are often central features of home rule charter proposals, but some commissions feel these changes are best instituted in the context of the current government form.

Some recommendations fall in functional rather than structural areas. These have included building a township building, instituting an historic preservation program, establishing a police department and pressing for improved public transportation.

Some commissions have recommended placing another government study commission question on the ballot at a later date. The first Bethel Park study commission was restricted by its ballot question to considering optional plans of government. After completing its study, the commission found the borough needed a home rule charter, so it recommended no change from the present form and the election of second government study commission with the power to draft a home rule charter.[4] The Scranton Government Study Commission has been unique in submitting an administrative code to the voters along with the proposed home rule charter. The charter stipulated the administrative code became effective on the effective date of the charter, but could be amended in the future by ordinance of council.[5] All other study commissions have decided against drafting an administrative code. They have either recommended a transition committee to draft this document, or provided in the proposed charter for the new governing body to draft and adopt an administrative code.

The second government study commission in Franklin City examined the operation of the city government under the home rule charter adopted in 1974. The government study commission report proposed a series of amendments to the existing charter.[6] Twenty-three paragraphs of the charter were affected by the proposal, including provisions for the election of council members, appointment of a city clerk, alteration of the initiative and referendum procedures and limiting terms for appointed members of boards and commissions. The amendments were presented to the voters as a single proposal to adopt the recommendations of the study commission.

Amending the Final Report. A government study commission recommending a home rule charter or an optional plan is not discharged until after the referendum. At any time up until 60 days before the election, the commission can modify or change any recommendation by publishing an amended report.[7] Any amended report issued supersedes all prior final reports.

The Upper Dublin Township Government Study Commission published its first draft charter in the local newspaper in February 1974, then held three public hearings to receive comments on the draft. After making numerous changes, the commission published its report and proposed charter in April. A copy was mailed to each household. The commission called on the public for further recommendations and held four more public forums and two meetings with the board of commissioners. The proposed charter was revised and an amended report issued in August with the referendum scheduled for November.[8]

In Radnor Township, the government study commission filed its final report in May 1976 to meet the 18-month deadline in the Home Rule Law. The report was widely distributed and four public meetings were held in July and August. The commission voted to amend the proposed charter in several minor respects and issued an amended final report in August.[9] The amended version of the charter was approved by the voters in the November election.

Minority Reports. Often adoption of the final recommendation of the government study commission is by a less than unanimous vote. The Home Rule Law requires the recommendation to be adopted by a majority of the whole number of members.[10] A number of study commissions have included statements by dissenting members within their final reports. The Chester County Court of Common Pleas found, "It is undisputed that Act No. 62 neither directs nor even contemplates the publishing or filing of 'minority' reports or of the individual views or comments of each member of a government study commission."[11] The court found inclusion of a minority report in the final report of the Chester County Government Study Commission was discretionary with the commission, and not mandated by the Home Rule Law.

In Chester County, 6 of the 9 members of the government study commission recommended adoption of the council-manager optional plan. This proposal was placed before the voters. The final report included statements from each of the 3 dissenting members, two urging home rule and the other supporting no change.[12] In Ross Township, the majority of the commission recommended no change. The final report included as an addendum an 11-page position statement favoring adoption of a home rule charter signed by 4 of the 11 members.[13] In Warminster Township, the commission majority proposed a home rule charter. The final report included a minority report by one member opposing the charter and a concurring report by two members agreeing with placing the charter before the voters, but expressing reservations on specific provisions.[14]

Printing and Distributing Report. The Home Rule Law directs each government study commission to publish or cause to be published sufficient copies of its final report for public study and information, and to deliver sufficient copies to the municipal clerk or secretary to be supplied to any interested citizen on request.[15] Study commissions have taken various approaches to this mandate. Some have printed complete reports and distributed them to each registered voter or each household, either by mail or by hand with the cooperation of a local civic group. Others have printed the final report as an insert in a local newspaper circulating within the jurisdiction with additional copies available on request. Some have made the complete report available at the municipal office, local library or other location while mailing a summary brochure or statement to the voters. In Chester County, printing and mailing 80,000 summary brochures of the commission report was found by the court to be consistent with the requirements found in the Home Rule Law.[16]

In most cases, printing and distributing the final report has been a responsibility of the government study commission and funded from its budget. In a few instances, the local governing body has undertaken the cost of printing and distributing the report.

References

1. 53 Pa.C.S. 2921(a); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2921(b); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2923; Home Rule Charter and Optional Plans Law.
4. *Plan for Progress in Bethel Park; A Report of the Government Study Commission,* August 7, 1973, p. 14.
5. Home Rule Charter of the City of Scranton, 335 Pa.Code 11.13-1301.
6. *Final Report of the Second Franklin Government Study Commission,* June 28, 1982, p.12.
7. 53 Pa.C.S. 2922; Home Rule Charter and Optional Plans Law; *McDermott v. Board of Commissioners,* 74 D.&C.2d 167, at 173, 1974, C.P. Chester Co.
8. To Improve Our Township Government; Recommended Home Rule Charter for Upper Dublin Township, Amended Report of the Government Study Commission, August 28, 1974, p. xii.
9. Proposed Home Rule Charter for Radnor Township; *Final Report, Government Study Commission of Radnor Township,* August 18,1976, As Amended, pp. iii and xv.
10. 53 Pa.C.S. 2916(b); Home Rule Charter and Optional Plans Law.
11. McDermott, supra, at 175.
12. *Chester County Government Study Commission Final Report and Recommendations,* February 13, 1974, pp. 32-34a.
13. *Report to the Citizens and Commissioners of Ross Township of the Government Study Commission*, February 26, 1974, Addendum II, pp. I-xi.
14. *Township of Warminster Final Report and Proposed Home Rule Charter of the Government Study Commission,* February 3, 1979, p. 10.
15. 53 Pa.C.S. 2921(a); Home Rule Charter and Optional Plans Law.
16. McDermott, supra, at 174.

Discharge of the Commission

If a commission recommends no change, it is discharged on filing its final report. If the commission recommends a home rule charter or optional plan, it is not discharged until after the referendum.[1] Before its discharge, the commission should prepare a final financial report for the appropriate officer of the local government if there are any additions to the report included in the published final report. All records, tapes, reports, minutes or other written documents must be turned over to the custody of the municipal clerk or secretary.[2]

References

1. 53 Pa.C.S. 2922(a); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2921(d); Home Rule Charter and Optional Plans Law.

Personal Experience of Commission Members

A study of the home rule experience in 7 Pennsylvania jurisdictions in 1973 and 1974[1] found study commissioners tended to be long-term residents of their communities. Although they represented a wide range of occupations, most were above average levels for their community in educational attainment, occupational status and income. Members were heavily involved in civic organizations and one third had held some appointed or elected position in local government.

Government study commission members spent an average of 10 hours a week on commission work, with some spending 20 hours or more per week. Study commissions tended to be dependent on a portion of their members for leadership and expertise on local government matters. In general, there was little disagreement on procedural matters and members felt their commission was well organized and deliberations were focused on the most important issues.

The expectations of what was to be gained from the study commission process focused on the potential for restructuring the local government with very little concern directed to the potential for increased local discretion and autonomy. Differences of opinion were most common over proposals for marked departure from the current structure. Commission members were most likely to divide over the method of electing the governing body where possible gains or losses for particular groups or areas were perceived.

Many members did not realize the magnitude of work involved in the government study commission process, the potential for conflict and political implications or the difficulty in generating public support for the commission's activities.[2] Almost half the commission members interviewed felt it was very difficult to assimilate all the testimony and information collected and use it to develop recommendations for change. Members of county government study commissions had a greater problem dealing with technical issues than those studying municipal governments.

The greatest disappointment expressed by commission members was the low level of public involvement and interest in the commission's activities. Many study commissions reported meager turnouts at both regularly scheduled meetings and specially advertised public hearings. There was also some dissatisfaction arising from the need to sacrifice full discussion of all issues to the need to meet the deadline for making the commission's report.

Study commissioners felt the most valuable aspect of their service was the experience of compromise and consensus building. They also found hearing candid testimony on local government matters satisfying. Most indicated they would repeat the experience if they had to do it over.

In giving some Dutch uncle advice to prospective study commission members, the National Civic League lists particular do's and don'ts for commission members.[3] These focus on keeping an open mind, being willing to compromise and getting feedback on ideas from individuals experienced in local government operations.

References

1. Larry Gamm, Joseph James and Joseph Karlesky, *Home Rule and Local Government Change Efforts: A Comparative Study of Seven Pennsylvania Communities,* State College: The Pennsylvania State University, College of Human Development, 1974.
2. Larry Gamm, "Pa. Local Government Study: Observations by Commissioners," National Civic Review, September, 1975, p. 400.
3. *A Guide for Charter Commissions,* New York: National Municipal League, 1972, p. 20.

IV. Drafting a Home Rule Charter

Basic Nature of a Charter

A government study commission that decides to draft and recommend a home rule charter will be essentially replacing the municipal code with a new legal framework for the community's local government. The framework provided by the legislature is replaced by one drafted by local citizens and adopted by popular vote. This process opens the door for changes in the way the government is organized, rights guaranteed to citizens, procedural requirements and limitations on powers. The degree and kinds of change incorporated into a proposed charter will be based on the commission's study of the present form of government and its operation. Some charters have continued the present form of government with only minimal changes; others have proposed drastically different ways of organizing the government.

While a home rule charter will form the central document for local government authority, it is only one of many sources for municipal activity. The municipality will remain subject to general state and federal laws that will continue to govern its organization, procedures and functions. The home rule government will remain subject to both the Pennsylvania and the United States Constitutions. The municipality will also remain subject to locally enacted ordinances, although the charter will prevail in any conflicts. The local government will also be guided by and live within the local political culture -- the collective traditions, habits and expectations of the local political system.

In drafting a home rule charter, the commission must be sensitive to the limits imposed by these other sources of municipal authority. They must also be conscious of their own objectives in making changes in the existing structure. Objectives stated by past study commissions include separation of executive and legislative powers or functions, increased citizen access to government, flexibility for the future, accountability and responsiveness to the public, professional administration and improved fiscal procedures or controls. Some commissions have determined the current form of government was working well and that a major objective was preserving that form through the charter process. Other commissions decided their objectives required a new or substantially revised governmental form.

The charter can be seen as a local constitution or enabling legislation. It sets forth the basic structure of the municipality, the principal officers and how they are chosen, their powers and functions and how they are to be exercised. In writing a charter, the commission should determine which matters they feel are so essential they should be given the protection of charter status and those which can be left to the discretion of elected municipal officials. Elements guaranteeing citizen access and setting ethical standards for elected officials are often included; detailed listings of administrative offices are often excluded.

Since charter provisions can be changed only by referendum, they have more permanency than ordinances. The need for durability should be carefully weighed by the commission. Most charters have been relatively brief, leaving administrative and procedural details to be fleshed out by ordinances of the governing body. Giving maximum flexibility to the governing body while reserving safeguards to the citizens has been an objective expressed by many study commissions. This aim was expressed by the Youngsville Borough Government Study Commission:

> We recognize that what we are proposing is in fact a blueprint of the machinery of government for tomorrow. Although we have no crystal ball to tell what changes and problems may arise in the next ten, twenty or fifty years, we have attempted to develop a formula that is flexible, adaptable, broad without being vague, and precise without being restrictive.[1]

In Kingston, the government study commission incorporated this idea into its conception of a home rule charter as "an instrument providing maximum power and flexibility to the municipality. It would enable the Borough to develop a governmental system which best suits its present and future needs and wishes. Such a charter serves as a constitution for the municipality."[2] The Youngsville Government Study Commission saw a charter as "a body of law, a framework within which the local council can adopt, adapt and administer legislation and regulations for the conduct of business and the maintenance of order and progress."[3]

References

1. *A Report on the Activities and Findings of the Youngsville Government Study Commission and a Proposed Home Rule Charter for the Borough of Youngsville,* August 30, 1974, p. 2.
2. *Report of the Government Study Commission of Kingston Borough,* August 12, 1974, p. iv.
3. Youngsville, op.cit., p. 12.

Style Characteristics

The central role of the charter in the governing of a home rule community stresses the importance of the study commission's duty to draft a workable, easily understandable document. Past practice in Pennsylvania and other states has pointed to the desirable nature of certain style characteristics.

Clarity. The basic requirement is simple, clear language. Since the charter must be adopted and used by the people, it must be readable and understandable by them. As far as possible, the drafters should stick to basic English, avoiding needless legalisms. There is no inherent conflict between clear, simple language and legal precision. Persons drafting a charter should aim at conveying meaning and easing understanding. Inclusion of impressive-sounding legal phrases should be avoided at all costs.

A home rule charter is meant to be a tool for the people of a community. The voters themselves must adopt and amend a charter. If ordinary voters cannot understand a charter, they will not be able to make sound judgments at the polls. Most charters adopted by Pennsylvania communities have expanded the scope and techniques of citizen participation. Since the people are expected to be more active in the conduct of their local government, its basic law must be clearly understandable to them.

Consistency. The study commission should work for internal consistency in drawing up a charter. This means the sections of the charter should fit together in a rational way. Confusing and conflicting provisions should be sorted out. A good outline is a basic tool to develop a coherent charter. A simple, flexible numbering system should be developed and followed throughout the charter. Subjects should be treated in a natural order, with provisions grouped together in an expectable location. Officials should not be given conflicting duties in separate places. Provisions should be put in the most logical place within the document.

Conciseness. The study commission should aim at a satisfactory balance between brevity and precision. The United States Constitution is often held up as a model of brevity, economy of words and flexibility. Its enduring nature is attributed to its concentration on essentials, lack of unnecessary detailing and adaptability to changing circumstances. The study commission should focus on the fundamentals of local government and leave as many details as possible to local legislation. Provisions creating citizen rights or internal checks and balances should have enough detail to avoid vagueness and the possible creation of unnecessary conflicts over interpretation. However, most administrative procedure can be delegated to the governing body.

Correctness. The charter should be legally correct. A home rule charter cannot conflict with either the United States Constitution or the Pennsylvania Constitution. The Home Rule Law specifically excludes certain areas of government activity from the exercise of home rule powers and reserves control over them to state legislation.[1] In addition, home rule municipalities are subject to state laws that are uniform and applicable in every part of the Commonwealth and relate to substantive matters of statewide concern, such as the health, safety, security and general welfare of all inhabitants of Pennsylvania.[2]

The study commission should avoid obvious conflicts with overriding constitutional and statutory provisions. Many of these issues will arise and be dealt with during the commission's study. Much of this can be done through exercise of common sense and seeking good advice. However, the draft of the charter should be submitted to a thorough legal review before being finalized and submitted to the voters.

Because certain basic procedures or powers, such as elections, planning and zoning, tort liability and eminent domain are governed by state law, the study commission will have to decide how to treat references to these subjects. Some can be safely omitted or relegated to the administrative code. Others can be referred to in general terms. Reference to a specific state law should be avoided in most cases because future changes in the state legal system will require conforming amendments to the local charter.

Government study commissions in Pennsylvania have considered style and language to be important considerations. The Horsham Township Government Study Commission found the Second Class Township Code to be: an accumulation of state legislation designed to serve all second class townships, regardless of size or particular needs. Much of the code is overly detailed, difficult, unnecessary, unclear, inflexible, and inappropriate for Horsham Township at the present time and will become increasingly so in the future.[3]

The O'Hara Township Government Study Commission found a well-written charter as a solution to this problem: "The clear and simple language of the proposed charter replaces unnecessarily detailed procedural specifications in the First Class Township Code."[4]

References

1. 53 Pa.C.S. 2962(a); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2962(e); Home Rule Charter and Optional Plans Law; *Lenox v. Clark*, 93 A.2d 834, 372 Pa. 378, at 379, 1953.
3. *Report and Recommendation of Horsham Township Government Study Commission,* May 1, 1974, p. 5.
4. *Township of O'Hara Government Study Commission Report and Home Rule Charter,* August 31, 1973, p. 13.

Basic Charter Components

Opting for a home rule charter allows the government study commission to structure the local government to meet the particular needs, desires and practices of the community. While this flexibility means charters will vary from place to place, certain elements are basic to most charters. In order to provide a comprehensive framework, these elements must be included.

1. A general grant of powers to the municipality.
2. The basic organization of the government, including identification of all elected and chief appointed officials, placement of legislative, executive and administrative powers and duties and organizational interrelationships.
3. Specification of critical legislative and administrative procedures or safeguards to assure due process.
4. Provision for citizen participation in the local government and reservation of specific powers to voters.
5. Mandates for desirable administrative practices such as a merit personnel system, long-range capital budgeting or professional auditing.
6. General provisions covering matters such as transition procedures and the effective date.

Since the charter will replace state legislation directed to the particular class of municipality, it must make provision for the superseded material. While much procedural detail can be left to action by the governing body, critical elements should be covered by the charter.

General Grant of Powers

Because the home rule charter is in the nature of enabling legislation, the government organized under it is also empowered by it. Government study commissions in Pennsylvania have been unanimous in writing a general grant of power into charters proposed to the voters. None has attempted the tricky business of enumerating powers for the local government.

These general grants have followed the grant of home rule powers in the Constitution. The Peters Township charter provides: "Peters Township may exercise any power and perform any function of government not denied by the Constitution of the United States, by the Constitution of Pennsylvania, by this charter, or by the General Assembly at any time."[1] The wording in Kingston's charter is somewhat different:

The Municipality of Kingston shall have full and complete powers of local self government as is or may be in the future possible under the constitution and laws of the Commonwealth of Pennsylvania and this Home Rule Charter; and in addition, shall have all other powers not denied to it by said constitution and laws of Pennsylvania and by this charter.[2]

In Scranton, the grant reads: "The governing body of the City of Scranton shall exercise all powers which may now or hereafter be possible for a municipal corporation in this state to exercise except as may be limited by this charter."[3]

General grants of power follow the Pennsylvania tradition of strong local government. The municipal codes all contain a general grant of powers in addition to their numerous specific authorizations. For example, the Second Class Township Code authorizes the supervisors:

> The board of supervisors may make and adopt any ordinances, bylaws, rules and regulations not inconsistent with or restrained by the Constitution and laws of this commonwealth necessary for the proper management, care and control of the township and its finances and the maintenance of peace, good government and health and welfare of the township and its citizens, trade, commerce and manufacturers.[4]

A general grant of powers under home rule will be broader. However, this does not necessarily mean a home rule government will do more things. It will be constrained by limits of financial resources, local political traditions and expectations and public opinion within the community. Pennsylvania local governments have generally been hesitant to branch out into new areas. Change in home rule municipalities is more likely to come in administrative arrangements and procedures.

County Exercise of Municipal Powers. At the time of the Home Rule Law's adoption, much concern was raised by the possibilities of county home rule governments taking over traditional municipal functions. The Home Rule Law includes a provision protecting local units from counties taking over existing municipal functions.[5] This provision has not been used. This issue has not proven to be a real problem, since home rule counties find they have enough to do with their limited revenue sources.

County home rule charters do contain provisions preserving the powers of municipal units, usually as part of their general powers clause. At least one county government study commission concluded this guarantee provided protection not previously available to local governments:

> Under present law, without a Home Rule Charter, the local governments and their citizens have no such protection at all. Hence the Charter will insure, for the first time that the county government may not take over powers and services being exercised and provided by local government . . . without approval of the local government or its people.[6]

References

1. Home Rule Charter of Peters Township, 363 Pa. Code 31.1-102.
2. Home Rule Charter for Kingston Municipality, 340 Pa. Code 41.1-101.
3. Home Rule Charter of the City of Scranton, 335 Pa. Code 11.13-204.
4. 53 P.S. 66506; Second Class Township Code, Section 1506.
5. 53 Pa.C.S. 2963; Home Rule Charter and Optional Plans Law.
6. *Final Report and Proposed Charter of the Erie County Government Study Commission,* June 29, 1976, p. 13.

Basic Governmental Form

Development of charter provisions will be based on the form of government chosen by the government study commission. In turn, the decision for a particular governmental form will grow out of the commission's study of the existing government and available alternatives. Governmental form along with increased local autonomy are the two major issues to be considered by the study commission when it decides whether or not to draft a home rule charter. A home rule charter can be written to introduce a new governmental form, but it can also be designed to preserve the existing form.

The governmental form should reflect the principles developed by the study commission in their study of the existing form and possible alternatives. Frequent objectives stated by government study commissions in Pennsylvania have included separation of legislative and executive or administrative functions, improved citizen access, increased accountability and responsiveness, professional administration, wider representation and more focused political leadership.

Government study commissions have almost total flexibility in choosing a governmental form. The only stipulation in the Home Rule Law is that the governing body must be chosen by popular election.[1] Most government study commissions have opted for one of the two basic local government forms, council-manager or strong mayor-council. Other forms recommended include the weak mayor-council form (the traditional borough form), commission forms and the traditional township form. Only one government study commission disregarded the stipulation for an elected governing body and proposed a town meeting form of government. The second McKees Rocks Borough Government Study Commission wrote a charter vesting the legislative power in an assembly composed of all registered voters of the municipality.[2]

Council-manager forms have been adopted in 40 of the 71 charters, or 56%, providing for an elective governing body and an appointed administrator. The degree of responsibility vested in the manager varies, and in some cases a mayor is included with minimal executive powers. A further variation of this form occurred when West Deer Township voters amended their charter in 1990 to make the position of township manager/secretary an elective office.

Strong mayor-council forms have been adopted in 19 charters, or 27%, providing for a separately elected executive and an elected council with legislative functions. In two-thirds of these charters, a managing director or chief administrative officer is responsible for daily management of most or all governmental functions, serving at the pleasure of the mayor.

The weak mayor-council form continuing the traditional borough government arrangement was adopted in 5, or 7% of the charters. The traditional township form was adopted in 4, or 6% of the charters and the commission form in 3 charters, or 4%.

Other forms operating in North America, but not in Pennsylvania, have not been proposed to or adopted by the voters. These include the chairman council form where the chairman doubles as chief executive and presiding officer of the council, and the council-chief administrative officer form developed in California. Only one town meeting form has been proposed to the voters; this charter proposal was defeated in McKees Rocks Borough in 1982.

Government study commissions have tended to be conservative in writing their charters. Most have preserved essential elements of the existing municipal government. When new forms were recommended, they were familiar forms, already in use in Pennsylvania. The principal exception is the office of elected county executive proposed by a number of government study commissions and adopted by the voters of 4 counties.

References

1. 53 Pa.C.S. 2924; Home Rule Charter and Optional Plans Law.
2. *McKees Rocks Borough Government Study Commission Final Report to Borough Council and the Citizens of McKees Rocks Borough,* August 18, 1982, p.3.

Governing Body

Most Pennsylvania charters contain the greatest detail in treating the legislative function. Most powers not clearly delegated to a specific officer or agency are left to be handled by the governing body. These residual powers are assigned to the local legislative process. Because it is desirable to keep the charter as short as possible, the discretionary area for legislation is quite broad. This means most charters treat the legislative process in some detail, assuring procedural safeguards in the enactment of local legislation.

Size. The size and method of electing the governing body are often central issues to be dealt with by the government study commission. This is likely to be an area where opinions are divided. The overall trend in Pennsylvania local government has been to reduce the size of governing bodies. The only exceptions are in counties and second class townships where code forms provide for boards of 3 members. The size of governing bodies in Pennsylvania home rule charters falls within a surprisingly small range. Of the 71 charters, 65, or 92% have governing bodies of 5, 7 or 9 members.

Governing Body Size in Home Rule Charters

Number of Members	Number of Charters	Percent
17	1	1
15	1	1
11	1	1
9	7	10
8	1	1
7	36	51
5	22	31
3	2	3

The largest governing body is Philadelphia's council with 17 members; second is Allegheny County with 15 and third largest is Upper Darby Township with 11 members. Only 2 charters have a governing body of 3 members, those in Elk Township and Lackawanna County. The only governing body to have an even number of members is Tyrone Borough where council is composed of the mayor and 7 council members.

Two charters provide for increasing the size of the governing body after specified population growth. The Elk Township Charter provides: "When a census shows the township has 2,000 residents, at the next municipal election the Board shall be expanded to 5 members elected at large."[1] In Ferguson Township, the increase must be approved by the voters.

The Board membership may be increased to seven (7) members when the population of Ferguson Township reaches ten thousand (10,000) people as determined by the most recent regular or special U.S. census. Approval for addition of the two (2) supervisors at this time shall be by referendum which can be initiated by ordinance or citizen's petition.[2]

In Cheltenham, the Government Study Commission felt it was desirable to give the Board of Commissioners flexibility to change its size to 5 or 9 members without charter amendment.[3] "The initial wards of the Township shall be the seven wards on the effective date of this Charter. The number of wards may be reduced to a number not less than five or increased to a number not more than nine upon an absolute three-quarters vote."[4]

Method of Election. One of the principal issues in the deliberations of many government study commissions is the method of electing members of the governing body. Local government literature is replete with arguments for and against election at large or by districts. The progressive reform movement of the early twentieth century pushed for elections at large to cure the abuses of the nineteenth century ward system. The recent movement to return power to neighborhoods has been a force in the opposite direction.

Method of Electing Governing Body

Method	Number	Percent
At large	40	56
Combination district/at large	19	27
By district	12	17

The majority of Pennsylvania charters provide for election of the governing body at large. Where some or all members are elected by district, the number of districts ranges from 3 to 13. All are single-member districts with the exception of Bellevue which elects 3 members from its 3 wards and Portage which elects 2 each from its 3 wards.

Number of Districts Provided in Charter

Number of Districts	Number of Charters
13	1
10	1
9	3
7	7
6	1
5	6
4	7
3	5

Three charters guarantee minority party representation by limited voting. Lackawanna County continues the traditional limited voting system for county commissioners.[5] Philadelphia provides for limited voting for its seven at-large council members, ensuring at least two minority members on council: "Each elector shall have the right to vote for one district councilman and for five councilmen at-large. To this end not more than five candidates for councilman-at-large shall be nominated pursuant to law by any party or other political body."[6] The Allegheny County Charter permits parties to nominate only one candidate for the two at-large council seats and limits voters to a single vote for the two positions.[7] A proposal to amend the West Deer Township Home Rule Charter to provide for minority representation through limited voting was defeated in the May 1981 primary election.

Terms. The term of office for members of governing bodies is almost universally set at four years. Only Elk Township and Chester Township provide six-year terms for members of the governing body. Hermitage provides for four-year terms for four of its five members and a two-year term for the fifth.

Terms of office shall be upon an alternating basis so that a majority of the Township Commissioners shall be elected at each municipal election to take the place of the Township Commissioners whose terms of office expire the following January. That Township Commissioner who receives the least number of votes of those Township Commissioners who are elected shall serve for a two (2) year term of office. All other Township Commissioners shall serve for a four (4) year term of office.[8]

The government study commission felt this short term was important. "The intent of this provision is to make possible a change of majority in any given election. This is a partial guard against formation or continuation of a dominant power bloc and is an assurance that the Commissioners remain responsive to the voter."[9]

Provision for overlapping terms of governing body members are found in 68 of the 71 charters. Only Philadelphia, Wilkes-Barre and Lackawanna County elect the entire membership of their governing bodies at the same election.

There has been increased discussion in recent years over term limits for members of legislative bodies. None of the municipal codes in Pennsylvania limit the number of terms elected officials can serve. However, term limits for members of governing bodies appear in 10 home rule charters. The charters of West Deer Township, West Chester, Upper Providence Township, St. Marys, Norristown, Plymouth Township, Whitemarsh Township and Murrysville included term limits when originally adopted. The voters added term limits to the Monroeville charter in 1980 and to the Ferguson Township charter in 1988. In all 10 charters, the limit prescribed is two consecutive four-year terms.

Other Provisions. Charters usually include qualifications for members, prohibitions on holding other offices concurrently, provisions for removal from or forfeiture of office and filling vacancies. Qualifications usually include being a resident of the municipality and a registered voter. Sometimes age limits are set above the minimum voting age, or prior residence within the municipality for a specified time period is required.

Often charters prohibit elected officials from holding more than one office or being employed by the municipality. Some charters prohibit elected officials from concurrently holding elective office in another government. Council members can also be prohibited from acting as individuals and their authority limited to when they act as a body.

A procedure for filling vacancies in elected office is usually included in a charter. This role is usually delegated to the governing body. Some charters stipulate conditions constituting forfeiture of office such as failure to maintain residency, conviction of crimes relating to public office, or a fixed number of consecutive unexcused absences from meetings.

Power to set compensation for elected officers is usually lodged in the governing body. Often the charter stipulates that increases in salaries cannot take effect until the current term of the officer expires. Some charters place a maximum percentage a governing body is allowed to increase its own salary. Five charters do not allow the governing body to increase its own salary. In Allentown, Ferguson Township, Farrell, O'Hara and Radnor, the voters must approve a pay increase through referendum or charter amendment. The West Deer Township charter does not provide a salary for the board of supervisors. Charters can also restrict members of governing bodies from receiving some or all fringe benefits.

Procedures. Most charters contain some detail governing the organization and procedures of the governing body. These usually include date and time of the organization meeting, taking oaths of office and electing officers. Charters can stipulate a minimum frequency for meetings and methods of calling special meetings. Some charters require public notice, public hearings, submitting ordinances to a separately elected executive, if applicable, and recording and codification of ordinances. Special provisions can cover adoption of standard building codes.

Many charters authorize the governing body to conduct investigations into the affairs of the municipality. These often include the power to issue subpoenas and administer oaths during the course of the investigation.

References

1. Elk Township Charter, 315 Pa. Code 33.3-301.
2. Ferguson Township Home Rule Charter, 314 Pa. Code 31.2-2.03.
3. Cheltenham Township Charter as Proposed by Cheltenham Government Study Commission, June 8, 1976, p. 5.
4. Cheltenham Township Charter, 346 Pa. Code 21.3-302.
5. Home Rule Charter for the County Government of Lackawanna County, 335 Pa. Code 1.3-301.

6. Philadelphia Home Rule Charter, 351 Pa. Code 2.2-101.
7. Home Rule Charter of Allegheny County, Article III, Section 5(d).
8. Home Rule Charter of the Municipality of Hermitage, 343 Pa. Code 21.1-2.02(c).
9. *Township of Hickory Government Study Commission Final Report,* March 13, 1974, p. 6.

Executive/Administrative Provisions

While all Pennsylvania charters establish an elected legislative body, basic differences in governmental form arise from the way the executive and administrative functions are handled and the nature of the relationship between the legislative and executive branches. Government study commissions have treated the executive branch in a wide range of ways.

Elected Executives. In 30 cases, Pennsylvania charters provide for a separately elected mayor or executive. Fourteen other charters designate one of the council members as mayor. In many cases, the mayor is not a strong executive. Eleven home rule municipalities continue varying forms of the weak-mayor system found in the Borough Code. The Chalfont Home Rule Charter recognizes this role by recognizing both mayor and president of council as executives: "The executive duties of the government of the Borough of Chalfont shall be administered jointly by the Mayor and the President of Council."[1] The Charter allocates the bulk of the executive duties to the council president. Nineteen of the charters, or 27%, provide for a separately elected executive to be in charge of the bulk of the local government's administrative functions.

Term limits for elected executives appear in nine home rule charters. The original charters of Allegheny County, West Chester, Upper Darby, St. Marys, Norristown, Philadelphia and Murrysville included executive term limits. Voters added term limits on the executive to the Monroeville charter in 1980 and to the Lehigh County charter in 1989. Most charters prescribe limits of two consecutive four-year terms. However, the Upper Darby and Allegheny County charters set a limit of three consecutive four-year terms and the Murrysville charter sets a limit of four consecutive two-year terms.

Elected Executives in Home Rule Charters

Type	Number	Percent
Separately elected executive	30	42
Strong mayor	19	27
Weak mayor	11	15
Mayor elected as member of council	14	20
No elected executive	27	38

Appointed Executive/Administrator. More than three-fourths of Pennsylvania charters require appointment of a professional administrative officer. These positions are given different designations and varying degrees of responsibility. The administrator can be appointed by and responsible to either the governing body or the elected executive. Powers of the office range from full executive and administrative responsibility to a more limited responsibility for internal management functions. These officers are titled: manager - 41, managing director - 3, executive director - 1, chief administrative officer - 2, municipal administrator- 3, administrative director/director of administrative services - 4, and business administrator- 2.

In general, managers have the most complete power and business administrators the least, but the charter process provides a wide range of variations. The extent of the administrator's power is also dependent on the existence of other independent elected and appointed officers.

Executive Types. Combination of various types of elected executive and appointed administrators produce a wide range of executive types under home rule in Pennsylvania. Because of differing powers given to officers under each charter, these executive types are merely rough groupings and do not represent identical provisions.

Executive Types in Pennsylvania Charters

	Appointed Administrators		
Elected Executive	**Manager/Managing Director**	**Administrative Officer**	**No Appointed Administrator**
No Elected Executive	A **22**	E **1**	I **4**
Mayor Elected as member of council	B **12**	F **1**	J **1**
Weak Mayor	C **6**	G **1**	K **4**
Strong Mayor	D **4**	H **1**	L **7**

The 34 municipalities falling in cells A and B have classic council-manager systems, differing only in the designation of one of the council members as mayor. The 7 municipalities in cell L have the classic strong mayor-council form where the elected executive is not required to run the local government through a professional administrator. The municipalities represented in cells I, J, and K have the traditional township, city and borough forms, respectively, written into their charters. The 4 charters in cell I have boards of supervisors with no provision for an administrator. The Chester City charter falls in cell J; the mayor serves as one member of council in a commission form. The charters falling in cell K contain the traditional borough form with a weak mayor and a council with both administrative and legislative duties. Bellevue Borough in cell G is a modification of the traditional borough form with the addition of a Director of Administrative Services responsible to council.

The traditional borough form is modified even more radically by the charters in cell C. These provide for a manager to administer borough affairs under the direction of council. It is almost the classic council-manager system, except the separately elected mayor has a veto power and retains some vestige of administrative power. This ranges from control of the police department in Green Tree to a purely ceremonial role in State College. Youngsville's charter was amended in 1981 to move control over the police department from the mayor to the manager.

Lackawanna County falls in cell E by retaining the traditional county form, but providing for an administrative director. Likewise, Greensburg falls in cell F with the traditional commission form for a city modified by the presence of an administrator.

Twelve of the 19 strong mayor municipalities falling in cells D and H mandate some degree of professional administration. In cell D, Coatesville's managing director controls a much larger proportion of the municipal government than does Philadelphia's because of the lack of independent elected and appointed officers and boards which control major parts of Philadelphia's government.

Other Elected Officers. Home rule charters can also provide for the election of additional officers beyond the governing body and the executive. Most Pennsylvania charters have limited the number of additional officers elected.

Number of Elected Officers

(other than executive and governing body)

Number of Officers	Number of Charters	Percent
11	1	1
9	1	1
7	2	3
5	1	1
4	1	1
3	2	3
2	8	11
1	28	39
0	27	38

The charters with the largest numbers of elected administrative officers are Allegheny County – 11, Lackawanna County – 9, Philadelphia and Lehigh County – 7, Erie County – 5, and Delaware County – 4. Retention of elected judicial support officers accounts for the large number of elective offices in these jurisdictions. In municipal governments other elected officials fall into two general categories: auditors/controllers and treasurers/tax collectors. Twenty-five charters, or 35%, provide for election of a tax collector or treasurer and, in one case, a finance officer. Election of an auditing officer is provided for in 27 charters, or 38%. These include 15 controllers, 3 single auditors and 9 boards of 3 auditors. Many of these charters also require an annual post audit by an appointed CPA or independent accountant. Charters in Bethel Park, Ferguson Township and Whitehall Borough were amended to eliminate the elected three-member boards of auditors and replace them with appointed independent auditors.

Auditing Functions

Officer Type	Number of Charters	Percent
Only Elected Controller/Auditor	12	17
Elected Controller/Auditor and Appointed CPA	15	21
Only Appointed CPA/Accountant	44	62

Two municipal charters provide for an elected assessor and one for an elected constable even though this is an independent and not a municipal office.

Judicial support officers elected in Philadelphia and the 6 home rule counties are listed below. In addition, Philadelphia elects 3 city commissioners who serve as the board of elections. Allegheny County's special enabling legislation prohibited the charter from eliminating any elected officers other than the county commissioners. The charter as adopted does not include provisions relating to the judicial support officers who continue to operate under terms of the Second Class County Code in conjunction with the home rule charter.

Judicial Support Officers Elected in Philadelphia and Counties

Officer Type	Number of Charters	Percent
Only Elected Controller/Auditor	12	17
Elected Controller/Auditor and Appointed CPA	15	21
District Attorney	7	100
Sheriff	6	86
Register of Wills	5	71
Coroner	5	71
Recorder of Deeds	3	42
Clerk of Courts	3	42
Clerk of Records	2	28
Prothonotary	2	28
Jury Commissioners	1	14

Appointed Officers. Home rule charters can specify appointment of significant officers and outline their powers and duties. Most charters limit the number of appointive officers mandated, leaving most administrative detail to legislation by the governing body.

Appointive Officer Specified in Charters

Number of Officers	Number of Charters	Percent
21	1	1
9	1	1
7	1	1
6	5	7
5	6	8
4	13	18
3	29	41
2	14	20
1	1	1

Philadelphia specifies the appointment of 21 officers, by far the largest number. Second is Norristown with 9. Most charters specify 4 or fewer appointive officers. The most common appointive office is solicitor/attorney. Second is manager or administrative officer.

Common Appointive Charter Officers

Office	Number of Charters	Percent
Solicitor/Attorney	69	97
Manager/Administrator	54	77
Secretary/Clerk	41	58
Engineer	23	32
Finance Officer	15	21
Treasurer	12	17
Police Chief	10	14
Personnel Officer	6	9
Planning Officer	5	7
Public Defender	4	6
Fire Officer	3	4

Mandated Departments. Most charters leave details of departmental structure to be included within the administrative code enacted by the governing body. Among Pennsylvania charters, the only exceptions are Philadelphia which creates 15 departments and Delaware County which creates 14.

Number of Charter-Created Departments

Number of Departments	Number of Charters	Percent
15	1	1
14	1	1
7	1	1
5	2	3
4	1	1
3	3	4
2	3	4
1	17	24
0	42	59

Excluding Delaware County and Philadelphia, the following types of departments were mandated in charters: police/public safety – 16, administration/operations – 10, finance – 7, public works – 5, fire – 3, information/complaints – 2, law – 2, planning and zoning – 2, community development – 1, institutional management – 1, human resources – 1, parks/buildings – 1, and treasury – 1.

Mandated Boards and Commissions. Other than Philadelphia, most charters mandate few boards or commissions, and these boards generally are quasi-judicial rather than operating boards. The exception is Philadelphia's charter which creates 5 independent and 20 departmental boards.

Number of Charter-Mandated Boards and Commissions

Number of Boards	Number of Charters	Percent
25	1	1
6	2	3
5	2	3
4	6	8
3	8	11
2	5	7
1	8	11
0	39	55

Most common types of mandated boards deal with planning and zoning and personnel. Excluding Philadelphia, the most common types of boards/commissions mandated in charters are: planning commission – 16, civil service/personnel – 14, zoning hearing board – 14, parks & recreation – 7, tax assessment appeals – 6, election board – 5, environmental board – 3, library – 3, retirement/pension – 3, and human relations commission – 2.

Personnel Systems. Most charters require the governing body to set up personnel systems. Merit systems are mandated in 61 charters, or 86%.

Municipal Authorities. A number of government study commissions were concerned over the dilution of municipal control and responsiveness caused by the existence of municipal authorities. Several charters require special procedures before the governing body can adopt an ordinance creating a municipal authority. In Murrysville, two public hearings must be held, and the ordinance must receive approval from six of the seven members of council.[2] The Green Tree Charter requires approval by the voters in a referendum before council can create an authority.[3] Whitehall's charter requires both a public hearing and approval by the voters in a referendum.[4]

Administrative Codes. The general lack of administrative detail in most Pennsylvania charters is coupled with a reliance on development of a municipal administrative code. All but 3, or 96%, of the charters mandate or authorize the governing body to adopt an administrative code by ordinance. In some cases, a general outline of the code is set forth in the charter, but in most cases this is left to the discretion of the governing body.

Drafters of home rule charters must strike a balance between control and flexibility. Some areas of administrative organization are considered to be important enough to include in the charter, thus placing them beyond alteration by elected officials. Common examples are merit systems for personnel, budget adoption procedures and tax limits. On the other hand, designation of municipal departments is usually left to the administrative code. In each case, the government study commission must balance the goal of leaving the greatest possible flexibility with elected officials against the need for control over their activities. It must also keep in mind the acceptability to the voters of a charter with a specific degree of control.

The administrative code is the municipal ordinance establishing the administrative organization of the municipal government. It fleshes out the governmental framework set forth in the charter. The less detail contained in the charter, the greater will be the need for a comprehensive administrative code. Being created by ordinance, the administrative code can be altered by action of the governing body without the need to go to the voters. The ability of the voters to amend the charter, overruling a decision of the governing body, serves as an ultimate control over the activities of elected officials.

References

1. Charter of the Borough of Chalfont, 309 Pa. Code 41.4-4.01.
2. Home Rule Charter for the Municipality of Murrysville 365 Pa. Code 41.21-2101.
3. Charter of the Borough of Green Tree, 302 Pa. Code 45.11-11.01.
4. Home Rule Charter of the Borough of Whitehall, 302 Pa. Code 49.13-1301.

Fiscal Procedures

Each Pennsylvania charter contains at least a few basic provisions governing the finances of the municipality. Common fiscal procedures found in charters include budgeting, capital programs, fiscal control, disbursal procedures, auditing, tax collection, purchasing, borrowing and investment.

Budget Procedures. All 71 charters contain procedures for preparation, proposal, consideration, adoption, reopening and amendment of the municipal budget. Most of these include requirements for public hearings or public inspection of the budget proposal. Capital budget components or multi-year capital programs are mandated by 65, or 92%, of the charters. The fiscal year is usually designated in the charter, but 4 charters, or 6%, stipulate the fiscal year is to be designated by ordinance. In 32 charters, or 45%, January 1 is set as the beginning of the fiscal year. Another 35 charters, or 49%, designate a January 1 fiscal year, but permit change in the fiscal year by ordinance.

Tax Limits. The Home Rule Charter and Optional Plans Law allows a degree of flexibility to home rule municipalities regarding tax limits. Although the law reserves the fixing of subjects of taxation to the General Assembly, it does allow home rule municipalities freedom in setting the rates of property taxes and personal taxes levied on residents.[1] The question of whether to include tax rate limits and what type of limits is a central area of concern for the government study commission.

Two types of tax rate limits are found in Pennsylvania charters. The first is a maximum limit on the rate of a particular tax or all taxes; the second is a limit on the amount taxes can be raised in any given year. Maximum rate limits are found in 30, or 42%, of the charters, while 41, or 58%, have no maximum rate limits. Limits on the amount of annual tax increases are found in 6 charters, or 9%.

Maximum rate limits are either set by reference to a provision of state law, or stipulation of a millage limit. Twenty-one charters, or 30%, contain a state law reference limit and 9 charters, or 13%, contain a stated millage limit. Ten of these 30 charters allow the limit to be increased by referendum of the voters, without the need to amend the charter. The rate limits set by reference to state law establish a limit set in one of the municipal codes, except in Chester which references the 12 mills of market value limitation in Section 17 of the Local Tax Enabling Act.[2] In Allentown and St. Marys, the cities are also limited to the rates set in Act 511 for non-real estate taxes. Millage rate limits are stipulated in 9 charters: Hermitage and Lackawanna County - 25 mills, McCandless, O'Hara and Whitehall Township - 20 mills, Whitemarsh Township - 19 mills, and West Deer Township - 12 mills. The charters of St. Marys and Portage have millage limits of 25 mills for general purposes and additional limits for various special purpose real estate taxes.

The Lackawanna County charter allows an annual increase of up to 5% above the 25 mill limit, or higher if approved by referendum.[3] The Whitemarsh charter contains an intricate limit on tax increases.

The rate of taxation on real property for roads, bridges and general township purposes shall not exceed 19 mills except the Board by ordinance may increase said rate of taxation not to exceed three (3) additional mills in the aggregate in any four (4) consecutive years by not more than two (2) mills per year by the affirmative vote of at least five (5) of the members thereof.[4]

Five other charters limit the annual increase in taxes. In Upper Darby, real estate tax increases are limited to 3 mills or 5% of the prior year's figure unless approved in referendum.[5] The Murrysville and Allentown charters require all increases in property taxes to be approved by a 6/7 council vote or by referendum.[6] A 1977 amendment to the Mount Lebanon charter restricts tax increases to two mills over the prior year except by referendum.[7] The Reading charter limits real estate taxes to 105% of the previous year.[8]

The majority of government study commissions felt flexibility of tax rates was more important than control. The position of the Cambridge Springs Government Study Commission is typical.

Existing ceilings on the rates of taxation will cease with the establishment of Home Rule. It should be pointed out that it is not a mandated ceiling that holds down a tax rate by the politically sensitive elected Council. Excessive or frivolous taxes will be just as unacceptable as they have been in the past. The Study Commission also learned that the most significant change in local taxes in recent years came not from a change in the tax rate, but in an adjustment of the assessed valuation of property.[9]

Contracts. Another area where the government study commission must make a choice between control and flexibility is in the area of purchasing. Provision of a limit above which municipal purchases must be through a competitive bidding process is included in roughly half the charters; 35 charters, or 49%, either do not set a bidding limit or specify it is to be set by the governing body, while 36 charters, or 51%, set a limit, of which 8, or 12%, can be increased by action of the governing body.

Charter Treatment of Bidding Limits

Governing Body Can Increase

Charter Limit	Yes	No
None	35	
Municipal Code Limit		13
$20,000		1
10,000	1	5
5,000		2
4,000	1	
3,000		1
2,500	3	3
2,000	1	
1,500		1
1,000		2
other*		2
	41 (58%)	30 (42%)

**McCandless and Upper St. Clair: 1/4 of 1% of previous budget.*

Twelve of the bidding limits contained in the original charters have already been changed to keep pace with inflation. Monetary limits have been raised, or reference made to the current municipal code limit.

References

1. 53 Pa.C.S. 2962(b); Home Rule Charter and Optional Plans Law.
2. Home Rule Charter of the City of Chester, 323 Pa. Code 11.7-718.
3. Home Rule Charter for the Lackawanna County Government, 335 Pa. Code 302(c).
4. Home Rule Charter of Whitemarsh Township, 346 Pa. Code 31.8-801(a).
5. Home Rule Charter of the Township of Upper Darby, 323 Pa. Code 25.9-906 (as amended April 26, 1988).
6. Home Rule Charter for the Municipality of Murrysville, 365 Pa. Code 41.18-1810; City of Allentown Home Rule Charter, 339 Pa.Code 11.1-807.
7. Home Rule Charter of Mount Lebanon, 302 Pa. Code 27.9-914 (as amended May 17, 1977).
8. Home Rule Charter of Reading, 306 Pa. Code 11.9-907.
9. *Final Report of Government Study Commission of Cambridge Springs,* March 16, 1974, p. 10.

Citizen Participation

One of the primary focuses of government study commissions has been improving and expanding citizen access to local government. While state law guarantees public access to documents and requires governing bodies to meet in public, most Pennsylvania charters go further in providing avenues for citizen participation. Guaranteeing the citizen the right to speak at public meetings of the governing body was pioneered in home rule charters. This is a common provision in home rule charters with 60, or 85%, guaranteeing the citizen a right to be heard at meetings. In 1993, this guarantee was extended to citizens of all Pennsylvania municipalities through amendment of the Sunshine Act.

Another common form of citizen participation is through the electoral procedures of initiative, referendum and recall. Thirty-eight Pennsylvania charters, or 54% include recall provisions, and 54, or 76% include initiative and referendum.

Electoral Procedures for Citizen Participation

Procedures	Number of Charters	Percent
No Electoral Procedures	10	14
Initiative, Referendum and Recall	31	44
Initiative and Referendum Only	23	32
Recall Only	7	10

In addition to the charters counted above, two charters provide limited initiative and one provides limited referendum. In Bryn Athyn and Warren, voters can place issues on the agenda of the governing body by an initiative petition, but have no recourse to the ballot. In Delaware County, the council can place issues on the ballot for referendum, but there is no provision for citizens to initiate referenda through a petition process.

Other forms of citizen participation found in Pennsylvania charters include required public hearings before adoption of ordinances, publication of annual reports and establishment of various types of citizen advisory, review or study committees. Some charters include strong statements encouraging participation of citizens in municipal government affairs.

General Provisions

Charters usually contain an article of general provisions containing an assortment of provisions that do not seem to logically fit elsewhere. These can include technical provisions such as definitions and a separability clause. The separability clause provides if any charter section is held invalid by the courts, other portions of the charter are not affected by the action.

Prohibitions on certain activities by municipal officers and employees are usually included. Some sort of official conflict of interest provision is found in 59, or 83%, of the charters. A prohibition against discrimination on the basis of race, sex, religion, ethnic origin or other basis is found in 37, or 52%, of the charters.

Provisions for charter amendment is usually not included since this area is covered by the Home Rule Charter and Optional Plans Law.[1] Some charters contain a reference to the Home Rule Law as the procedure for amendment.

Reference

1. 53 Pa.C.S. 2941 through 2944; Home Rule Charter and Optional Plans Law.

Transition Provisions

Transition provisions are usually included at the end of the charter. These sections cover arrangements for the change to the form of government outlined in the charter. The amount of detail depends on the degree of change from the previously existing government. The charter must include the effective date, either in the transition section or elsewhere.[1] If the charter does not change the method of electing members of the governing body, there is no restriction on setting the effective date. Effective dates are usually set on the date of the reorganization meeting in January. If the charter requires creating, revising or eliminating districts for the election of governing body members, the effective date is set by the Home Rule Law.[2]

The charter must provide for the continuation of elected officials whose terms of office continue after the effective date.[3] A county court determined this provision did not entitle a tax collector to a new term which was to commence two days after a charter became effective, where the charter abolished the office of elected tax collector.[4] The charter can provide for these officers to exercise their previous powers until the end of their terms, or function under the charter, if suitable. The size of the governing body can be temporarily increased to accommodate holdover offices. The charter can stipulate that any vacancies in holdover offices not be filled after the effective date of the charter.

Some charters provide for temporary ordinances until an administrative code is adopted, or stipulate that all municipal ordinances remain in effect except where they conflict with the charter. A succession clause vests the new government with all the property, rights, privileges and liabilities of the old government. Sometimes a special clause deals with adoption of the budget by the outgoing governing body and its modification in the first year under the new form.

Government study commissions have shown concern for a smooth transition process by recommending the establishment of a transition committee, most typically composed of representatives of the governing body, the government study commission and the public. A transition committee is mandated in 27 charters, or 38%. In another 15 charters, or 21%, a transition committee is included in the recommendations of the government study commission, but not in the charter. In 29 charters, or 41%, there is no formal recommendation of a transition committee.

Often a transition committee is charged with the drafting of an administrative code and personnel code for consideration by the new governing body. There is more concern for a transition process where the new form of government varies considerably from the existing form.

References

1. 53 Pa.C.S. 2928; Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2914(c); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2966; Home Rule Charter and Optional Plans Law.
4. *Fazio v. Borough of West Chester,* Chester County Court of Common Pleas, No. 93-11756, April 11, 1994.

V. Adopting, Amending and Repealing a Charter

The central actor in the adoption of a home rule charter is not the government study commission; it is the municipal electorate. The long months of study and work by the commission culminate in the voters' verdict on its proposal on election day. In putting together a new government structure, commission members must keep in the back of their minds a judgment of what is acceptable to the voters. The voters are given a single package and must accept or reject the proposed charter as a whole, deciding whether its perceived assets outweigh its perceived defects.

Making decisions on the future structure of a local government is a basic political process. Getting the citizens involved in its activities must begin at the onset of the commission's work and build up to election day.

Referendum on a Proposed Charter

From the time the government study commission decides to recommend a home rule charter, it is in a countdown to election day. The activities of the commission are organized into a schedule based on the date for the referendum.

Election Date. The government study commission may choose the date of the referendum on the charter proposal.[1] To some extent, the date is controlled by the time limit on the commission's activity and the deadline for filing the final report. The commission may choose to put the proposal on an election subsequent to the first possible election available, and some have done so. When considering timing of the election, the commission must weigh the need to allow for adequate time for public education and discussion of issues against the difficulty of sustaining voter interest and media attention over the six-month period to the next election.

Another factor in setting the election date is either using or avoiding a general election. November elections consistently have higher voter turnouts than primaries, but competing issues or the existence of national or statewide contests may distract attention from the charter question. The experience of Pennsylvania communities shows a distinct difference in the outcomes of referenda on home rule charter proposals. Although study commissions have used November elections almost half again as frequently as primaries, the rate of voter approval of charter proposals was significantly higher in primaries and more than half the home rule charters adopted by the voters were approved in primary elections.

Results of Referenda on Proposed Charters

	All Elections			Primaries			Nov. Elections	
	No.	Percent		No.	Percent		No.	Percent
Yes	71	51.8	Yes	37	68.5	Yes	34	41.0
No	66	48.2	No	17	31.5	No	49	59.0

	All Referenda			Approvals			Defeats	
	No.	Percent		No.	Percent		No.	Percent
Primary	54	39.4	Primary	37	52.1	Primary	17	25.8
Nov.	83	60.6	Nov.	34	47.9	Nov.	49	74.2

Filing Final Report. Within the time frame established in the Home Rule Law, the government study commission must report its findings and recommendations to the citizens.[2] The report in sufficient copies for adequate distribution is delivered to the municipal secretary. Within five days, the municipal secretary must certify a copy of the commission's report to the county board of elections. The county board of elections places the question of adopting or rejecting the proposal on the ballot at the election specified in the report, occurring not less than 60 days following its filing with the election board.[3] The government study commission must also file a copy of its final report with the Department of Community and Economic Development.[4]

County Charter Elections. When a question on the adoption of a county home rule charter or an amendment to a county home rule charter appears on the ballot, the president judge of the court of common pleas is to appoint judges or registered voters of the county to serve as the election board in place of the county commissioners.[5]

Ballot Question. Questions to appear on the ballot are specified by the Home Rule Law.[6] It has been almost universal practice for the ballot wording to be identical to that appearing in the Law. The government study commission is authorized to frame an interpretative statement to accompany the question.[7] Very few commissions have placed such interpretative statements on the ballot. An interpretative statement framed by the second Allegheny County Government Study Commission was ruled off the ballot by two common pleas judges sitting as the board of elections in 1978, and in the same month a challenge to the interpretative statement submitted by the Lock Haven Government Study Commission was rejected by the Clinton County Court of Common Pleas.

An interpretative statement framed by the Schuylkill County Government Study Commission was ruled off the ballot by the county board of elections. On appeal, the court of common pleas held the board of elections had jurisdiction over the wording on the ballot. The court held an interpretative statement must be intended to interpret the intrinsic nature of the act of voting, not the nature of the object of that voting, so as to insure all voters would be aware of the consequences of their vote.[8] For each referendum affecting only one county or a portion of a county, the county board of elections is to prepare an explanation of the ballot question.[9] This statement must be in plain English. It is to indicate the purpose, limitations and effects of the ballot question to the people. The statement is to be included in the notice of the election and three copies are to be posted at each polling place.

Notice. The board of elections must include the question in its official election notice.[10] In addition, the municipal secretary must give at least 30 days notice of the election. The notice must be published in a newspaper of general circulation once a week for three consecutive weeks during the 30-day period prior to the election and on election day a copy of the notice must be posted at each polling place.

Failure of the township secretary to make the required notice rendered the first election approving adoption of a home rule charter for Horsham Township null and void.[11] The Montgomery County Court of Common Pleas held the notice requirements of the Home Rule Law were mandatory and the absence of compliance invalidated the election. The court ordered a second election for the following November when the charter was approved by the voters.

Results; Certification. Results of the election are computed in the same manner as for other municipal offices and questions. The county board of elections must certify the results of the election to the municipal governing body, the Secretary of the Commonwealth and the Secretary of Community and Economic Development.[12] The county board of elections must also certify the complete text of the approved charter to the Department of Community and Economic Development.[13]

After adoption of a home rule charter by the voters, the municipal secretary is to record the new charter in the municipal ordinance books.[14] The secretary must also file a certified copy of the charter with the Secretary of the Commonwealth, the Secretary of Community and Economic Development and the county board of elections.

References

1. 53 Pa.C.S. 2926; Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2921(a); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2924; Home Rule Charter and Optional Plans Law.
4. 53 Pa.C.S. 2921(c); Home Rule Charter and Optional Plans Law.
5. 25 P.S. 2641(c); Pennsylvania Election Code, Section 301(c).
6. 53 Pa.C.S. 2925; Home Rule Charter and Optional Plans Law.
7. 53 Pa.C.S. 2926; Home Rule Charter and Optional Plans Law.
8. *In re: Appeal of the Schuylkill County Government Study Commission,* No. 5-1586, C.P. Schuylkill Co., 1982.
9. 25 P.S. 2621.1; Pennsylvania Election Code, Section 201.1.
10. 25 P.S. 3041; Pennsylvania Election Code, Section 1201.
11. *Braun v. Montgomery County Election Board,* No. 74-16897, C.P. Montgomery Co.
12. 53 Pa.C.S. 2961; Home Rule Charter and Optional Plans Law.
13. 45 Pa.C.S. 722(d)(2).
14. 53 Pa.C.S. 2965; Home Rule Charter and Optional Plans Law.

Electoral Dynamics

At the end of study, discussion and deliberation extending over a period of 6 to 20 months, the members of the government study commission will have gained considerable expertise in the workings of their local government. This accumulated knowledge is put to use in drawing up their recommendations for the voters. But the job does not end with printing a final report. The public must be made aware of the issues and educated about the meaning of the proposed change. Members of the government study commission will have the most knowledge and greatest motivation to undertake a campaign to persuade and inform the electorate.

Commission Action. The government study commission as a body is charged with public education. It is required to hold one or more public hearings, can sponsor public forums and is to provide for the ". . .widest possible public information and discussion respecting the purpose and progress of its work."[1] As the government study commission is not finally discharged until after the referendum, these public information activities are appropriate after as well as before filing the final report.

The government study commission is to publish or cause to be published sufficient copies of its final report containing its findings and recommendations for public study and information.[2] The Chester County Court of Common Pleas held printing and distributing a brochure summarizing the final report and recommendations of the Chester County Government Study Commission was a valid expenditure of county funds and a legitimate activity of the commission.[3]

In State College, members of the study commission spoke at meetings of service clubs, community organizations and university classes. The chairman appeared on a television panel session on home rule, and the entire commission served on two public forums sponsored by the League of Women Voters.[4]

The first Abington Township Government Study Commission undertook a public education effort to gain public acceptance of their recommendations. They printed five hundred copies of the full report and prepared and printed 25,000 copies of a 10-page summary brochure that was mailed to each voter. Members spoke at civic and service club meetings, coffee klatches and political party meetings. Press releases were prepared by the chairman and sent to local newspapers. Members appeared at a public forum sponsored by the League of Women Voters.[5]

Citizens Committee. Sometimes the efforts of study commission members are enough, as in the case of State College, where the proposed charter was accepted by all groups and met no organized opposition. In Abington, the proposal was defeated in the face of concerted opposition from local officeholders and political party leaders in spite of support from some community groups.

A common practice where opposition is expected or a large effort at education is indicated is to form a broad-based citizens committee to promote acceptance of the recommendations. This committee could enlist the help of local civic and service groups and volunteers. The whole range of electioneering activities can be employed: phone calls, letters and visits to voters, posters, bumper stickers, newspaper ads, letters to the editor, spot announcements on radio and television, public meetings and forums.

Political committees organized to influence the outcome of an election on a question presented to the voters must register and file a campaign report with the county election board.[6] If the committee's expenditure is less than $250, the treasurer files a sworn statement to that effect rather than the campaign finance report. This requirement applies to committees organized to support or defeat a proposed charter or charter amendments.

A campaign to support the proposed Moon Township charter was undertaken by the local chapter of the League of Women Voters in 1976. In June, a pilot study consisting of phone calls to 10 percent of the registered voters revealed voters had not heard about the charter but did not hold a negative attitude toward it. The campaign was

planned in the summer for September and October, including phone calls to each household of registered voters, newspaper ads, distribution of literature at shopping centers, speeches before local groups, bumper stickers, a small door-to-door campaign and letters to the editors of local papers.

A study of the campaign by the League attributed the charter's defeat to three factors.[7] There was a lack of information on the part of the voters and disinclination to learn about the issues. Opposition literature by the political party leaders was designed to elicit an emotional response and was mailed at the end of the campaign. Township government remained on an even keel throughout the period, failing to provide a controversial issue. The study concluded a successful campaign would require more adequate funding and a vehicle to bring the issue home to the voters in a meaningful way.

Voter Knowledge and Participation. A study of the local government study process in seven Pennsylvania jurisdictions in 1972 through 1974 included polling a random sample of voters in each community and interviews of community leaders.[8] The study found a general pattern in group stands on the proposals. With only one exception, local officials were either opposed or divided; newspapers and television were usually supportive while labor, religious and charitable groups were inactive.

Actual voter participation in the referendums was surprising. In six of the seven jurisdictions the vote on the question was comparable if not larger than the vote for contested offices. But voter awareness of home rule was found to be low. Only between 10 and 29 percent of the voters could recall any specific recommendation. Less than a third of the voters could identify a group or person favoring or opposing the recommendations. Less than 25% of the voters claimed to be very interested in study commission activities, but up to 50% had discussed home rule with someone else. The study asserted "...we can conclude that home rule and the study commissions' work were neither well-understood by, nor of much interest to, most of the voters in the seven municipalities."[9]

The study found levels of trust in the existing local government to do what is right may have been a factor in the outcome of the referendum. Where trust was low, change was favored. Where trust was high and local officials supported change, it was favored. Where trust was high and local officials opposed change, it was defeated.

Voters who lived longer in a community were more likely to vote against change, as were voters who felt local taxes were too high. Voters who could identify specific recommendations or name groups taking positions for or against were more likely to oppose change. Voters who were less fully informed on specific recommendations or group positions were more likely to support change.

The study found no single set of factors applying to all seven communities. It did find citizen involvement in the study process and widespread public interest and discussion are critical. The strength of home rule is its ability to bring local government closer to the people; campaigns capitalizing on that strength were successful.

County Charter Campaigns. Voter approval of city, borough and township charters has been more readily forthcoming than for county charters. Of the 114 municipal charters proposed to the voters, 65, or 57%, were approved, while only 6, or 27%, of the 22 county charters proposed were approved. A 1975 analysis of county charter elections found five dominant factors in their outcomes.[10]

Timing was critical in a charter proposal; a ground swell of dissatisfaction with the existing county government encouraged acceptance of change. Voter education was found to be a problem where too short a time was allowed for the public to consider a charter. Political considerations were more important at the county than the municipal level, since party leaders and elected officials had an enormous stake in the outcome. Many study commissions concluded at least one party's support or complete neutrality by both was required. The fear of county dominance by municipal officials added another source of opposition. The complexity of county government gave rise to more involved proposals which were difficult for the voters to understand.

Another analysis found the natural tendency of government study commissions to deal comprehensively with the problems of county government "exposed us to criticism from too many angles, but also went against a fundamental principle of American political life - gradualism."[11] The limited degree of change in the proposed charter for Delaware County was found to be a factor in its adoption as the first county home rule charter in Pennsylvania.[12]

References

1. 53 Pa.C.S. 2920; Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2921(a); Home Rule Charter and Optional Plans Law.
3. *McDermott v. Board of Commissioners,* 74 D.&C.2d 167, at 174, 1974, C.P. Chester Co.
4. Elizabeth Smedley, "State College Borough Adopts Home Rule," National Civic Review, December 1974, p. 574.
5. Horace F. Richter, "The Abington Township Experience," unpublished paper presented to Department of Community Affairs home rule workshop, January 22, 1974.
6. 25 P.S. 3246; Pennsylvania Election Code, Section 1626(a); 4 Pa. Code 176.1.
7. Moon Township League of Women Voters, "Home Rule Charter Campaign," unpublished paper, p. 6.
8. Larry Gamm, Joseph James and Joseph Karlesky, *Home Rule and Local Government Change: A Comparative Study of Seven Pennsylvania Municipalities,* State College: The Pennsylvania State University, College of Human Development, 1974, Chapter IV.
9. Ibid., p. IV-20.
10. James G. Shultz, "County Home Rule - Why the Charters Failed: How Some Might Win," DCA Reports, January, 1975, p. 1.
11. Kingdon W. Swayne, "A Valedictory: Remembering Home Rule Vote," County News, May 24, 1976, p. 14.
12. Charles A. Cochener, "Why Home Ruled Passed in Delaware County," DCA Reports, October, 1975, p. 1.

Charter Amendment

Basic to the concept of home rule is local control over the content of the charter and the ability to make changes in the structure and powers of the local government by local actions. The frame of government set by the government study commission and adopted by the voters is open to change and adaptation through the amending process. The amending procedure established in the Home Rule Law provides citizens direct access to the ballot to alter the form or functioning of their local government.

Proposing Amendments. Charter amendments can be placed on the ballot either by action of the governing body or by petition of the voters.[1] The petition or ordinance must contain the complete text of wording proposed to be added to the charter and identify any provisions to be deleted.

A petition must be signed by at least the number of registered voters comprising 10% of the number of persons voting for the office of governor in the last gubernatorial general election.[2] The name and address of the person filing the petition must be clearly stated on the petition. No petition may be circulated prior to the twentieth Tuesday before the election. Petitions or ordinances proposing amendments must be filed with the county board of elections no later than the thirteenth Tuesday before the next primary, municipal or general election. In the case of initiative petitions, the county election board is to send copies of the petition without the signatures to the municipal governing body and to the Department of Community and Economic Development.

Conduct of the referendum on the proposed amendment is governed by the provisions of the Election Code. The board of elections has the power to frame the question to be placed on the ballot.[3]

Notice of the election is to be published by the municipal secretary in at least one newspaper of general circulation once a week for three consecutive weeks during the period of 30 days prior to the election.[4] A copy of the notice is to be posted at each polling place on the day of the election. The county board of elections also must include the question in its official election notice.[5]

For each referendum on a charter amendment, the county board of elections is to prepare an explanation of the ballot question.[6] This statement must be in plain English. It is to indicate the purpose, limitations and effects of the ballot question to the people. The statement is to be included in the notice of the election and three copies are to be posted at each polling place.

Results of the election on a charter amendment are to be certified by the county board of elections to the municipal governing body, the Secretary of the Commonwealth and the Secretary of Community and Economic Development.[7] The county board of elections must also certify the complete text of any approved amendments to the Department of Community and Economic Development.[8]

Amendments to a home rule charter can also be proposed to the voters by a government study commission under its authority to recommend actions it deems advisable consistent with its functions.[9] This procedure was followed by the second government study commission in Franklin City. Its report recommended amendments to 23 paragraphs of the Franklin charter combined into a single proposal to the voters.[10] This complex proposal was defeated at the polls. The second Lehigh County government study commission took a different approach. It found the existing charter was working well, but needed some fine tuning, so recommended a series of amendments. Fifteen separate questions were placed on the ballot over three elections in 1996 and 1997. Voters approved 9 and defeated 6.

Restrictions. A charter amendment is restricted to the same degree as the charter itself as far as extending the powers of the municipal government. However, the Pennsylvania Supreme Court has held an amendment to a home rule charter has the force and status of a legislative enactment and courts should not interfere before completion of the process.[11] The exception to this rule is where there has been a failure to comply with provisions concerning public notice.[12]

A further restriction is found in the prohibition against changing the form of government within five years after a home rule charter becomes effective.[13] The Commonwealth Court has ruled that an amendment proposing to increase the number of council members, provide for elections by district and alter the duties of the mayor could be kept off the ballot.[14] The Court found the amendment would violate the prohibition against changing the form of government within five years based on the Home Rule Law's definition of form of government to include provisions concerning size and basis of election of council and elective status of municipal officers.[15]

This provision was also invoked when Commonwealth Court barred from the ballot a charter amendment proposing to reestablish the appointive position of township manager-secretary. Less than a year earlier, voters had approved an amendment making the position elective. The Court determined the position was an integral part of the township's governmental composition, making a five-year wait mandatory before another amendment could be considered.[16]

In a case with a similar outcome, Commonwealth Court ruled a charter amendment changing the basis for electing council members from at large to district elections constituted a change in the municipality's form of government. The court held this amendment triggered the five-year statutory moratorium on additional changes in the form of government.[17]

Changing the method of electing municipal governing body members from at large to district election by amendment of the home rule charter is now expressly authorized in the Home Rule Law.[18] The Law provides for appointment of an apportionment commission to draw up the district lines after approval of such an amendment by the voters. This provision was added to the Home Rule Law in 1987 to overcome an adverse court decision ruling a Pittsburgh charter amendment off the ballot. In 1987, Pittsburgh voters amended their charter, changing from at large to district election of council members.

A member of city council who lost his seat because of the change in the city charter filed suit alleging he was entitled to complete his four-year term of office. The Commonwealth Court ruled neither the constitution nor the city's home rule charter gave a council member the right to remain in office after the position was abolished. The guarantee in the Home Rule Law for sitting officials to complete their terms at the time of adoption of a home rule charter does not apply in cases where the basis of electing council members is changed by charter amendment.[19]

Incidence of Charter Amendments. Of the 71 home rule charters in Pennsylvania, only 41, or 58%, have been amended as of January 1, 1999. These charters have accumulated a total of 1,362 years of operation through January 1999, producing an average of 6 years of operation per charter amendment.

Amendment Activity to Home Rule Charters

Number of Amendments Proposed	Number of Charters	Number of Amendments Adopted	Number of Charters
49	1	37	1
32	1	27	1
23	1	22	1
18	1	15	1
13	1	13	1
11	1	10	1
10	1	7	3
7	4	6	1
6	2	5	4
5	3	4	3
4	5	3	7
3	8	2	6
2	7	1	11
1	10	0	30
0	25		

A total of 279 amendments have been proposed in these 71 jurisdictions, of which 227, or 81%, were approved by the voters.

The experience of charter amendment indicates charters have been neither inflexible nor so poorly drawn as to require extensive amendment. The only charters with a significant number of amendments are Lehigh County with 37, Whitehall Township with 27 and Ferguson Township with 22 amendments.

References

1. 53 Pa.C.S. 2942; Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2943(a); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2944; Home Rule Charter and Optional Plans Law.
4. 53 Pa.C.S. 2952; Home Rule Charter and Optional Plans Law.
5. 25 P.S. 3401; Pennsylvania Election Code, Section 1201.
6. 25 P.S. 2621.1; Pennsylvania Election Code, Section 201.1.
7. 53 Pa.C.S. 2951; Home Rule Charter and Optional Plans Law.
8. 45 Pa.C.S. 722(d)(2).
9. 53 Pa.C.S. 2923(4); Home Rule Charter and Optional Plans Law.
10. *Final Report of the Second Franklin Government Study Commission,* June 28, 1982, p. 12.
11. *Mount Lebanon v. County Board of Elections of Allegheny County,* 368 A.2d 648, 470 Pa. 317, 1977.
12. *Mount Lebanon, supra,* at 322, distinguishing Shultz v. Philadelphia, 385 Pa. 79, 1956.
13. 53 Pa.C.S. 2929; Home Rule Charter and Optional Plans Law.
14. *Borough of Warren v. County Board of Elections of County of Warren,* 425 A.2d 1113, 59 Pa.Cmwlth. 137, 1981.
15. 53 Pa.C.S. 2930; Home Rule Charter and Optional Plans Law.
16. *McCaskey v. Allegheny County Department of Elections,* 590 A.2d 77, 139 Pa.Cmwlth. 229, 1991.
17. *Wolfgang v. Allegheny County Department of Elections,* 629 A.2d 316, 157 Pa.Cmwlth. 346, 1993.
18. 53 Pa.C.S. 2941(b); Home Rule Charter and Optional Plans Law.
19. *Lyons v. City of Pittsburgh,* 586 A.2d 469, 137 Pa.Cmwlth. 330, 1991, appeal denied 593 A.2d 845.

Charter Repeal

Procedure for repeal of a charter is the same as that for charter adoption, that is, election of a government study commission, study of the existing form and available alternatives, recommendation and decision by the voters.[1] The government study commission is to provide in its report for the new form of government which is to replace the charter proposed for repeal.

Although the Home Rule Law does not explicitly specify that a municipality can return to operation under one of the municipal codes after repeal, it appears to be within the powers of a government study commission to recommend repeal of a charter and return to a code form.[2] It may even be possible for a municipality to vote itself under a code different from that under which it was organized before it adopted a home rule charter.

No question on repeal of a charter can be presented to the voters within five years from the effective date of a home rule charter.[3] The Commonwealth Court has interpreted this restriction:

> . . . we are satisfied that the legislature wanted to provide a reasonable testing period during which citizens of a municipality would give their chosen form of government a fair chance to succeed rather than having those citizens whipsawed back and forth by suggestions that something else would be a better choice.[4]

There have been only two proposals to repeal a charter. The first occurred in McKeesport. In 1973, McKeesport voters adopted a home rule charter providing for a strong mayor-council form of government. Many political leaders did not approve of the change and worked for a return to the commission form.[5] A second government study commission was elected in 1979. The commission decided to abandon the existing strong mayor-council charter and write a new charter containing a modified commission form.[6] The question of repealing the present charter and going to the new form was defeated by the voters in 1981.

The second attempt to repeal a home rule charter occurred in Farrell. Farrell had operated since 1976 under a council-manager home rule charter. Political opposition to the incumbent manager resulted in a petition drive to elect a second government study commission in 1985. This commission recommended repeal of the home rule charter and adoption of a mayor-council optional plan. The voters defeated the proposal in 1986 by a margin of three to one.

References

1. 53 Pa.C.S. 2967(a); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2923(4); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2929; Home Rule Charter and Optional Plans Law.
4. *Borough of Warren v. County Board of Elections of the County of Warren,* 425 A.2d 1113, 59 Pa.Cmwlth. 137 at 141, 1981.
5. Jan Ackerman, "McKeesport to Choose: Home Rule or Commission," Pittsburgh Post-Gazette, May 7, 1981.
6. *McKeesport Government Study Commission Report,* April 23, 1981, p. 1.

VI. Extent of Home Rule Powers

Explaining just what powers a municipality gains by adopting a home charter is a difficult, if not impossible task. The Pennsylvania Constitution grants home rule municipalities the right to exercise any powers not denied by their charters, by the Constitution or by the General Assembly. The exact extent of these powers will be subject to continual expansion or contraction as interpretations are made by the courts, new legislation is enacted by the General Assembly and new fields of activity are recognized as valid municipal concerns.

The purpose of this section is not to engage in a discussion of the theory of home rule nor how the Home Rule Law fits into the various available theoretical frameworks. The focus here is on the practical defining of the limits of home rule powers through legislative enactments and court cases. The discussion will be restricted in the main to those areas where concrete positions can be identified with some attention to fields where prospective statements can be made with a minimum of speculation. These conclusions are subject to change at any time in the future by new court decisions or legislation.

Parameters of Home Rule

It is difficult to give a general view of home rule powers without becoming immersed in theoretical discussions.[1] The Constitution and the Home Rule Law grant a home rule municipality any power not denied by the Constitution, by its own charter, or by the General Assembly at any time.[2] For the most part, home rule is defined negatively by identifying constitutional or statutory prohibitions and concluding the remainder of municipal activities is a valid field of exercise for home rule powers where a municipality may act without a specific statutory authorization or even in a manner contradictory to a statutory authorization.

Sources of Statutory Restriction. There are four principal types of laws restricting home rule powers. The first and least open to conjecture are the specific restrictions found in Section 2962 of the Home Rule Law. Within the subject areas listed in Sections 2962(a), (b) and (f), home rule municipalities are limited to powers granted by state law. Many of these restricted areas are the same found in Philadelphia's enabling legislation, but there are significant additions.

The second source of legislative restriction is found in Section 2962(c). Laws that are uniform and applicable in every part of the Commonwealth supersede municipal ordinances on the same subject. A similar clause in the Philadelphia enabling legislation has been the pivot of Pennsylvania's leading court cases on home rule.

The third type of legislative restriction is a law that expressly preempts home rule powers or includes home rule municipalities within its terms. The legislature in these cases determines the state law will prevail over local legislation by home rule communities, not leaving the matter to court interpretation. These laws do not have to be entirely preemptive; they can define an area of flexibility for home rule municipalities, or for all municipalities.

The fourth type of legislative restriction is a statute directly implementing a constitutional provision, where a contradictory exercise of home rule powers would necessarily involve the municipality in violation of a right granted by a specific constitutional provision. Many laws in this category will overlap the second group as being uniform and applicable in every part of the commonwealth.

Court Interpretation of Statutory Applicability. The listing of ways state law restricts home rule powers gives rise to the question of what is left. Actually, court interpretation has carved out a broad area of local powers under home rule. The leading cases so far have all been brought under Philadelphia's enabling legislation, but they do provide precedent for interpretation of the Home Rule Law. The early cases deal with home rule powers over city personnel and offices, but are the source of significant judicial statements on home rule powers.

In *Lennox v. Clark,* the Pennsylvania Supreme Court held former county offices and their personnel came under the jurisdiction of the city's civil service regulation. The court made a significant determination on the applicability of uniform state laws that has set the standard for decision in many subsequent cases.

> There seems to exist an erroneous impression on the part of the plaintiffs in all these actions regarding section 18 of the Home Rule Act which forbids the city to exercise powers contrary to powers granted by acts of the General Assembly applicable in every part of the Commonwealth or to all cities of the Commonwealth. It is argued that because plaintiffs perform their respective functions and duties in pursuance of general laws which impose similar or identical duties upon officers holding corresponding positions throughout the Commonwealth, the city is thereby shorn of all power to interfere with them or their employees. Nothing could be further from the truth, it being abundantly clear that the limitations of power referred to in section 18 concern only laws in relation to substantive matters of state-wide concern, such as the health, safety, security and general welfare of all the inhabitants of the State, and not to matters affecting merely the personnel and administration of the offices local to Philadelphia and which are of no concern to citizens elsewhere. Any other conclusion would reduce the Charter to a mere scrap of paper and make the much heralded grant of Philadelphia home rule an illusion and a nullity.[3]

This precedent was invoked by the Supreme Court in the Addison Case which upheld a limitation on court review of decisions of the civil service commission found in Philadelphia's charter. The court held removal of civil service employees was a purely local concern, not affecting the general welfare of inhabitants of the state outside Philadelphia. In this case, the court made an important determination of the nature of a home rule charter in relation to legislation.

> That the charter constituted legislation no less than does a statute of the legislature to like end is too plain for even cavil. Whether a municipal charter comes into being by direct statutory grant of the legislature or by adoption by the constituent electorate in the exercise of power constitutionally reposed, it is as much legislative in the one instance as in the other and has equal legal force and standing in both. Indeed, a constitutionally permissible adoption of a municipal charter is not one whit less in dignity than a statute of the legislature granting a charter.[4]

In *Ebald v. Philadelphia,* the Supreme Court ruled Philadelphia's civil service regulations superseded the state heart and lung act, finding disability compensation for police and firemen not a substantive matter of statewide concern, even though the act expressly includes "any county, city, borough, town or township."[5] The court also addressed the issue of the act being amended subsequent to the adoption of Philadelphia's charter, rejecting the argument that:

> The legislature has indicated an intent to include Philadelphia within the scope of the amendment by reason of its failure explicitly to except home rule cities from the purview of the amendment. We are of the opinion that the legislature's silence as to home rule cities is no indication of its intent in this regard. It may just as reasonably be contended that the legislature regarded it as unnecessary expressly to exclude home rule cities from the scope of the amendment, because it knew that after the charter became effective the City of Philadelphia could, by regulation duly adopted, supersede the provisions of the amendment.[6]

In *Seneca Resources Corporation v. Highland Township,*[7] the United States District Court for the Western District of Pennsylvania ruled that numerous sections of Highland Township's Home Rule Charter were invalid, unenforceable, and unconstitutional on various grounds such as: preemption by the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); preemption by section 3302 of the Pennsylvania Oil and Gas Act (55 Pa. C.S. § 3302); illegal exercise of legislative authority; *de jure* exclusionary zoning; violating the Petition Clause of the First Amendment of the United States Constitution; and substantive due process grounds. The Court severed the offending provisions.

References

1. For a discussion of how the Home Rule Law fits in with various home rule theories, see Gary E. French, Home Rule in Pennsylvania, *Dickinson Law Review,* Vol. 81, No. 2, 1977, pp. 270-81.
2. 53 Pa.C.S. 2961; Home Rule Charter and Optional Plans Law.
3. *Lennox v. Clark,* 93 A.2d 834, 372 Pa. 355, at 378, 1955.
4. *Addison Case,* 122 A.2d 272, 385 Pa. 48, at 57, 1956.
5. 53 P.S. 637; 1935 P.L. 477.
6. *Ebald v. Philadelphia*, 7 D.&C.2d 179, at 183, 1956, affirmed per curiam, 128 A.2d 352, 387 Pa. 407, 1957.
7. *Seneca Res. Corp. v. Highland Twp.,* No. 16-cv-289, 2017 U.S. Dist. LEXIS 152737 (W.D. Pa. Sep. 20, 2017).

Local Government Units

While home rule conveys to a municipality practically unlimited power over the structure and organization of its own government, home rule municipalities are limited in their powers relative to other local jurisdictions. Three principal areas of concern are municipal boundary change, school districts and municipal authorities.

Municipal Boundary Change. Section 2962 of the Home Rule Law limits home rule municipalities to powers granted by the state legislature in the area of municipal boundary changes.[1] The Pennsylvania Constitution requires uniform legislation for consolidation, merger or boundary change procedures for municipalities. The right of voters to merge, consolidate or change municipal boundaries through initiative and referendum guaranteed by the Constitution applies to home rule municipalities.[2] This procedure was used in boundary change actions transferring territory from Hanover Township to Catasaqua Borough in the May 1982 primary, from Monroeville Municipality to Pitcairn Borough in the November 1982 general election, and from West Deer Township to Richland Township in the May 1989 primary. A proposal to transfer territory from Cambridge Township to Cambridge Springs Borough was defeated by the voters in November 1998.

The Municipal Consolidation or Merger Act is the first law of general applicability implementing a boundary change procedure. This act specifically includes home rule municipalities within its scope, except for home rule municipalities that would otherwise be cities of the first or second class.[3] In one of the first actions under the new law, voters in College Township, Patton Township and State College Borough defeated a consolidation proposal in May 1995.

Schools. The Home Rule Law limits home rule municipalities to powers granted by the General Assembly concerning public schools.[4] A similar limitation appears in Philadelphia's enabling legislation, but the Supreme Court upheld application of city zoning requirements for offstreet parking to school buildings, stating they did not constitute regulation of public schools. The Court said: "As we view the term 'regulating public schools' this deals more with the quality of public education than with the physical structures required to provide it."[5]

Although regulation of schools is not likely to become an issue, the closest municipal involvement with schools is through the sponsorship of a community college. A home rule municipality or county acting as a sponsor of a community college would be limited to the powers granted in the Community College Act.[6] Presently, Philadelphia and Allegheny County are the only home rule jurisdictions sponsoring community colleges.

The Commonwealth Court has ruled the prohibition against dual employment in the Pittsburgh Home Rule Charter did not constitute regulation of the public schools in violation of this section of the Home Rule Law.[7] The court upheld dismissal of a police officer who was also employed as a public school teacher by the school district.

Authorities. The vast majority of municipal authorities are organized under the Municipality Authorities Act.[8] The first case involving a home rule municipality challenged the ability of Monroeville to organize a hospital authority, claiming it no longer qualified under the Act. The Commonwealth Court upheld creation of the authority, but on other grounds.[9] In a second case, the Supreme Court ruled the Municipality Authorities Act was uniform and its procedures must be followed by a home rule municipality to withdraw from a joint authority. The Court held:

> home rule municipalities are without power to devise their own scheme for withdrawing from a joint Authority. Here, the General Assembly has established a clear set of procedures applicable throughout the commonwealth which a municipality must follow if it wishes to withdraw from a joint Authority.[10]

Authorities are also organized under several other enabling acts. Some of these are rather clearly not uniform, such as the Parking Authority Law;[11] some appear to be uniform such as the Industrial and Commercial Development Authority Law;[12] and some fall within a gray area, most notably the Urban Redevelopment Law.[13] Any attempt to exercise home rule powers over an already existing authority, whether operating under legislation that is uniform or not, would appear to run into problems with the weight of judicial precedent on the character of authorities.

> This Court has consistently held that municipal authorities are not the creatures, agents or representatives of the municipalities which organize them, but rather are independent agencies of the commonwealth and part of its sovereignty.[14]

Bonds issued by authorities organized under the Industrial and Commercial Development Authority Law to fund projects within each political subdivision must be approved by the chief elected local official to qualify for federal tax exemption. For home rule municipalities, the appropriate official is the chief elected executive officer designated in the charter, or if there is no elected executive, a member of the legislative body designated by that body.[15]

References

1. 53 Pa.C.S. 2962(a)(3); Home Rule Charter and Optional Plans Law.
2. Pennsylvania Constitution, Article IX, Section 8; *Middle Paxton Township v. Borough of Dauphin*, 326 A.2d 342, 458 Pa. 396, 1974.
3. 53 Pa.C.S. 732.
4. 53 Pa.C.S. 2962(a)(4); Home Rule Charter and Optional Plans Law.
5. *School District of Philadelphia v. Zoning Board of Adjustment,* 207 A.2d 864, 417 Pa. 277, at 282, 1965.
6. 24 P.S. 19-1901-A et seq.
7. *Williams v. City of Pittsburgh,* 531 A.2d 42, 109 Pa.Cmwlth. 168, 1987, appeal denied 541 A.2d 748, 518 Pa. 622.
8. 53 P.S. 301 et seq.
9. *Jonnet v. Municipality of Monroeville,* 376 A.2d 1015, 31 Pa.Cmwlth. 437, 1977.
10. *Deer Creek Drainage Basin Authority v. County Board of Elections of Allegheny County,* 381 A.2d 103, 475 Pa. 491, at 499, 1977.
11. 53 P.S. 341 *et seq.*
12. 73 P.S. 371 *et seq.*
13. 35 P.S. 1701 *et seq.*
14. *Commonwealth v. Erie Metropolitan Transit Authority,* 281 A.2d 882, 444 Pa. 345, at 348, 1971.
15. 73 P. S. 374(d)(6); Industrial and Commercial Development Authority Law, Section 4(d)(6).

Election Procedures

Election procedures do not offer a field for wide exercise of home rule powers in Pennsylvania, which, unlike other states, has long had a uniform statewide system for voter registration and elections. However some election related issues have been raised in the exercise of home rule powers.

Election Code. The Home Rule Law restricts home rule municipalities to powers granted in state legislation for the registration of voters and conduct of elections.[1] It is clear elections in home rule municipalities must be conducted under the provisions of the Election Code, and counties adopting home rule must follow the procedures in state law for registering voters and administering elections. These laws were amended to provide home rule counties with the choice of designating the registration commission and the election board as the county legislative body or an appointed board or commission.[2] There must be minority representation on the board. If the county legislative body serves as the registration commission and election board and does not have minority representation, it is to appoint minority representation from a list submitted by the county chairman of the minority party.

The Election Code provides for election of local officials in odd-numbered years and state and national officials in even-numbered years. The Supreme Court held the Election Code prohibited Philadelphia from filling a vacancy in the office of mayor in a general election year.[3] It stated vacancies in municipal offices, except for members of the

governing body, can only be filled in a municipal election. This precedent was followed in the first ruling under the Home Rule Law. The Common Pleas Court found Norristown could not hold a special election to fill a vacancy in the office of mayor in an even-numbered year. The home rule charter provided that the vacancy was to be filled at the next primary, municipal or general election, but the court ruled this violated the Election Code.[4]

Ethics Law. Home rule municipalities would appear to be subject to all the provisions of the Ethics Act, including the requirement for candidates to file financial disclosure statements.[5] The Law applies to all elected officials of all political subdivisions.

Recall. In one of the most publicized and controversial cases of its time, the Pennsylvania Supreme Court voided the Philadelphia charter's recall provisions during a heated campaign to recall Mayor Frank L. Rizzo in 1976. The opinion of the court held recall was unconstitutional by violating Article VI, Section 7 of the Pennsylvania Constitution and that elected civil officers can only be removed for cause, but only in a very divided opinion.[6] A second case arose out of an action to recall the mayor of Kingston in 1995.[7] This case directly addresses the constitutionality of recall, and is not surrounded by all the complex procedural issues of the Rizzo case. The Pennsylvania Supreme Court in a unanimous opinion ruled that recall is unconstitutional, violating Article VI, Section 7 of the Pennsylvania Constitution.

Municipal Reapportionment. Article IX, Section 11 of the Pennsylvania Constitution requires every municipal governing body elected partially or wholly by districts to be reapportioned after each federal decennial census. This provision has been implemented by the Municipal Reapportionment Act.[8] This Act applies to home rule municipalities because it is uniform and applicable in every part of the commonwealth, it implements a specific constitutional mandate, and it expressly includes home rule municipalities within its terms.[9]

References

1. 53 Pa.C.S. 2962(a)(5); Home Rule Charter and Optional Plans Law.
2. 25 P.S. 951-3; Permanent Registration Act of Cities of the Second Class, Cities of the Second Class A, Cities of the Third Class, Boroughs, Towns and Townships, Section 361; 25 P.S. 2641(b); Pennsylvania Election Code, Section 301(b).
3. *Cali v. Philadelphia,* 177 A.2d 824, 406 Pa. 290, at 305, 1962.
4. *Zolitor v. Election Board of Montgomery County,* 48 D.&C.3d 544, 1988, appeal dismissed 540 A.2d 266, 518 Pa. 56.
5. 65 Pa.C.S. 701 et seq.
6. *Citizens Committee to Recall Rizzo v. Board of Elections of the City and County of Philadelphia,* 369 A.2d 1164, 470 Pa. 1, at 25, 1976.
7. *In re: Petition to Recall Reese;* 665 A.2d 1162, Pa., 1995.
8. 53 Pa.C.S. 901 et seq.
9. 53 Pa.C.S. 901(2).

Citizen Rights

State legislation sets a minimum for home rule municipalities in several important areas concerning citizen rights. This is generally not a problem since most charters guarantee more citizen participation and access than is available to citizens in local governments operating under the municipal codes. Expansion of citizen rights beyond those granted in state legislation has been one of the chief objectives of government study commissions.

Elected Governing Body. Home rule municipalities have almost complete freedom in organizing their own forms of government. The Home Rule Law does require members of the governing body to be chosen by popular election.[1] While members of municipal corporations in colonial Pennsylvania appointed their own successors, these were replaced by popularly elected governing bodies at the time of the Revolution. Freely elected representation has long since been firmly established as a cornerstone of American democratic practice.

Open Meetings. The Sunshine Law requiring deliberation and formal action to be taken at advertised public meetings appears to apply to home rule municipalities as uniform legislation applicable to all political subdivisions in every part of the commonwealth.[2] Most home rule charters have similar requirements and many go further, requiring publication of agendas and guaranteeing citizens the right to be heard at public meetings. The requirement for public comment periods added to the Sunshine Law in 1993 is less broad than the provisions of most charters.

Open Records. The provisions of the Right to Know Law guaranteeing citizen access to public documents apply to home rule municipalities.[3] The Commonwealth Court has ruled the Right to Know Law relates to a substantive matter of state concern, superseding the more restrictive limits on access in the Philadelphia Home Rule Charter.[4]

Administrative Hearings and Appeals. The Local Agency Law sets standards for administrative hearings and provides a right of appeal to the courts by persons aggrieved by an adjudication of a local agency.[5] The law allows persons proceeding under the terms of a home rule charter to raise questions on the validity of the charter provision upon appeal,[6] but the procedural issues must be documented in the appeal.[7] The Commonwealth Court has held the Local Agency Law implements Article V, Section 9 of the Pennsylvania Constitution: "Thus the law effectuates the intention that parties aggrieved by an administrative adjudication be provided the same opportunity to pursue relief as those aggrieved by a judicial determination."[8] The Local Agency Law supersedes inconsistent provisions of home rule charters.[9]

Tort Claims. Municipalities are liable for damages stemming from injury to persons or property within limits set by Chapter 85 of the Judicial Code.[10] Home rule municipalities fall within the coverage of the Code. However, municipalities may waive the governmental immunity defense provided by the Code in particular classes of cases as a matter of local judgment.[11]

References

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2. 65 Pa.C.S. 702.
3. 65 P.S. 66.1 *et seq.;* 1957 P.L. 390.
4. *Moak v. Philadelphia Newspapers, Inc.,* 366 A.2d 920, 18 Pa.Cmwlth. 599, at 606, 1975.
5. 2 Pa.C.S. 55l-555; 2 Pa.C.S. 75l-754.
6. 2 Pa.C.S. 753(a).
7. *Eber Appeal,* 415 A.2d 1253, 52 Pa.Cmwlth. 284, at 286, 1980.
8. *North Point Breeze Coalition v. City of Pittsburgh,* 431 A.2d 398, 60 Pa.Cmwlth. 298, at 305, 1981.
9. *Harrington v. Philadelphia Civil Service Commission,* 287 A.2d 912, 4 Pa.Cmwlth. 580, at 583, 1972.
10. 42 Pa.C.S. 8541 et seq.
11. *Borenstein v. City of Philadelphia,* 595 F.Supp. 853, at 858, 1984.

Fiscal Procedures

Most areas of municipal finance fall within the scope of home rule powers. Most state legislation regulating municipal financial affairs is found in the municipal codes rather than uniform statewide laws. Home rule municipalities appear to have clear powers over budgeting, internal control, auditing, investing and purchasing. Restrictions on home rule powers in financial matters are quite limited.

Fiscal Year. Designation of January 1 as the beginning of the fiscal year occurs in the municipal codes. It is clear home rule municipalities may alter their fiscal years. The Pennsylvania Supreme Court upheld changing Philadelphia's fiscal year to July 1, and also held the method effecting the change is left to the discretion of council.[1]

Borrowing. Article IX, Section 10 of the Pennsylvania Constitution directs the General Assembly to prescribe debt limits for all units of local government. The Local Government Unit Debt Act implements this constitutional provision and establishes debt limits for all municipalities. The Local Government Unit Debt Act specifically states home rule municipalities are subject to the Act's substantive provisions but further states municipalities may adopt the Act's procedural provisions by reference in their charters.[2] This statement implies that home rule municipalities may adopt different procedural provisions in their charters for incurring debt. As to substantive provisions, the debt limits in the Local Government Unit Debt Act are clearly substantive. However, as to procedural provisions, the traditional problem of the distinction between "substantive" and "procedural" may arise. Thus, a home rule municipality should proceed with caution in adopting alternative procedures relating to debt to ensure the marketability of its instruments. For example, if a debt instrument is not in a usually acceptable form, then the municipality may have difficulty selling it.

Purchasing. Most purchasing procedures for local governments are contained in the municipal codes and have been superseded by charter provisions. The Department of Transportation has recognized this fact in its regulations by allowing home rule municipalities to follow their own purchasing procedures in the expenditure of state liquid fuels funds. "In the case of any municipality which has adopted a home rule charter, the Department will recognize charter provisions which are contrary to the advertising, bidding, and bonding requirements set forth in this chapter or in the various municipal codes."[3]

A number of other state laws impact on the purchasing process. It is highly questionable that some or all will meet the tests of being uniform and applicable throughout the commonwealth and meeting the Lennox test of constituting "substantive matters of State-wide concern such as the health, safety, security and general welfare of all the inhabitants of the state."[4] Laws establishing procedures for rebidding when no bids are received[5] and for withdrawal of bids[6] seem within the power of home rule municipalities to set their own procedures. Laws governing retainage provisions in contracts and award of contracts[7] are somewhat more doubtful. Laws governing steel procurement,[8] motor vehicle procurement[9] and prevailing wages[10] and the Antibid-Rigging Act[11] appear to fall more clearly into areas of statewide concern. None of these statutes has yet been interpreted by the courts as applying to home rule municipalities. The language of the Public Works Contractors Bond Act[12] specifically includes home rule municipalities within its provisions.

Pensions. The Home Rule Law prohibits home rule municipalities from diminishing the rights or privileges of qualifying former employes or present employes in a municipal retirement system.[13] Home rule municipalities are free to devise their own pension systems as long as the rights of retired, vested and current employes are preserved. The requirement for periodic actuarial reports on municipal pension systems to the state seems to apply to home rule municipalities.[14] Home rule municipalities are specifically included within the terms of the Municipal Pension Plan Funding Standard and Recovery Act and subject to its requirements for reporting and pension funding.[15]

In a contest over an arbitration award, the Commonwealth Court has ruled a home rule municipality is not constrained by the limitations of the municipal police pension law (Act 600) or the municipal codes and may give retirees hospital and medical benefits.[16] In another arbitration case, Commonwealth Court decided a home rule city was not precluded from providing retiree health insurance coverage. The city could not acquiesce to an arbitration award under a prior contract giving health insurance benefits to retirees and subsequently contend the provision is illegal and refuse to provide the benefit.[17]

In two separate cases involving former police officers, the Pennsylvania Supreme Court invalidated a Philadelphia ordinance which prohibited payment of pension benefits to former employes who were dismissed and failed to get reinstated.[18] The court held the city ordinance was preempted by the state Public Employee Pension Forfeiture Act.[19] In both cases, police officers with vested pension rights were dismissed from the police force for alleged misconduct, but were never convicted in criminal court as required by the act.

References

1. *Phillips v. Tate,* 244 A.2d 774, 431 Pa. 124, at 126, 1968.
2. 53 Pa.C.S. 8008.
3. 67 Pa.Code 449.3(e).
4. *Lennox v. Clark,* 93 A.2d 834, 372 Pa. 355, at 378, 1953.
5. 73 P.S. 1641; 1979 P.L. 241, No. 78.
6. 73 P.S. 1602; 1978 P.L. 9, No. 4.
7. 62 Pa.C.S. 3911 and 3921.
8. 73 P.S. 1881; Steel Products Procurement Act.
9. 62 Pa.C.S. 3731; Motor Vehicle Procurement Act.
10. 43 P.S. 165; Pennsylvania Prevailing Wage Act.
11. 62 Pa.C.S. 4501.
12. 8 P.S. 193.1(d).
13. 53 Pa.C.S. 2962(c)(3); Home Rule Charter and Optional Plans Law.
14. 43 P.S. 1406(a)(15); 53 P.S. 730.1; Public Employe Retirement Commission Act.
15. 53 P.S. 895.102; Municipal Pension Plan Funding Standard and Recovery Act.

16. Appeal of Upper Providence FOP, 502 A.2d 263, 93 Pa.Cmwlth. 272, 1985; affirmed 526 A.2d 315, 514 Pa. 301.
17. *City of Wilkes-Barre v. Wilkes-Barre Firefighters Association,* AFL-CIO, 596 A.2d 1271, 142 Pa.Cmwlth. 168, 1991, affirmed 623 A.2d 815, 533 Pa. 326.
18. *Mazzo v. Board of Pensions and Retirement of City of Philadelphia,* 611 A.2d 193, 531 Pa. 78, 1992; *Christy v. Board of Pensions and Retirement of City of Philadelphia,* 611 A.2d 198, 531 Pa. 88, 1992.
19. 43 P.S. 1311 *et seq.;* Public Employee Pension Forfeiture Act.

Taxation

Taxation is a critical field in the consideration of home rule powers. Without adequate revenues, no municipality will be able to undertake extensive new governmental functions. The general practice in the United States has been to retain power over taxation in the state legislature and forbid exercise of home rule powers in this field.[1] Existing Pennsylvania law grants all municipalities one of the broadest authorizations to tax found in any state under the terms of the Local Tax Enabling Act and the Sterling Act.

In a leading case on home rule taxation powers, the Pennsylvania Supreme Court invalidated interim taxes levied by Philadelphia during the course of the fiscal year. The court held "the determination of whether the General Assembly has granted to a municipality the power of taxation in a particular area is subject to a strict construction and the grant of such power may not be found by implication."[2] The power of the legislature extends beyond subjects of taxation: "the General Assembly possesses the sole competency to determine not only the areas of permissible taxation but also when and in what manner such taxes shall be imposed."[3] Philadelphia's enabling legislation does contain more restrictive provisions on taxation than are found in the Home Rule Law.

Assessment. The Home Rule Law restricts home rule municipalities to those powers granted by the General Assembly concerning the assessment of property and persons for taxation purposes.[4] In construing a similar restriction in Philadelphia's enabling legislation, the Supreme Court held this restriction applied to assessment methods and procedures, but not personnel of the assessment office. "What was obviously intended by that provision of the statute was that the city should not have the power to legislate in regard to the substantive rules governing the making of assessments and valuations of property."[5]

Tax Collection. Home rule municipalities are free to devise their own methods of tax collection. The Local Tax Collection Law was amended in 1995 to explicitly allow home rule municipalities to set their own dates for sending out tax notices.[6] The Home Rule Law does restrict them to procedures in state law for filing and collecting municipal claims and liens and selling properties for unpaid taxes.[7] Commonwealth Court determined a city had the right to bring action in assumpsit to recover delinquent sewer and garbage removal fees under broad power granted to it as a home rule charter municipality.[8] The mandatory coverage of the Real Estate Tax Sale Law has been extended to include home rule counties of the Second Class A through the Eighth Class.[9] Tax collectors elected or appointed by home rule municipalities remain the collector of school taxes and of county taxes (except in counties collecting their own taxes). County commissioners in fourth through eighth class counties can choose to have county taxes collected by the county treasurer within home rule municipalities that have eliminated the elective office of tax collector.[10] Delaware and Lackawanna counties have instituted collection of their own taxes through exercise of their home rule powers. Home rule municipalities have been explicitly brought within the terms of the law governing refunds of taxes owing to taxpayers[11] and the Local Taxpayers Bill of Rights Act.[12] The Real Estate Tax Deferral Act applies to all political subdivisions and is available to home rule municipalities.[13]

Subjects of Taxation. The Home Rule Law restricts home rule municipalities to subjects of taxation granted by state law.[14] While the General Assembly has yet to pass a law specifying subjects of taxation for home rule municipalities, this clause is interpreted to mean home rule municipalities are limited to the subjects of taxation they possessed prior to the adoption of a charter. This is supported by a further clause in the Home Rule Law: "This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter."[15] In a case brought under this section, the Commonwealth Court interpreted it to mean a home rule municipality has separate authority to tax under the Home Rule Law, independent of its power to tax under the Local Tax Enabling Act.[16] This ruling has not been followed elsewhere.

While the restriction as to subjects of taxation is not too onerous on municipalities adopting home rule because of the broad grant of taxing power in the Local Tax Enabling Act, home rule counties have no such broad taxing powers and are severely limited as to sources of tax revenues.

Tax Rates. The Home Rule Law restricts home rule municipalities to authority granted in state law in fixing rates of nonproperty or personal taxes levied upon nonresidents.[17] Legal challenges to the power of home rule municipalities to exceed statutory tax rates for property taxes and for nonproperty taxes levied on residents climaxed in 1984. As a result of a negative decision by the Commonwealth Court, the legislature amended the Home Rule Law to specifically state home rule municipalities are not subject to any limitations on the rates of taxation imposed on residents.[18] The Commonwealth Court decision was also overturned by the Pennsylvania Supreme Court which ruled home rule municipalities had the right to fix rates but not subjects of taxation, except for the restrictions covering nonresidents.[19] The resulting differential tax rate for residents and nonresidents has been upheld as not violating the uniformity clause of the Pennsylvania Constitution nor the equal protection clause of the United States Constitution.[20] The Homestead Property Exclusion Act explicitly brings within its terms home rule jurisdictions and implements a provision of the Constitution.[21]

Home rule municipalities do not have authority to establish interest and penalty rates on delinquent taxes above the statutorily prescribed rates.[22] Home rule municipalities also may not exceed the 10 percent statutory cap on interest that may be charged on claims for taxes, water rents or rates, lighting rates, and sewer rates.[23]

References

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2. *Mastrangelo v. Buckley,* 250 A.2d 447, 433 Pa. 352, at 363, 1969.
3. Ibid., at 364.
4. 53 Pa.C.S. 2962(b); Home Rule Charter and Optional Plans Law.
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7. 53 Pa.C.S. 2962(a)(1); Home Rule Charter and Optional Plans Law.
8. *McSwain v. City of Farrell,* 624 A.2d 256, 154 Pa.Cmwlth. 523, 1993.
9. 72 P.S. 5860.102; Real Estate Tax Sale Law, Section 102.
10. 72 P.S. 5511.2; Local Tax Collection Law, Section 2; 16 P.S. 1701.1(a)(l); County Code, Section 1701(a)(1).
11. 72 P.S. 5566b.
12. 53 Pa.C.S. 8241 through 8438.
13. 53 Pa.C.S. 8571 through 8578.
14. 53 Pa.C.S. 2962(b); Home Rule Charter and Optional Plans Law.
15. 53 Pa.C.S.2962(h); Home Rule Charter and Optional Plans Law; *Meitner v. Cheltenham Township,* 460 A.2d 1235, 75 Pa.Cmwlth. 46, at 53, 1983.
16. *Penn Hills School District v. Municipality of Penn Hills,* 555 A.2d 302, 124 Pa.Cmwlth. 113, 1989.
17. 53 Pa.C.S. 2962(7); Home Rule Charter and Optional Plans Law.
18. 53 Pa.C.S. 2962(i); Home Rule Charter and Optional Plans Law.
19. *Reilly v. City of Pittsburgh,* 484 A.2d 736, 506 Pa. 165, 1984.
20. *City of Pittsburgh v. Commonwealth of Pennsylvania,* 559 A.2d 513, 522 Pa. 20, 1989.
21. 53 Pa.C.S. 8581 through 8587.
22. *Pollice v. National Tax Funding,* L.P., cite as 225 F.3d.379 (3rd. Cir.2000).
23. Ibid.

Municipal Personnel

Control over the rights, duties and benefits of municipal employees has generally been considered an integral part of home rule. In Pennsylvania, the leading court cases interpreting the nature of Philadelphia's home rule powers involved personnel matters. Almost without exception, the courts upheld broad home rule powers in personnel matters.[1] The broad interpretation of home rule powers was also extended to cities operating under the Optional Third Class City Charter Law.[2]

Because of its additional restrictions, the experience under the Home Rule Law has not followed the precedents set by the Philadelphia cases. In the few cases decided, courts have rather strictly construed the prohibition found in the Home Rule Law against enacting provisions inconsistent with existing state law affecting the rights, benefits or working conditions of municipal employes.[3]

Civil Service. The courts have upheld Philadelphia's power to prescribe its own civil service regulations even when they were contrary to state laws applicable throughout the commonwealth.[4] The restriction on rights, benefits and working conditions of employees is not found in Philadelphia's enabling legislation. The city's power to furlough firefighters has been upheld as a discretionary administrative decision not subject to judicial review except in cases of bad faith.[5]

Commonwealth Court held that Pittsburgh's enactment of an ordinance establishing a new procedure for hiring experienced police officers without the usual civil service examination was not prohibited by provisions of the Home Rule Law.[6] It was critical in the reasoning of the court that the ordinance affected only applicants for positions on the police force and did not affect current employees. The court also concluded the ordinance was not contrary to acts of the General Assembly, which are uniform and applicable in every part of the commonwealth. The facts in this case were different from an earlier civil service case where the Commonwealth Court found the promotion opportunity offered by two newly-created assistant chief positions would affect the rights of existing civil service employes.[7] The city had proposed creating two new deputy fire chief positions outside the competitive civil service class. The court ruled this would violate the previously enacted civil service law that it found to be a law "affecting the rights" of the firefighters.

A similar distinction was drawn from another earlier case where Commonwealth Court determined Norristown was subject to the statutory civil service provisions in the Borough Code regarding promotion of police officers.[8] The court ruled that civil service provisions governing promotion of police officers constituted a previously existing statute governing the rights, benefits or working conditions of employees.

The Delaware County Court of Common Pleas has held that the civil service provisions of the First Class Township Code are binding on Upper Darby Township. "The civil service requirements of the Township Code are binding upon the municipality because they so plainly affect the rights, benefits and working conditions of, in this instance the police."[9]

In a parallel case, the Allegheny County Court of Common Pleas invalidated the Police Manual of Richland Township as far as it was inconsistent with the Police Tenure Act. The court held the limitation in Section 2962 "evinces a clear legislative intent to continue to regulate many matters that are of significant concern to local municipalities."[10] The Police Tenure Act was found to be a statute affecting the rights of municipal employees.

In 1981, the Commonwealth Court held Scranton had no statutory authority to dismiss police officers for economic reasons, rejecting the argument the city's home rule powers included the power to eliminate positions for economic reasons.[11] This ruling was reversed when the legislature enacted an amendment to the Home Rule Law in 1988, specifically permitting second class A cities to furlough police officers and firefighters for economic reasons. The court also found Scranton subject to provisions of Second Class A City Law in the removal or demotion of firefighters.[12]

The Commonwealth Court has also held a home rule county's personnel rules are not applicable to court-appointed personnel.[13] A home rule county is given no greater latitude than a nonhome rule county where the judiciary is concerned. Hiring, firing and supervising court employees is part of the inherent power of the courts to do all things necessary for the administration of justice.

The Supreme Court found an at-will employee was not exempted from civil service protection and therefore entitled to notice and a hearing under the Local Agency Law.[14] The failure of the borough to provide for furloughs of merit service employees for economic reasons in its administrative code complicated the settlement of the case.

Veterans Preference. The Military Code requires the commonwealth and its political subdivisions to give preference to veterans in hiring and promotion. The law contains a clause establishing exclusivity.[15] The Supreme Court has held the veterans preference provisions are applicable to Philadelphia.[16]

A federal court declared invalid and contrary to state law a Philadelphia civil service regulation which prohibited veteran's preference in promotions.[17] The court ruled a home rule municipality was subject to the state Veteran's Preference Act.

Collective Bargaining. State legislation authorizing collective bargaining between police and firemen and their public employers and imposing binding arbitration explicitly applies to home rule municipalities: "The provisions of this act shall be applicable to every political subdivision of this commonwealth notwithstanding the fact that any such political subdivision, either before or after the passage of this act, has adopted or adopts a home rule charter."[18] The Commonwealth Court has held this law applies to Philadelphia because it implements Article III, Section 31 of the Pennsylvania Constitution authorizing the General Assembly to make arbitration awards mandatory on local governments.[19]

The Public Employee Relations Act does not explicitly include home rule municipalities within its terms, but it is commonly understood this legislation applies to home rule municipalities under the rights, benefits or working conditions restriction.[20] The Act prohibits collective bargaining agreement provisions from being implemented if they violate or are in conflict with state laws or provisions of municipal home rule charters.[21]

Whistleblower Protection. The Whistleblower Law is apparently uniform in every part of the commonwealth and its provisions would appear to protect employees reporting wrongdoing or waste in home rule municipalities.[22]

References

1. *Lennox v. Clark,* 93 A.2d 834, 372 Pa. 355, 1953; *Ebald v. Philadelphia,* 7 D.&C.2d 179 affirmed 128 A.2d 352, 387 Pa. 407, 1957.
2. *Greenberg v. Bradford,* 248 A.2d 51, 432 Pa. 611, 1968.
3. 53 Pa.C.S. 2962(c)(3); Home Rule Charter and Optional Plans Law.
4. Ebald, supra.
5. *City Firefighters' Association v. City of Philadelphia,* 442 A.2d 393, 65 Pa.Cmwlth. 283, at 287, 1982.
6. *Fraternal Order of Police, Fort Pitt Lodge No.1 v. City of Pittsburgh,* 644 A.2d 246, 165 Pa.Cmwlth. 83, 1994.
7. *Fire Fighters Local Union No. 1 v. Civil Service Commission of City of Pittsburgh,* 545 A.2d 487, 118 Pa.Cmwlth. 498, 1988.
8. *Norristown Fraternal Order of Police, Lodge 31 v. DeAngelis,* 611 A.2d 322, 148 Pa.Cmwlth. 285, 1992.
9. *Gill v. Devlin,* 17 D.&C.3d 299, 1980.
10. *Hopper v. Richland Township,* 6 D.&C.3d 96, 1978, distinguishing Ebald, supra, and Greenberg, supra.
11. *Balcrius v. Hickey,* 436 A.2d 246, at 249, 62 Pa.Cmwlth. 258, 1981.
12. *Langan v. City of Scranton*, 465 A.2d 729, 77 Pa.Cmwlth. 249, 1983.
13. Matter of Antolik, 501 A.2d 697, 93 Pa.Cmwlth. 258, 1985.
14. *Delliponti v. DeAngelis,* 681 A.2d 1261, Pa., 1996.
15. 51 Pa.C.S. 7109; Military Code.
16. *Eggleston v. Philadelphia*, 110 A.2d 183, 380 Pa. 158, 1955.
17. *Carter v. City of Philadelphia,* 989 F.2d 117, 3rd Cir., 1993.
18. 43 P.S. 217.9; 1968 P.L. 237, No. 111.
19. *Tate v. Antosh,* 281 A.2d 192, 3 Pa.Cmwlth. 144, 1971.
20. Governor's Study Commission on Public Employe Relations, *Home Rule Charter Provisions Relating to Personnel and Labor Relations,* Commonwealth of Pennsylvania, Governor's Office, 1978, p. 4.
21. 43 P.S. 1101.703; Public Employe Relations Act, Section 703.
22. 43 P.S. 1421; Whistleblower Law.

Building/Housing Codes

A basic police power of municipalities is the regulation of building construction and occupancy. The Home Rule Law specifically extends to home rule municipalities power over building codes and related safety, sanitation and health regulations.[1]

Home rule powers over building regulations have been upheld by the courts. The Commonwealth Court held Mount Lebanon's requirement for a permit for an air conditioning system was a valid exercise of home rule powers.[2] It reached the same conclusion concerning Wilkes-Barre's provision for demolition of unsafe structures, rejecting the argument the city should have followed procedures in the Third Class City Code. "This argument is wholly without merit. Wilkes-Barre having adopted a home rule charter, its affairs with respect to the subject at hand were no longer governed by the Third Class City Code."[3]

Some state laws affect certain parts of the building regulation field. The Building Energy Conservation Act setting energy conservation standards explicitly applies to home rule municipalities.[4] The Industrialized Housing Act regulating manufactured housing does not contain an explicit inclusion of home rule municipalities, but it does contain a legislative finding of the need for uniformity: "To facilitate the use of industrialized housing in the Commonwealth and to safeguard the health, safety and welfare of citizens of the commonwealth, there is a need for uniform State standards."[5] This declaration appears to bring the Act under the Lennox test of a substantive matter of statewide concern,[6] making it applicable to home rule municipalities.

References

1. 53 Pa.C.S. 2962(c)(4); Home Rule Charter and Optional Plans Law.
2. *General Bowling Corporation v. Township of Mount Lebanon,* 373 A.2d 783, 30 Pa.Cmwlth. 279, at 282, 1977.
3. *Murray v. City of Wilkes-Barre,* 394 A.2d 1055, 38 Pa.Cmwlth. 509, at 513, 1978.
4. 35 P.S. 7201.103; Building Energy Conservation Act, Section 103.
5. 35 P.S. 1651.2(5); Industrialized Housing Act, Section 2(5).
6. *Lennox v. Clark,* 93 A.2d 834, 372 Pa. 355, at 378, 1953.

Land Use Control

Although municipal control over planning and zoning is usually considered a basic part of home rule powers, the Home Rule Law subjects home rule municipalities to the powers and procedures granted by the legislature in the Pennsylvania Municipalities Planning Code.[1] The Commonwealth Court has invalidated an attempt to use the referendum provision of the Horsham Township Home Rule Charter to repeal an amendment to the township zoning ordinance, holding the Planning Code makes no provisions for review of a zoning ordinance by referendum.[2] In a similar case, the Commonwealth Court ruled the initiative provision of the Ferguson Township Home Charter could not be used to amend the township zoning ordinance since the Planning Code vests the power to enact, amend and repeal zoning ordinances in the municipal governing body.[3]

The decision by the City of Pittsburgh to reorganize its Fire Bureau by closing four fire stations and building two new stations resulted in a land use dispute between the mayor and city council. A city ordinance gave council power to approve the location of public safety buildings through the conditional use process. The mayor contended the city charter vested executive, administrative and law enforcement powers in the mayor and this grant superseded any power over conditional use given to council. The court determined the strong-mayor form of government was not intended to confer unlimited power on the mayor — certainly not the power to ignore ordinances. Nowhere in the home rule charter or ordinance did the mayor or public safety director have power to determine, without council's approval, the location of public safety related buildings as part of their executive or administrative duties.[4]

The Uniform Condominium Act applies to all condominiums in the commonwealth created after its passage, superseding municipal ordinances governing condominium conversions.[5] The Historic District Act is not uniform statewide and apparently can be superseded by exercise of home rule powers.[6] The Agricultural Area Security Law does not explicitly include home rule municipalities but may apply to them because it is uniform statewide and implements Article VIII, Section 2 of the Pennsylvania Constitution.[7] A 1982 act excluding normal agricultural operations from municipal nuisance ordinances explicitly includes home rule municipalities.[8] When a home rule county adopts a uniform parcel identifier system, it becomes subject to the provisions of the Uniform Parcel Identifier Law.[9] Home rule municipalities smaller than a county are made explicitly subject to the provisions of the act.

References

1. 53 Pa.C.S. 2962(a)(10); Home Rule Charter and Optional Plans Law; *Delaware County v. Middletown Township,* 511 A.2d 811, 511 Pa. 66, 1986.
2. *Horsham Township Council v. Mintz*, 395 A.2d 677, 39 Pa.Cmwlth. 408, 1978.
3. *Minshall v. Board of Supervisors of Ferguson Township,* 413 A.2d 1165, 50 Pa.Cmwlth. 541, 1980.
4. *City Council of City of Pittsburgh v. City of Pittsburgh,* 625 A.2d 138, 155 Pa.Cmwlth. 328, 1993.

5. 68 Pa.C.S. 3102(a).
6. 53 P.S. 8001 *et seq.;* 1961 P.L. 282, No. 167.
7. 3 P.S. 901 *et seq.;* Agricultural Area Security Law.
8. 3 P.S. 952; 1982 P.L. 454, No. 133.
9. 21 P.S. 337; Uniform Parcel Identifier Law.

Environmental Control

Local governments exercise environmental control under powers delegated by state laws. Chief among these are the Clean Streams Law,[1] Pennsylvania Sewage Facilities Act,[2] Solid Waste Management Act,[3] Municipal Waste Planning, Recycling and Waste Reduction Act,[4] Flood Plain Management Act[5] and Storm Water Management Act.[6] With the exceptions of the Pennsylvania Sewage Facilities Act and the Municipal Waste Planning, Recycling and Waste Reduction Act, none of these laws explicitly include home rule municipalities, but all are uniform and applicable in every part of the commonwealth. They carry legislative findings as to their intent to protect the safety, health and welfare of the citizens of the commonwealth, and they serve to implement Article I, Section 27 of the Pennsylvania Constitution guaranteeing the right to clean air, pure water and the preservation of the environment. Home rule municipalities appear to be subject to the provisions of these laws. The Pesticide Control Act was amended in 1986 by adding a clause making state regulation of pesticides exclusive and prohibiting inconsistent local regulation, including that of home rule municipalities.[7] The Land Recycling and Environmental Remediation Standards Act of 1995 applies explicitly to home rule municipalities.[8]

References

1. 35 P.S. 691.1 *et seq.*
2. 35 P.S. 750.1 *et seq.*
3. 35 P.S. 6018.101 *et seq.*
4. 53 P.S. 4000.101 *et seq.*
5. 32 P.S. 679.101 *et seq.*
6. 32 P.S. 680.1 *et seq.*
7. 3 P.S. 111.57.
8. 35 P.S. 6026.101 *et seq.*

Public Safety

Municipalities have extensive police powers to protect the health, safety and welfare of their citizens. Home rule municipalities may create summary offenses, but are restricted from defining felonies or misdemeanors and providing for their punishment.[1] More serious crimes in Pennsylvania are defined by the Crimes Code which also provides for their punishment.[2] The Supreme Court has upheld the right of Philadelphia to provide criminal penalties for violation of its ordinances.[3]

The Vehicle Code declares itself to be applicable and uniform throughout the commonwealth and in all political subdivisions. Political subdivisions may not enact ordinances on matters covered by the Vehicle Code unless expressly authorized.[4] Home rule municipalities are limited to those police powers specified as reasonable under the Code.[5]

The Emergency Management Services Code is uniform and applicable in every part of the commonwealth, but does not explicitly apply to home rule municipalities.[6] Because it deals with the protection of health, safety and welfare of citizens throughout the commonwealth, it appears to be applicable to home rule municipalities. The Hazardous Material Emergency Planning and Response Act applies to home rule municipalities.[7] The Act contains a specific clause preempting inconsistent local legislation. The Public Safety Emergency Telephone Act establishing a statewide 911 system is uniform and applicable throughout the commonwealth and specifically includes governing bodies of home rule counties.[8]

The Municipal Police Officers' Education and Training Act was amended in 1984 to include Philadelphia, making it uniform and applicable statewide.[9] It appears this law applies to home rule municipalities. The Emergency Medical Services Act gives the state Department of Health exclusive control over the licensing of emergency medical services.[10]

Firearms/Hunting. The Home Rule Law prohibits home rule municipalities from regulating the transfer, ownership, transportation or possession of firearms.[11] Although Philadelphia's enabling legislation does not include this limitation, the courts invalidated two firearms ordinances because they conflicted with the Uniform Firearms Act.[12] The Supreme Court upheld the General Assembly's preemption of Philadelphia and Pittsburgh's attempts to regulate assault weapons.[13] It held that because ownership of firearms is constitutionally protected, its regulation is a valid matter of statewide concern subject to state preemption. The Game and Wildlife Code makes hunting a right subject to the exclusive control of the Game Commission, and although municipalities can prohibit unnecessary discharge of firearms, they cannot prohibit use of guns for hunting, nor can they regulate areas permissible for hunting.[14]

References

1. 53 Pa.C.S.2962(a)(9); Home Rule Charter and Optional Plans Law; *Smaller Manufacturers Council v. Pittsburgh,* 485 A.2d 73, 85 Pa.Cmwlth. 533, at 537, 1984.
2. 18 Pa.C.S. 101 et seq.
3. *Commonwealth v. Cabell,* 185 A.2d 611, 199 Pa.Super. 513, at 522, 1962; *Commonwealth v. Bellis,* 472 A.2d 194, 324 Pa.Super. 506, at 518, 1984.
4. 75 Pa.C.S. 6101.
5. 75 Pa.C.S. 6109.
6. 35 Pa.C.S. 7101 *et seq.*
7. 35 P.S. 6022.101 *et seq.*
8. 35 P.S. 7014(a).
9. 53 Pa.C.S. 2161(b).
10. 35 P.S. 6921 *et seq.; Whitehall-Coplay Ambulance and Rescue Corps v. Pennsylvania Department of Health;* 575 A.2d 982, Pa.Cmwlth., 1990.
11. 53 Pa.C.S. 2962(g); Home Rule Charter and Optional Plans Law.
12. 18 Pa.C.S. 6120(a); *Commonwealth v. Ray,* 272 A.2d 275, 218 Pa.Super. 72, at 78, 1970 vacated on other grounds, 292 A.2d 410, 448 Pa. 307, 1972; *Schneck v. City of Philadelphia,* 383 A.2d 237, 34 Pa.Cmwlth 96, 1978.
13. *Ortiz v. Commonwealth,* 681 A.2d 152, Pa., 1996.
14. 34 Pa.C.S. 322; 1974 Opp. Atty. Gen., No. 17.

Health and Social Services

Another of the basic police powers of municipalities is the protection of the health and welfare of its citizens. Courts have long upheld the right of municipalities to regulate business operations impinging on the health of citizens.[1]

Health Services. The Attorney General has ruled that third class cities adopting home rule charters are no longer bound by the mandate in the Third Class City Code to provide health services to their citizens.[2] The Attorney General held the Third Class City Code is not uniform and applicable throughout the commonwealth, and home rule municipalities are exempt from its requirements relating to public health.

Licensing Eating and Drinking Places. The Attorney General has held the law requiring licensing of public eating and drinking establishments is uniform and applicable throughout the commonwealth.[3] In 1989, the law was amended to give second class townships with home rule charters the power to issue licenses to eating and drinking establishments. An earlier case involving municipal powers under this law upheld the enactment of additional municipal regulations.[4] The Supreme Court held the licensing act did not preempt the field so as to preclude municipal regulation consistent with the state law. This case sets forth three types of state laws which have different effects on similar municipal legislation. These distinctions will apply to home rule municipalities when the state law involved is uniform and applicable throughout the commonwealth.

There are statutes which expressly provide that nothing therein should be construed as prohibiting municipalities from adopting appropriate ordinances, not inconsistent with the provisions of the act or the rules and regulations adopted thereunder as might be deemed necessary to promote the purpose of the legislation. On the other hand, there are statutes which expressly provide that municipal legislation in regard to the subject covered by the State act is forbidden. Then there is a third class of statutes which, regulating some industry or occupation, are silent as to whether municipalities are or are not permitted to enact supplementary legislation or to impinge in any manner

upon the field entered upon by the State; in such cases the question whether municipal action is permissible must be determined by an analysis of the provisions of the act itself in order to ascertain the probable intention of the legislature in that regard.[5]

Food Packaging. The Home Rule Law prohibits ordinances or regulations not uniform with state law covering processing, storage, distribution or sale of foods.[6] The Commonwealth Court has ruled the state has preempted the field of meat packaging and labeling, precluding nonuniform municipal regulations.[7]

Social Services. In a very broad enabling act in 1974, the legislature authorized local governments to spend revenue sharing funds and general revenues for social service programs. The act defines social service programs for code municipalities, but allows home rule municipalities to create their own definition: "Home Rule municipalities may define the term 'social service programs' within their powers under a Home Rule Charter."[8] The legislative definition includes programs addressing recognized needs of the poor, disabled or aged, children's services, including day care, health services, including alcohol and drug addiction, housing and homemaker services, senior opportunities and services, consumer services, migrant services, youth services, sheltered workshops for the handicapped, hot meals for older adults, rehabilitation of low to middle income housing and family planning. In this law, the General Assembly clearly recognized the power of home rule municipalities to widen or narrow the scope of their functions and services from the definition set in state law.

References

1. *Western Pennsylvania Restaurant Association v. Pittsburgh*, 77 A.2d 616, 366 Pa. 374, at 384, 1951.
2. 1978 Op. Atty. Gen., No. 12; Health Services for Third Class Cities, 8 D.&C.3d 96, at 100, 1979.
3. *Ibid.*, at 101, construing 1945 P.L. 926; 35 P.S. 655.1 et seq.
4. Western Pennsylvania Restaurant Association, supra, at 382.
5. *Ibid.,* at 380-81.
6. 53 Pa.C.S. 2962(c)(4); Home Rule Charter and Optional Plans Law.
7. *City of Erie v. Northwestern Pennsylvania Food Council,* 322 A.2d 407, 14 Pa.Cmwlth. 355, at 363, 1974.
8. 53 P.S. 5424; 1974 P.L. 865, No. 292, Section 4.

Libraries

In 1976, the City of Farrell faced a cutoff of state library aid when it placed operations and finances of the library directly under the city government and reduced the library board to an advisory status. The State Library's regulations held the library and its finances must be under control of the library board according to the terms of the Library Code.

When the issue of Farrell's home rule powers to organize its own affairs was raised, the Advisory Council on Library Development reconsidered its regulations. The legal counsel to the Department of Education ruled the Home Rule Law takes precedence over the Library Code and Farrell's action in making the library board advisory was valid.[1] Regulations of the State Library were amended to recognize the right of home rule municipalities to manage the local library by an agency other than a library board of directors,[2] and to receive state aid funds directly if their library was not administered by a library board.[3]

References

1. 8 Pa.Bull. 488, March 4, 1978.
2. 22 Pa.Code 141.21.
3. 22 Pa.Code 131.34.

Private Business

The Home Rule Law restricts municipalities from engaging in proprietary or private business except as authorized by the General Assembly.[1] In the first action brought under this section, the Commonwealth Court ruled that Pittsburgh could not sell asphalt from the city's asphalt plant to neighboring municipalities.[2] Production of asphalt for its own use was acceptable, but production for sale to outside entities constituted private business.

Two cases involved Philadelphia whose enabling legislation contains a similar prohibition. The Supreme Court ruled a sports stadium is a public purpose even if it is to be leased to privately owned football and baseball teams.[3] The city was not engaging in private business and the leasing was only incident to providing public recreation. In a later case, the Supreme Court ruled Philadelphia's municipally-owned gas system is a private business, and the General Assembly could regulate the manner the gas system was operated, including procedures for termination of service to consumers.[4]

Regulation of Business. Exercise of municipal police powers necessarily involves regulation of private business. Powers of home rule municipalities to regulate business are restricted in two places in the Home Rule Law. They are prohibited from regulating definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods or services subject to state law, unless the municipal regulation is uniform with the state legislation.[5] As the Supreme Court has held in the Western Pennsylvania Restaurant Association case, the existence of uniform state law does not necessarily preempt the possibility of local legislation in the same field.[6] The test outlined in that case would appear to apply to regulatory activity by home rule municipalities within this restricted area.

A second restriction on regulation of business is the restriction against placing duties and responsibilities on businesses and employers to withhold, remit or report taxes imposed on them or their employes except as provided by state law.[7] This section seems aimed chiefly at responsibility for collecting and withholding taxes, but the wording is general enough to be open to a wider interpretation. It was used to strike down a Pittsburgh ordinance requiring prior notice of plant closings or reductions of employment of more than 15%.[8]

Home rule powers to regulate business were addressed in a case where the Supreme Court upheld a Philadelphia ordinance imposing rent control.

> By its adoption of the charter (April 17, 1951) the city was then clothed with police power. This necessarily encompassed authority to enact such ordinances as are for the health and welfare of its citizens. It is not necessary for its exercise over rents and evictions that they be specifically enumerated in the Act. Precedent for this lies in the cases where, under their general police powers, municipalities have been sustained in the regulation of restaurants, signs, construction and height of buildings, fair employment practices and other like matters.[9]

Public Utilities. Regulation of public utilities is preempted by the Commonwealth under the Public Utility Code.[10] Municipally-owned utilities operating within municipal limits are not subject to the rate making powers of the Public Utility Commission. But municipal rates are subject to court review for reasonableness, and the courts have applied the same standard applied by the Commission – fair rate return on fair value. In a case involving rates set by the Philadelphia Gas Works, the Supreme Court held Philadelphia under its home rule powers could adopt a different standard for establishing the reasonableness of rates, since city ordinances have the effect and force of state law.[11] Rates charged by a home rule municipality for municipal utilities outside its boundaries are subject to the jurisdiction of the Public Utility Commission.[12]

References

1. 53 Pa.C.S. 2962(c)(1); Home Rule Charter and Optional Plans Law.
2. *Associated Pennsylvania Constructors v. City of Pittsburgh,* 579 A.2d 461, 134 Pa.Cmwlth. 536, 1990.
3. *Martin v. Philadelphia,* 215 A.2d 894, 420 Pa. 14, at 18, 1966.
4. *Philadelphia Facilities Management Corporation v. Beister,* 431 A.2d 1123, 60 Pa.Cmwlth. 366, at 387, 1981.
5. 53 Pa.C.S. 2962(c)(4); Home Rule Charter and Optional Plans Law.
6. *Western Pennsylvania Restaurant Association v. Pittsburgh,* 77 A.2d 616, 366 Pa. 374, 1951.
7. 53 Pa.C.S. 2962(f); Home Rule Charter and Optional Plans Law.
8. *Smaller Manufacturers Council v. Pittsburgh,* 485 A.2d 93, 85 Pa.Cmwlth. 533, at 542, 1984.
9. *Warren v. Philadelphia,* 115 A.2d 218, 382 Pa. 380, at 384, 1955.
10. 66 Pa.C.S. 101 *et seq.*; *Duquesne Light Co. v. Monroeville Borough,* 298 A.2d 252, 449 Pa.573, at 581, 1972.
11. *Action Alliance of Senior Citizens of Greater Philadelphia v. Philadelphia Gas Commission,* 406 A.2d 1155, 45 Pa.Cmwlth. 234, at 241, 1979.
12. *City of McKeesport v. Pennsylvania Public Utility Commission,* 442 A.2d 30, 65 Pa.Cmwlth. 179, at 181, 1982.

Community Development

In a very broad grant of power, the General Assembly in 1975 authorized every municipality to make expenditures for community development programs from community development funds and from general municipal revenues. The act contains a definition listing authorized community development activities for code municipalities, but allows home rule municipalities to define the scope of community development programs on their own: "Home Rule municipalities may define the term 'community development programs' within their own powers under a Home Rule Charter."[1] The statutory definition includes elimination of slums and blight, elimination of conditions detrimental to health, safety and public welfare, conservation and expansion of housing, more rational land use, deconcentration of low income housing, revitalization of neighborhoods to attract higher income persons and restoration and preservation of properties with historic, architectural or aesthetic values. Home rule municipalities can narrow or broaden this definition in devising their own community development programs.

Eminent Domain. The Home Rule Law restricts municipalities to following statutory procedures in the exercise of eminent domain.[2] While home rule municipalities must follow the procedures set forth in the Eminent Domain Code, there does not appear to be a restriction on the purposes for which eminent domain is exercised.

In a Philadelphia case, the Supreme Court ruled the owners of a building demolished as a public nuisance under the city's police powers did not have access to an eminent domain proceeding.[3] The Commonwealth Court's decision was based on the failure of the owners to exhaust their administrative remedies, but did not address the finding by the Court of Common Pleas that the demolition did not constitute a taking as required for an eminent domain proceeding.

References

1. 53 P.S. 5424; 1974 P.L. 865, No. 292, Section 4.
2. 53 Pa.C.S. 2962(a)(2); Home Rule Charter and Optional Plans Law.
3. *Gans v. City of Philadelphia*, 403 A.2d 168, 43 Pa.Cmwlth. 635, 1979.

VII. Home Rule Charter and Optional Plans Law

53 Pa. C.S. 2901 to 3171

(Includes amendments through September 1, 1999)

Subpart E
Home Rule and Optional Plan Government
Subchapter A
Preliminary Provisions

Section 2901. Short title and scope of subpart

(a) **Short title of subpart. –** This subpart shall be known and may be cited as the Home Rule Charter and Optional Plans Law.

(b) **Scope of subpart. –** This subpart applies to all municipalities except cities of the first class and counties of the first class.

Section 2902. Definitions

Subject to additional definitions contained in subsequent provisions of this subpart which are applicable to specific provisions of this subpart, the following words and phrases when used in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Council." County commissioner, city council, borough council, town council, township commissioner in a township of the first class and supervisor in a township of the second class.

"Election officials." The county boards of elections.

"Electors." The registered voters of any municipality involved in proceedings relating to the adoption and repeal of optional forms of government.

"Governing body." Board of county commissioners, city council, borough or incorporated town council, commissioners of a township of the first class and supervisors of a township of the second class or their successor forms of government.

"Government study commission" or "commission." The body elected under the provisions of Subchapter B (relating to procedure for adoption of home rule charter or optional plan of government).

"Home rule charter." A written document defining the powers, structure, privileges, rights and duties of the municipal government and limitations thereon. The charter shall also provide for the composition and election of the governing body, which in all cases shall be chosen by popular elections.

"Local municipality." Municipal corporation except a city of the first class.

"Nonresident." Any person or entity not a resident within the meaning of this subpart.

"Optional forms." Includes home rule charters and optional plans.

"Optional plans." Optional municipal powers, procedures and administrative structures as provided by this subpart.

"Rate of taxation." The amount of tax levied by a municipality on a permissible subject of taxation.

"Resident." Any person, or other entity living in or maintaining a permanent or fixed place of abode in a municipality or conducting or engaging in a business for profit within a municipality.

"Subject of taxation." Any person, business, corporation, partnership, entity, real property, tangible or intangible personal property, property interest, transaction, occurrence, privilege, transfer, occupation or any other levy which is determined to be taxable by the General Assembly. The term shall not be construed to mean the rate of tax which may be imposed on a permissible subject of taxation.

Subchapter B
Procedure for Adoption of Home Rule Charter or Optional Plan of Government

Section 2911. Submission of question for election of government study commission

(a) **General rule. –** Whenever authorized by ordinance of the governing body or upon petition of the electors to the county board of electors of the county wherein the municipality is located, an election shall be held upon one of the following questions:

Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of an optional form of government and to recommend whether or not an optional plan of government should be adopted?

Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of a home rule charter, and if advisable, to draft and to recommend a home rule charter?

Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of an optional form of government or a home rule charter, to recommend the adoption of an optional form of government or to draft and recommend a home rule charter?

(b) **Petition for election. –** The petition calling for the election shall be in the form required by subsection (e) and shall be signed by electors comprising 5% of the number of electors voting for the office of Governor in the last gubernatorial general election.

(c) **Ordinance authorizing election. –** Within five days after the final enactment of an ordinance authorizing the election, the municipal clerk or secretary shall file a certified copy of the ordinance with the county board of elections, together with a copy of the question to be submitted to the electors.

(d) **Duty of election board. –** At the next general or municipal or primary election occurring not less than the 13th Tuesday after the filing of the ordinance or the petition with the county board of elections, it shall cause the appropriate question to be submitted to the electors as other questions are submitted under the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.

(e) **Requirements for petitions. –** A referendum petition under this section shall be filed not later than the 13th Tuesday prior to the election, and the petition and the proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as those provisions are applicable. No referendum petition may be signed or circulated prior to the 20th Tuesday before the election nor later than the 13th Tuesday before the election. No candidate's nomination petition may be signed or circulated prior to the 13th Tuesday before the election nor later than the tenth Tuesday before the election. Any petition under this section shall be filed on or before the tenth Tuesday before the election.

Section 2912. Election of members of commission

(a) **General rule. –** A governmental study commission of seven, nine or eleven members, as designated in the question, shall be elected by the qualified voters at the same election the question is submitted to the electors.

(b) **Nomination of candidates. –** Each candidate for the office of member of the commission shall be nominated and placed upon the ballot containing the question in the manner provided by and subject to the provisions of the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code, which relate to the nomination of a candidate nominated by nomination papers filed for other offices elective by the voters. Each candidate shall be nominated and listed without any political designation or slogan, and no nomination papers shall be signed or circulated prior to the 13th Tuesday before the election, nor later than the tenth Tuesday before the election. No signature shall be counted unless it bears a date within this period.

(c) **Instructions to electors. –** Each elector shall be instructed to vote on the question and, regardless of the manner of his vote on the question, to vote for the designated number of members of a government study commission who shall serve if the question is or has been determined in the affirmative.

(d) **Insufficient number of candidates or members. –** If an insufficient number of nominating papers is filed to fill all of the designated positions on the study commission, the question of establishing a commission shall be placed on the ballot, and, unless a sufficient number of study commission members are elected by receiving at least as many votes as signatures are required to file a nominating position, then the question of creating a study commission shall be deemed to have been rejected.

Section 2913. Nomination of candidates

(a) **General rule. –** All candidates for the government study commission shall be electors. Each candidate shall be nominated by nomination papers signed by a number of electors equal at least to 2% of the number of electors voting for the office of Governor in the last gubernatorial general election or 200 electors, whichever is less, and filed with the county board of elections not later than the tenth Tuesday prior to the date of the election.

(b) **Content and signing of nomination papers. –** Each nomination paper shall set forth the name, place of residence and post office address of the candidate thereby nominated, that the nomination is for the office of government study commissioner and that the signers are legally qualified to vote for the candidate. An elector may not sign nominations papers for more candidates for the commission than he could vote for at the election. Every elector signing a nomination paper shall write his place of residence, post office address and street number, if any, on the petition.

(c) **Acceptance of candidates. –** Each nomination paper shall, before it may be filed with the county board of elections, contain under oath of the candidate an acceptance of the nomination in writing, signed by the candidate therein nominated, upon or annexed to the paper, or, if the same person be named in more than one paper, upon or annexed to one of the papers. The acceptance shall certify that the candidate is an elector, that the nominee consents to run as a candidate at the election and that, if elected, the candidate agrees to take office and serve.

(d) **Verification of nomination papers. –** Each nomination paper shall be verified by an oath of one or more of the signers, taken and subscribed before a person qualified under the laws of this Commonwealth to administer an oath, to the effect that the paper was signed by each of the signers in his proper handwriting, that the signers are, to the best knowledge and belief of the affiant, electors and that the nomination paper is prepared and filed in good faith for the sole purpose of endorsing the person named therein for election as stated in the paper.

Section 2914. Results of election

The result of the votes cast for and against the question as to the election of a government study commission shall be returned by the election officers, and a canvass of the election had, as is provided by law in the case of other public questions put to the electors. The votes cast for members of the commission shall be counted and the result

returned by the county board of electors, and a canvass of the election had, as is provided by law in the case of election of members of municipal councils or boards. The designated number of candidates receiving the greatest number of votes shall be elected and shall constitute the commission. If a majority of those voting on the question vote against the election of a commission, none of the candidates shall be elected. If two or more candidates for the last seat shall be equal in number of votes, they shall draw lots to determine which one shall be elected.

Section 2915. Oath of office of members of commission

(a) **Members elected on countywide basis. –** As soon as possible, and in any event no later than ten days after its certification of election, the members of a government study commission elected on a countywide basis shall, before a judge of a court of common pleas, make oath to support the Constitution of the United States and the Constitution of Pennsylvania, and to perform the duties of the office with fidelity.

(b) **Other members. –** A soon as possible and in any event no later than ten days after its certification of election, the members of a government study commission elected on other than a countywide basis shall, before a district justice or a justice of the peace, make oath to support the Constitution of the United States and the Constitution of Pennsylvania, and to perform the duties of the office with fidelity.

Section 2916. First meeting of commission

(a) **Procedure. –** As soon as possible and in any event no later than 15 days after its certification of election, the government study commission shall organize and hold its first meeting and elect one of its members chairman and another member vice chairman, fix its hours and place of meeting and adopt rules for the conduct of its business it deems necessary and advisable.

(b) **Quorum. –** A majority of the members of the commission shall constitute a quorum for the transaction of business, but no recommendations of the commission shall have any legal effect unless adopted by a majority of the whole number of the members of the commission.

Section 2917. Vacancies

In case of a vacancy in the government study commission, the remaining members of the commission shall fill it by appointing thereto some other properly qualified elector.

Section 2918. Function and duty of commission

The government study commission shall study the form of government of the municipality to compare it with other available forms under the laws of this commonwealth and determine whether or not in its judgment the government could be strengthened or made more clearly responsible or accountable to the people or whether its operation could become more economical or efficient under a changed form of government.

Section 2919. Compensation and personnel

(a) **Compensation and expenses of members. –** Members of the government study commission shall serve without compensation, but shall be reimbursed by the municipality for their necessary expenses incurred in the performance of their duties. Council shall appropriate moneys necessary for this purpose.

(b) **Appointment and compensation of personnel. –** Within the limits of the appropriations and other public and privately contributed funds and services made available to it, the commission may appoint one or more consultants and clerical and other assistants to serve at the pleasure of the commission and may fix reasonable compensation therefor to be paid the consultants and clerical and other assistants.

Section 2920. Hearings and public forums

The government study commission shall hold one or more public hearings, may hold private hearings and sponsor public forums and generally shall provide for the widest possible public information and discussion respecting the purposes and progress of its work.

Section 2921. Report of findings and recommendations

(a) **General rule. –** The government study commission shall report its findings and recommendations to the citizens of the municipality within nine months from the date of its election except that it shall be permitted an additional nine months if it elects to prepare and submit a proposed home rule charter and an additional two months if it chooses to elect its municipal council by districts. It shall publish or cause to be published sufficient copies of its final report for public study and information and shall deliver to the municipal clerk or secretary sufficient copies of the report to supply it to any interested citizen upon request. If the commission recommends the adoption of a home rule charter or any of the optional plans of government as authorized in this subpart, the report shall contain the complete plans as recommended.

(b) **List of resources used. –** There shall be attached to each copy of the report of the commission, as a part thereof, a statement sworn to by the members of the commission listing in detail the funds, goods, materials and services, both public and private, used by the commission in the performance of its work and the preparation and filing of the report. In addition, the list shall identify specifically the supplier of each item thereon.

(c) **Filing copy with Department of Community and Economic Development. –** A copy of the final report of the commission with its findings and recommendations shall be filed with the Department of Community and Economic Development.

(d) **Disposition of records. –** All the records, reports, tapes, minutes of meetings and written discussions of the commission shall, upon its discharge, be turned over to the municipal clerk or secretary for permanent safekeeping and made available for public inspection at any time during regular business hours.

Section 2922. Discharge of petition and amended reports

(a) **General rule. –** The government study commission shall be discharged upon the filing of its report, but if the commission's recommendations require further procedures in the form of a referendum on the part of the electors, the commission shall not be discharged until the procedure has been finally concluded. At any time prior to 60 days before the date of the referendum, the commission may modify or change any recommendation set forth in the final report by publishing an amended report.

(b) **Effect of amended report. –** Whenever a commission issues an amended report pursuant to subsection (a), the amended report shall supersede the final report and the final report shall cease to have any legal effect.

(c) **Procedure under amended report. –** The procedure to be taken under the amended report shall be governed by the provisions of this subpart applicable to the final report of a commission submitted pursuant to section 2921 (relating to report of findings and recommendations).

Section 2923. Types of action recommended

The government study commission shall report and recommend in accordance with the question presented to the electorate as provided in section 2911 (relating to submission of question for election of government study commission):

(1) That a referendum shall be held to submit to the electors the question of adopting one of the optional plans of government authorized by this subpart to be specified by the commission.

(2) That a referendum shall be held to submit to the electors the question of adopting a home rule charter as prepared by the commission and as authorized by this subpart.

(3) That the form of government shall remain unchanged.

(4) Such other action as it deems advisable consistent with its function as set forth in this subpart.

Section 2924. Specificity of recommendations

(a) **Optional plan of government. –**

(1) If the government study commission report recommends the adoption or the amendment of any of the optional plans of government set forth in this subpart, except the optional county plan, the report of the commission may specify the following:

(i) That the municipal council shall consist of three, five, seven, or nine members, except that under the small municipality plan and under the optional county plan the number of council members shall be as provided in sections 3073 (relating to election of council members) and 3092 (relating to county officers).

(ii) That the office of treasurer shall be omitted or that it shall be filled by election by the electors rather than by appointment.

(iii) That the office of controller shall be omitted or that it shall be filled by election by the electors rather than by appointment.

(2) If a commission report, initiative petition or ordinance shall recommend any optional plan, except for the optional county plan, it may specify that the then existing basis for electing council members shall be changed to an at-large or district or combination at-large and district basis.

(3) If a commission report, initiative petition or ordinance recommends the adoption of the council-manager form of government, it may specify that the mayor or president of council or chairman be elected directly by the electors rather than by council.

(4) If a commission report, initiative petition or ordinance for a county recommends the adoption of any of the optional plans, except the optional county plan, it may specify that the sheriff be elected directly by the voters of the county as provided in section 3094 (relating to additional options for election of county sheriff).

(5) In all cases, except for the council-manager plan, the commission report, initiative petition or ordinance shall specify whether the executive (mayor) shall be called "executive" or "mayor."

(b) **Home rule charter. –** If the commission recommends the adoption of a home rule charter, it shall specify the number to be on the municipal council, all offices to be filled by election and whether elections shall be on an at-large, district or combination district and at-large basis.

(c) **Election in new or revised districts. –** Notwithstanding any other provisions of this subpart, if an approved home rule charter or optional plan of government or other form of government adopted pursuant to the provisions of this subpart specifies that the election of the municipal council shall be on an at-large or district or combination district and at-large basis, and the basis recommended differs from the existing basis and therefore requires eliminating districts or establishing revised or new districts, then election of municipal officials shall not take place on the new basis until the municipal election following the next primary election taking place more than 180 days after the election at which the referendum on the question of a new form of government has been approved by the electorate. The new form of government shall not go into effect until the first Monday in January following the election of municipal officials on the new basis. New or revised districts shall be established by the government study commission and included in the proposed charter.

Section 2925. Form of question on form of government

The question to be submitted to the voters for the adoption of a home rule charter or any of the optional plans of government authorized by this subpart shall be submitted in one of the following forms or such part of them as shall be applicable.

> Shall the Home Rule Charter contained in the report, dated (insert date), of the government study commission, prepared in accordance with the Home Rule Charter and Optional Plans Law, be adopted by the (insert type and name of municipality)?

Shall (insert name of plan), including recommendations pertaining to optional provisions contained in the report of the government study commission, date (insert date), as authorized by the Home Rule Charter and Optional Plans Law, be adopted by the (insert type and name of municipality)?

Shall the (Home Rule Charter) (Optional Plan) of the (insert type and name of municipality) be repealed, and the form of government recommended in the report of the government study commission, dated (insert date), be adopted as authorized by the Home Rule Charter and Optional Plans Law?

Shall an Optional Plan for the (insert type and name of municipality) be amended as specified in the report of the government study commission filed with the election officials of the County (insert name of county), on (insert date), as authorized by the Home Rule Charter and Optional Plans Law?

Section 2926. Submission of question on form of government

If the government study commission recommends that the question of adopting a home rule charter or one of the optional plans of government authorized by this subpart shall be submitted to the electors, the municipal clerk or secretary shall, within five days thereafter, certify a copy of the commission's report to the county board of elections, which shall cause the question of adoption or rejection to be placed upon the ballot or voting machines at the time as the commission specifies in its report. The commission may cause the question to be submitted to the electors at the next primary, municipal or general election occurring not less than 60 days following the filing of a copy of the commission's report with the county board of elections, at the time the commission's report directs. At the election, the question of adopting that form of government recommended by the commission shall be submitted to the electors by the county board of elections in the same manner as other questions are submitted to the electors under the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code. The commission shall frame the question to be placed upon the ballot as provided for in section 2925 (relating to form of question on form of government) and, if it deems appropriate, an interpretative statement to accompany the question.

Section 2927. Limitations on enactment of ordinance or filing of petition

(a) **General rule. –** An ordinance may not be passed and a petition may not be filed for the election of a government study commission pursuant to section 2911 (relating to submission of questions for election of government study commission) while proceedings are pending under any other petition or ordinance filed or passed under the authority of this subpart nor on the same question if it has been defeated within four years after an election has been held pursuant to any such ordinance or petition passed or filed.

(b) **Time for commencement of proceedings. –** For the purpose of this section, proceedings shall be considered as having started:

(1) In the case of an ordinance, upon the final vote of council in favor of the ordinance, notwithstanding the fact that the ordinance cannot take effect until a certain number of days thereafter.

(2) In the case of petition, as soon as it is properly signed by one-third of the number of registered voters required for the petition and written notice thereof filed in the office of the county board of elections and in the office of the municipal clerk or secretary, who shall cause the notice to be immediately posted in a conspicuous place in the office, open to public inspection.

Section 2928. Time when change of form of government takes effect

Whenever the electors by a majority of those voting on the question vote in favor of adopting a change in their form of government pursuant to this subpart, the proposed form shall take effect according to its terms and the provisions of this subpart.

Section 2929. Limitation on changing new form of government

The voters of any municipality which has adopted a home rule charter or an optional plan of government pursuant to this subpart may not vote on the question of changing the form of government until five years after the home rule charter or optional plan became effective.

Section 2930. Status of forms of government provided in subpart

For the purposes of this subpart, each of the optional forms of government provided by this subpart and each of those optional forms as modified by any available provisions concerning size of council, election of municipal officials and the basis for electing councilmen is hereby declared to be a complete and separate form of government provided by the General Assembly for submission to the electors.

Subchapter C
Amendment of Existing Charter or Optional Plan

Section 2941. Procedure for amendment of charter or optional plan

(a) **Procedure. –** The procedure for amending a home rule charter or optional plan of government shall be through the initiative procedure and referendum or ordinance of the governing body as provided for in this subpart.

(b) **Changes in method of election. –** Changes in the method of election of a municipal governing body from at-large elections to elections by district, maintain at-large elections or a combination of at-large elections and elections by district may be implemented by amending a home rule charter or optional plan without creation of a government study commission.

(c) **Conflict in the question. –** If two or more questions appear on the ballot at the same election and such questions are in conflict and more than one receives the approval of the voters, the question which receives the largest number of affirmative votes shall prevail over the other.

(d) **Initial apportionment. –** If the referendum on the question results in the approval by the voters to amend the home rule charter or optional plan to provide for the election of the governing body either by districts or partially by districts and partially at large or in a change in the number of members of the governing body, the initial apportionment of the districts shall be made by an apportionment commission consisting of seven members, all of whom shall reside in such municipality. Two members of the apportionment commission shall be appointed by the mayor. Two members of the apportionment commission shall be appointed by the governing body; one shall be appointed by the mayor from a list of at least three qualified persons recommended by the municipal committee of the political party whose mayoral candidate received the highest number of votes cast in the most recent mayoral election and one shall be appointed by the mayor from a list of at least three qualified persons recommended by the municipal committee of the political party whose mayoral candidate received the second highest votes in the most recent mayoral election. The seventh member of the commission shall be elected at large by a majority vote of the other six members and shall serve as chairman of the commission.

Section 2942. Initiation of amendment by electors or council

A referendum on the question of amendment of a home rule charter or an optional plan of government may be initiated by petition of the electors or such a referendum may be initiated by an ordinance of the governing body. A proposal for amendment of an optional plan shall be limited to the additional options provided for in section 2924 (relating to specificity of recommendations).

Section 2943. Petition for referendum or ordinance proposing amendment

(a) **Filing. –** A petition containing a proposal for referendum on the question of amending a home rule charter or an optional plan of government signed by electors comprising 10% of the number of electors voting for the office of Governor in the last gubernatorial general election in the municipality, or an ordinance of the municipal governing body proposing amendment of a home rule charter or an optional plan, shall be filed with the election officials not later than the 13th Tuesday prior to the next primary, municipal or general election. The petition and the proceedings therein shall be in the manner and subject to the provisions of the election laws which relate to the signing, filing and adjudication of nomination petitions insofar as such provisions are applicable, except that no referendum petition shall be signed or circulated prior to the 20th Tuesday before the election nor later than the 13th Tuesday before the election. The name and address of the person filing the petition shall be clearly stated on the petition.

(b) **Review and disposition of petition. –** The election officials shall review the initiative petition as to the number and qualifications of signers. If the petition appears to be defective, the election officials shall immediately notify the persons filing the petition of the defect. When the election officials find that the petition as submitted in proper order, they shall send copies of the initiative petition without signature thereon to the governing body and to the Department of Community and Economic Development. The initiative petition as submitted to the election officials, along with a list of signatories, shall be open to inspection in the office of the election officials.

Section 2944. Time and manner of submission of question

A referendum on the question of the amendment of a home rule charter or an optional plan of government shall be held when the election officials find that the initiative petition or ordinance of the governing body is in proper order. The referendum shall be governed by the provisions of the act of June 3, 1937 (P.L. 1333, No. 320) known as the Pennsylvania Election Code. The election officials shall cause the question to be submitted to the electors at the next primary, general or municipal election occurring not less than the 13th Tuesday following the filing of the initiative petition or ordinance with county board of elections. At the election, the question shall be submitted to the voters in the same manner as other questions are submitted under the Pennsylvania Election Code. The county board of elections shall frame the question to be placed upon the ballot.

Subchapter D
Conduct of Election

Section 2951. Conduct and results of election

All elections provided for in this subpart shall be conducted by the election officials for such municipality in accordance with the act of June 3, 1937 (P.L. 1933, No. 320), known as the Pennsylvania Election Code. The election officials shall count the votes cast and make return thereof to the county board of elections. The results of the election shall be computed by the county board of election in the same manner as is provided by law for the computation of similar returns. Certificates of the results of the election shall be filed by the county board of elections with the municipal council or board, the Department of State and the Department of Community and Economic Development.

Section 2952. Notice of election

At least 30 days' notice of each election provided for under this subpart shall be given by the clerk or secretary of the municipality. A copy of the notice shall be posted at each polling place on the day of the election and shall be published in at least one newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of 30 days prior to the election.

Subchapter E
General Powers and Limitations of Home Rule Charter Municipalities

Section 2961. Scope of powers of home rule

A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

Section 2962. Limitation on municipal powers

(a) **Powers granted by statute. –** With respect to the following subjects, the home rule charter shall not give any power or authority to the municipality contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable to a class or classes of municipalities:

(1) The filing and collection of municipal tax claims or liens and the sale of real or personal property in satisfaction of them.

(2) The procedures in the exercise of the powers of eminent domain and the assessment of damages and benefits for property taken, injured or destroyed.

(3) Boundary changes.

(4) Regulation of public schools.

(5) The registration of electors and the conduct of elections.

(6) The fixing of subjects of taxation.

(7) The fixing of the rates of nonproperty or personal taxes levied upon nonresidents.

(8) The assessment of real or personal property and persons for taxation purposes.

(9) Defining or providing for the punishment of any felony or misdemeanor.

(10) Municipal planning under the act of July 31, 1968 (P.L. 805, No.247), known as the Pennsylvania Municipalities Planning Code.

(b) **Taxing power. –** Unless prohibited by the Constitution of Pennsylvania, the provisions of this subpart or any other statute or its home rule charter, a municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body. No home rule municipality shall establish or levy a rate of taxation upon nonresidents which is greater than the rate which a municipality would have been authorized to levy on nonresidents but for the adoption of home rule charter. The governing body shall not be subject to any limitation on the rates of taxation imposed upon residents.

(c) **Prohibited powers. –** A municipality shall not:

(1) Engage in any proprietary or private business except as authorized by statute.

(2) Exercise powers contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable in every part of this Commonwealth.

(3) Be authorized to diminish the rights or privileges of any former municipal employees entitled to benefits or any present municipal employee in his pension or retirement system.

(4) Enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods, or services subject to any commonwealth statutes and regulations unless the municipal ordinance or regulation is uniform in all respects with the commonwealth statutes and regulations thereunder. This paragraph does not affect the power of any municipality to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulation pertaining thereto.

(5) Enact any provision inconsistent with any statute heretofore enacted prior to April 13, 1972, affecting the rights, benefits or working conditions of any employee of a political subdivision of this commonwealth.

(d) **Reduction of police force. –** Notwithstanding any provision of this subpart or any other statute to the contrary, any municipality that is or was a city of the second class A may reduce its police force or its firefighting force for economic reasons, as determined by ordinance.

(e) **Statutes of general application. –** Statutes that are uniform and applicable in every part of this commonwealth shall remain in effect and shall not be changed or modified by the subpart. Statutes shall supersede any municipal ordinance or resolution on the same subject.

(f) **Regulation of business and employment. –** A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by statutes which are applicable in every part of this commonwealth or which are applicable to all municipalities or to a class or classes of municipalities. This subsection shall not be construed as a limitation in fixing rates of taxation on permissible subjects of taxation.

(g) **Regulation of firearms. –** A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

(h) **Levying taxes. –** This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.

(i) **Establishment of rates of taxation. –** No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).

(j) **Retroactive fee increase prohibited. –** A municipality which adopts a home rule charter may not retroactively increase any fee or charge for any municipal service which has been provided.

Section 2963. Exercise of municipal powers by home rule county

A county which has adopted a home rule charter shall not at any time thereafter exercise within any municipality in the county a power of function being exercised by that municipality, except under all of the following conditions:

(1) The exercise of such power or function by the county shall be authorized by ordinance of the governing body of the county, which ordinance, in addition to such other filings as may be required by law, shall be filed with the clerk or secretary of each local municipality within the county within 30 days of its enactment.

(2) The transfer of a power or function to the county from any local municipality within the county, as authorized by the ordinance, shall not become effective for at least 15 months from the date of adoption of the ordinance.

(3) Within 120 days from the adoption of the ordinance, the governing body of any local municipality, exercising on the date of the adoption of the ordinance any power or function authorized by ordinance of the county to be exercised by the county, may elect by ordinance to be excluded from the county's exercise of the power or function. Within 60 days after the date of adoption by the governing body of a local municipality of an ordinance excluding the local municipality from the exercise by the county of a power or function, or in the absence of any action of the governing body, the qualified electors of the local municipality may initiate a petition requiring that the question of inclusion or exclusion from the exercise of the power or function by the county be submitted to a referendum of the electorate at the election held on the date of the next ensuing primary, municipal or general election not less than 60 days after the filing of the initiative petition with the county board of elections. The initiative and referendum procedures set forth in this subchapter or Subchapter F (relating to general provisions and limitations for optional plan municipalities) shall be followed, except where the same may be inconsistent with any of the provisions of this section. In the event the county determines there is insufficient interest or that it is not feasible to establish the proposed municipal function or power as provided for in the ordinance passed by the county, the county may repeal the county ordinance prior to the effective date of the ordinance.

(4) The governing body of any local municipality may by ordinance, subsequent to the time limit for action as set forth in paragraph (3), request the county to be included in a municipal power or function being exercised by the county. However, the county may specify the terms and conditions for acceptance or denial of the power or function requested by the local municipality to be exercised by the county, which shall be subject to court review if the local municipality determines that the terms and conditions as set forth by the county are unreasonable.

(5) No assessment, tax, fee or levy in the nature thereof made by the governing body of a county in support of the exercise of a power or function as authorized by ordinance of the county shall be applicable in any local municipality within the county which is providing the same municipal power or function.

(6) If the electors of a local municipality by referendum vote to exclude the local municipality from the exercise of a power or function by the county, a petition may not be initiated nor may a referendum be held on the same question more often than every five years thereafter.

(7) A local municipality may, by action of the governing body, or by initiative and referendum, withdraw from a power or function which it was exercising at the date of the adoption of the county home rule charter which it transferred to a county, provided it again assumes and exercises the power or function, but may not vote on the question of withdrawing sooner than four years from the time the county assumed the power or function of the local municipality.

Section 2964. General powers of municipalities

Municipalities adopting a home rule charter shall have the power to:

(1) Sue and be sued.

(2) Have a corporate seal.

(3) Contract and be contracted with.

(4) Buy, sell, lease, hold and dispose of real and personal property.

(5) Appropriate and expend moneys.

(6) Adopt, amend and repeal any ordinances and resolutions as may be required.

Section 2965. Recording and filing of charter

The municipal clerk or secretary shall have the new charter as approved by the qualified electors recorded in the ordinance books and shall also file a certified copy of the charter with the Department of State, the Department of Community and Economic Development and the county board of elections.

Section 2966. Continuation of office of existing elective officials

All elective officials in office at the time of the adoption of a home rule charter shall continue in office until their terms expire.

Section 2967. Repeal of home rule charter

(a) **General rule. –** The procedure for repeal of a home rule charter shall be the same as for adoption of a home rule charter. Whenever the electors, by a majority vote of those voting on the question, vote in favor of repeal of a home rule charter and the establishment of a particular form of government, the municipality shall be governed under the form of government selected by the electors from the first Monday of January following the municipal election at which the elective officials of the form of government selected by the electors shall have been elected. The government study commission shall provide in its report for the new form of government to be established.

(b) **Election of new officials. –** The elective officials under a new form of government selected by the electors shall be elected at the first municipal election held after the referendum on the repeal of a home rule charter or at a later date as may be specified by the commission in its report.

Subchapter F
General Provisions and Limitations for Optional Plan Municipalities

Section 2971. Law applicable to optional plan

Upon the adoption by the electors of any of the optional plans of government as set forth in this subpart, the municipality shall thereafter be governed by the plan adopted and by the provisions of general law applicable to that class or classes of municipality except as otherwise provided in this subpart. Until the municipality adopts another form of government, the plan adopted and the provisions of general law applicable to that class or classes of municipality shall be law. All statutes affecting the organization, government and powers of the municipality which are not inconsistent or in conflict with this subpart shall remain in full force until modified or repealed.

Section 2972. Recording and filing of plan

The municipal clerk or secretary shall immediately cause the new plan of government as adopted to be recorded in the ordinance book of the municipality and shall also file a certified copy thereof with the Department of State, the Secretary of Community and Economic Development and the county board of elections.

Section 2973. Scope of powers of optional plan

The general grant of municipal power under this subpart is intended to confer the greatest power of self government consistent with the Constitution of Pennsylvania and with the provisions of and the limitations prescribed by this subpart. Any specific enumeration of municipal powers contained in this subpart or in other statutes does not limit the general description of power contained in this subpart. Any specifically enumerated municipal powers are in addition and supplementary to the powers conferred in general terms by this subchapter. All grants of municipal power to municipalities governed by an optional plan under this subpart, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

Section 2974. Limitation on powers of optional plan

The optional plan of any municipality adopted in accordance with this subpart shall not give any power or authority to diminish any rights or privileges of any present municipal employee in his pension or retirement system. No municipality shall exercise any powers or authority beyond the municipal limits except those conferred by statute, and no municipality shall engage in any proprietary or private business except as authorized by the General Assembly.

Subchapter G
Miscellaneous Provisions

Section 2981. Limitation on local municipality

No local municipality within a county shall supersede or exercise any power, function or service presently exercised by the county.

Section 2982. Retention of existing form of government

Each municipality which does not adopt a home rule charter or an optional plan under this subpart shall retain its existing form of government as otherwise provided by law.

Section 2983. Retention of existing of government when electors disapprove proposal

In case the electors of any municipality disapprove a proposal to adopt a home rule charter or an optional plan of government, the municipality shall retain its existing form of government.

Section 2984. Assumption of functions previously assumed by other municipality

(a) **Assumption of indebtedness. –** A municipality assuming a function previously performed by another municipality under the terms of this subchapter shall also assume all the indebtedness and obligations of the municipality relating to the function. If property, indebtedness or obligations of another municipality not within the boundaries of the municipality assuming the function is involved, the governing bodies of the respective municipalities shall make an adjustment and apportionment of all public property involved.

(b) **Procedure for adjustment and apportionment. –** The adjustment and apportionment shall be reduced to a written agreement which shall be filed with the court of common pleas of the county and the Department of Community and Economic Development.

(c) **Petition for adjustment and apportionment. –** In case the municipalities cannot make an amicable adjustment and apportionment of the property, obligations and indebtedness within six months after the function is assumed, any of the municipalities may present a petition to the court of common pleas. The court shall then appoint there disinterested commissioners, all residents and taxpayers of the county, but none residing in or owners of real property in any of the municipalities. After hearing, notice of which shall be given to the municipalities as the court shall direct, the commissioners shall file a report with the court making an adjustment and apportionment of all the property as well as the obligations or indebtedness. The report shall state the amount that shall be due and payable from each municipality, the forms of payment and the amount of obligations and indebtedness that shall be assumed by each.

(d) **Notice to municipalities. –** The commissioners shall give the municipalities at least five days' written notice of the filing of their report. Unless exceptions are filed to the report with 30 days after the date of the filing, the report shall be confirmed by the court absolutely. Any sum awarded by the report shall be a legal and valid claim in its favor against the municipality charged. Any real or personal property given to a municipality shall become its property. Any claim or indebtedness charged against the municipality may be collected from it.

(e) **Exceptions to report. –** If exceptions are filed to the report of the commissioners, the court shall dispose of them, taking testimony if it deems advisable. The court shall enter its decree confirming the award of the commissioners or modifying the same as appears just and proper.

(f) **Compensation to commissioners. –** The commissioners shall be allowed any compensation and expenses for their services as the court shall fix. The costs of the proceedings, including the compensation and expenses of the commissioners, shall be apportioned by the court between the municipalities as it deems proper.

(g) **Jurisdiction of court. –** If a municipality or part of a municipality is located in two or more counties, the court of common pleas of the county where the larger part of the municipality assuming the function is located shall have exclusive jurisdiction over the proceedings.

Chapter 30
Types of Optional Plans of Government

Subchapter A
Executive (Mayor) - Council Plan A

Section 3001. Designation and applicability of plan
The form of government provided in this subchapter shall be known as the "Executive (Mayor) - Council Plan A" and shall, together with the laws applicable to that class of municipality and Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Chapter 31 (relating to general provisions common to optional plans), govern any municipality the electors of which have adopted it under this subpart.

Section 3002. Officers and employees
Each municipality under this subchapter shall be governed by an elected council, an elected executive who may be called mayor, as determined by the government study commission, an elected district attorney in the case of counties and, when recommended by the commission and adopted by the voters, an elected treasurer, an elected controller and by such other officers and employees as may be duly appointed pursuant to this subchapter or other applicable law.

Section 3003. Election and term of office of officials
The executive (mayor), the treasurer, if elected, the district attorney in the case of counties and the controller, if elected, shall be elected by the electors at a regular municipal election and shall serve for a term of four years beginning on the first Monday of January next following his election.

Section 3004. Election and term of office of council members
The council shall consist of five members unless, under the authority granted under section 2924 (relating to specificity of recommendations), the municipality shall be governed by a council of three, seven, or nine members. Members of the council shall be elected at large by the electors unless, under the authority granted pursuant to section 2924, members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at-large and district basis as determined by the government study commission, or as specified in an initiative petition or ordinance of the governing body under the provisions of section 2942 (relating to initiations of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question) at a regular municipal election and shall serve for a term of four years, except as otherwise provided in this subchapter, beginning on the first Monday of January next following their elections.

Section 3005. First election of council members
At the first municipal election following the adoption of this plan, council members shall be elected and shall serve for the terms as provided in section 3162 (relating to status and term of office of officials).

Section 3006. Legislative power vested in council
The legislative power of the municipality as provided by laws applicable to that class of municipality shall be exercised by the municipal council, except as may otherwise be provided for under this subpart.

Section 3007. Organization of council
On the first Monday of January following the regular municipal election, the members of council shall assemble at the usual place of meeting, organize and elect a president from among its members, who shall preside at its meetings and perform such other duties as council may prescribe, and a vice president, who shall preside in the absence of the president. If the first Monday is a legal holiday, the meeting shall be held on the next day.

Section 3008. Powers of council concerning officers and agencies

The council, in addition to other powers and duties as may be conferred upon it by general law, may require any municipal officer to prepare and submit sworn statements regarding the performance of the officer's official duties and may otherwise investigate the conduct of any department, office or agency of the municipal government.

Section 3009. Appointment and duties of municipal clerk or secretary

A municipal clerk or secretary shall be appointed in the manner set forth in the administrative ordinance as provided pursuant to section 3146 (relating to passage of administrative ordinance). The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this subpart requires and perform such functions as may be required by law or by local ordinance. The municipal clerk shall, prior to the appointment, have been qualified by training or experience to perform the duties of the office.

Section 3010. Executive power vested in executive

The executive power of the municipality shall be exercised by the executive (mayor).

Section 3011. Powers and duties of executive

The executive (mayor) shall enforce the plan and ordinances of the municipality and all general laws applicable to them. The executive shall, annually, report to the council and the public on the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make these recommendations for action by the council as he deems in the public interest. He shall supervise the departments of the municipal government and shall require each department to make annual and other reports of its work as he deems desirable.

Section 3012. Approval or veto of ordinances

(a) **General rule. –** Ordinances adopted by the council shall be submitted to the executive (mayor) who shall, within ten days after receiving any ordinance, either approve the ordinance by affixing his signature thereto, or veto the ordinance by delivering it to the municipal clerk together with a statement setting forth his objections. The clerk shall immediately notify the council of the veto. No ordinance or any item or part thereof shall take effect without the executive's (mayor's) approval, unless the executive (mayor) fails to return an ordinance to the clerk within ten days after it has been presented to him, or unless council upon reconsideration of the veto on or after the third day following its return by the executive (mayor) shall override the executive's (mayor's) veto by a vote of a majority plus one of the members.

(b) **Attendance at meetings of council. –** The executive (mayor) may attend meetings of council and may take part in discussions of council but shall have no vote except in the case of a tie on the question of filling a vacancy in the council, in which case he may cast the deciding vote.

Section 3013. Mayor, departments and department heads

(a) **Inability of executive to perform duties. –** The executive (mayor) shall designate any department head to act as executive (mayor) whenever the executive (mayor) shall be prevented, by absence from the municipality, disability or other cause, from attending to the duties of his office. During such time the person so designated by the executive (mayor) shall possess all the rights, powers and duties of the executive (mayor). Whenever the executive (mayor) has been unable to attend to the duties of his office for a period of 60 consecutive days for any of the reasons stated in this subsection, a member of council shall be appointed by the council as acting executive (mayor), who shall succeed to all the rights, powers and duties of the executive (mayor) or the then acting executive (mayor), until he shall return or his disability ceases.

(b) **Establishment and exercise of functions of department. –** The municipality may have a department of administration and shall have such other departments as council may establish by ordinance. All of the administrative functions, powers and duties of the municipality, other than those vested in the office of the clerk, treasurer, if elected, and controller, shall be assigned among and within the departments.

(c) **Appointment and term of department heads and solicitor. –** Each department shall be headed by a director who shall be appointed by the executive (mayor) with the advice and consent of the council. Each municipality shall also have a solicitor who shall be appointed by the executive (mayor) with the advice and consent of council. Each department head and the solicitor shall serve during the term of office of the executive (mayor) appointing him, and until the appointment and qualification of his successor. No member of municipal council shall head a department.

(d) **Removal of department head. –** The executive (mayor) may remove any department head after notice and an opportunity to be heard. Prior to removing a department head, the executive (mayor) shall first file written notice of his intention with the council. The removal shall become effective 20 days after the filing of the notice.

(e) **Department officers and employees. –** Department heads shall appoint subordinate officers and employees within their departments under procedures established in section 3122 (relating to appointment of subordinate officers and employees).

Section 3014. Department of administration

(a) **Department heads. –** Where a department of administration is established, it shall be headed by a director. The director shall be chosen solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office. At the time of appointment, the director need not be a resident of the municipality or this commonwealth. He shall have, exercise and discharge the functions, powers and duties of the department.

(b) **Department functions. –** The department, under the direction and supervision of the executive (mayor), shall have the following powers and duties:

(1) To assist in the preparation of the budget.

(2) To administer a centralized purchasing system.

(3) To establish and administer a centralized personnel system.

(4) To establish and maintain a centralized accounting system which shall be so designed as to accurately reflect the assets, liabilities, receipts and expenditures of the municipality.

(5) To perform any other duties as council may prescribe through the administrative ordinance or as the executive (mayor) may direct.

Section 3015. Budget

The municipal budget shall be prepared by the executive (mayor) with the assistance of the director of the department of administration or other officer designated by the executive (mayor).

Section 3016. Form and adoption of budget

The budget shall be in the form required by council and shall have appended to it a detailed analysis of the various items of expenditure and revenue. The budget as submitted and adopted shall be balanced. Council may reduce any item or items in the executive's (mayor's) budget by a vote of a majority of the council, but an increase in any item or items therein shall become effective only upon an affirmative vote of a majority plus one of the members of council. Council shall, upon the introduction of the proposed budget, fix a date for adoption, which shall except as otherwise provided be not later than December 31 immediately following.

Section 3017. Amended budget

During January next following any municipal election, the executive (mayor) may submit an amended budget to council. Council shall consider it in the same manner as provided in section 3016 (relating to form and adoption of budget), but final consideration of the amended budget shall be completed by February 15 of the same year.

Section 3018. Council amendments to budget

Council may amend the budget during January next following any municipal election. Final adoption of the amended budget shall be completed by February 15 of the same year.

Subchapter B
Executive (Mayor) - Council Plan B

Section 3031. Designation and applicability of plan

The form of government provided in this subchapter shall be known as the "Executive (Mayor) - Council Plan B" and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities), Subchapter A of Chapter 30 (relating to executive (mayor) council plan A) and Subchapter A of Chapter 31 (relating to officers and employees), with the exception of section 3013(b) (relating to mayor, departments and department heads), govern any municipality the voters of which have adopted it pursuant to this subpart.

Section 3032. Departments

The municipality shall have a department of administration and shall have such other departments as council may establish by ordinance. The administrative functions, powers and duties of the municipality, other than those vested in the office of the clerk, treasurer and controller, if provided for, shall be allocated and assigned among and within the departments except that the functions specified in section 3014 (relating to department of administration) shall be assigned to the department of administration.

Section 3033. Mandatory department of administration

Under Executive (Mayor) - Council Plan B a department of administration shall be established.

Subchapter C
Executive (Mayor) - Council Plan C

Section 3041. Designation and applicability of plan

The form of government provided in this subpart shall be known as the "Executive (Mayor) - Council Plan C" and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities), Subchapter A of Chapter 30 (relating to executive (mayor) - council plan A) and Subchapter A of Chapter 31 (relating to officers and employees), with the exception of section 3011 (relating to powers and duties of executive), govern any municipality the voters of which have adopted it pursuant to this subpart.

Section 3042. Powers and duties of executive

The executive (mayor) shall enforce the plan and ordinances of the municipality and all general laws applicable thereto. The executive shall, annually, report to other council and the public of the work of the previous year and on the condition and requirements of the municipal government and shall, from time to time, make those recommendations for action by the council he deems in the public interest.

Section 3043. Appointment and duties of managing director

(a) **General rule. –** The executive (mayor) shall appoint, with the advice and consent of the council, a managing director who shall supervise the departments of government and who shall be the contact officer between the mayor and the departments. The managing director shall make periodic reports with those recommendations as he deems appropriate to the executive (mayor) concerning the affairs of municipal government and particularly of the departments.

(b) **Removal. –** The executive (mayor) may remove a managing director after notice and an opportunity to be heard. Prior to removing a managing director, the executive (mayor) shall first file written notice of his intention with the council. The removal shall become effective 20 days after the filing of the notice.

Subchapter D
Council - Manager Plan

Section 3051. Designation and applicability of plan

The form of government provided in this subchapter shall be known as the "Council-Manager Plan" and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), govern any municipality the voters of which have adopted this plan pursuant to this subpart.

Section 3052. Officers and employees

Each municipality under this subchapter shall be governed by an elected council, one member of which shall be the mayor, or president of council, or chairman chosen under sections 2924 (relating to specificity of recommendations) and 3056 (relating to selection of mayor, council president or chairman), an elected district attorney in the case of counties, and an appointed municipal manager, and, if so provided under the plan, an elected treasurer, an elected controller and by those other officers and employees as may be duly appointed pursuant to this subchapter, general law or ordinance.

Section 3053. Election and term of office of elected officials

The district attorney in the case of counties and the treasurer and controller, if provided for and if elected, shall be elected by the electors at a regular municipal election and shall serve for a term of four years beginning the first Monday of January next following the election.

Section 3054. Election and term of office of council members

The municipal council shall consist of five members, unless under the authority granted pursuant to section 2924 (relating to specificity of recommendations), the municipality shall be governed by a council of three, seven or nine members. Members of the municipal council shall be elected at large by the electors unless, pursuant to the authority granted under section 2924, members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at large and district basis as determined by the charter study commission or as specified in an initiative petition or ordinance of the governing body under the provisions of sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), at a regular municipal election. The members shall serve for a term of four years except as provided in this subchapter, beginning on the first Monday of January next following their election.

Section 3055. First election of council members

At the first municipal election following the adoption by a municipality of this charter plan, council members shall be elected and shall serve for the terms as provided in section 3162 (relating to status and term of office of officials).

Section 3056. Selection of mayor, council president or chairman

(a) **General rule. –** On the first Monday in January following the municipal election, the members of the municipal council shall assemble at the usual place of meeting, organize and elect one of their number as mayor or president of council or chairman unless otherwise provided. The mayor or president of council or chairman shall be chosen by ballot by majority vote of all members of the municipal council. If the members shall be unable, within five ballots to be taken within two days of the organization meeting, to elect a mayor or president of council or chairman, then the member who in the election for members of the municipal council received the greatest number of votes shall be the mayor, president of council or chairman. If that person declines to accept the office, then the person receiving the next highest vote shall be the mayor, president of council, or chairman, and so on, until the office is filled. The mayor, or president of council, or chairman shall preside at all meetings of the municipal council and shall have a vote in its proceedings.

(b) **Election of mayor. –** On the recommendation of the government study commission as provided under section 2924 (relating to specificity of recommendations), or as specified in an initiative petition or ordinance of the governing body as authorized by sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), the mayor shall be elected directly by the electors at the regular municipal election in lieu of being chosen as provided in subsection (a).

Section 3057. Appointment and duties of municipal clerk or secretary

A municipal clerk or secretary shall be appointed in the manner set forth in the administrative ordinance as provided in section 3146 (relating to passage of administrative ordinance). The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this subpart requires and perform any functions as may be required by law or ordinance. The municipal clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

Section 3058. Powers and duties of council

(a) **General rule. –** All powers as provided by laws applicable to that class of municipality shall be vested in the municipal council, except as otherwise provided by this subchapter, and the council shall provide for the exercise thereof and for the performance of all duties imposed on the municipality by law.

(b) **Adoption of administrative ordinance. –** The council shall by ordinance adopt an administrative ordinance defining the responsibilities of the municipal departments and agencies as it deems necessary and proper for the efficient conduct of municipal affairs.

(c) **Appointment of municipal manager. –** The municipal council shall appoint a municipal manager. The office of municipal manager and municipal clerk or secretary may be held by the same person.

(d) **Investigations. –** The council may make investigations into the affairs of the municipality and the conduct of any municipal department, office or agency.

(e) **Administrative departments, boards and offices. –** The municipal council shall continue or create, and determine and define, the powers and duties of any executive and administrative departments, boards and offices, in addition to those provided for in this subpart, as it deems necessary for the proper and efficient conduct of the affairs of the municipality, including the office of deputy manager. Any department, board or office so continued or created may be abolished by the municipal council. No member of municipal council shall head an administrative department.

(f) **Additional powers and limitations. –** It is the intention of this subchapter that the municipal council shall act in all matters as a body, and it is contrary to the spirit of this subchapter for any of its members to seek individually to influence the official acts of the municipal manager or any other officer, or for the council or any of its members to direct or request the appointment of any person to or his removal from office, or to interfere in any way with the performance by the officers of their duties. The council and its members shall deal with the administrative service solely through the municipal manager and shall not give orders to any subordinates of the municipal manager, either publicly or privately. This subchapter does not prevent the municipal council from appointing committees of its own members or of citizens to conduct investigations into the conduct of any officer or department, or any matter relating to the welfare of the municipality, and delegating to those committees such powers of inquiry as the municipal council deems necessary.

Section 3059. Qualifications of municipal manager

The municipal manager shall be chosen by the council on the basis of his executive and administrative qualifications. At the time of his appointment, he need not be a resident of the municipality or this commonwealth. The municipal manager shall not hold any elective governmental office.

Section 3060. Removal of municipal manager from office

The municipal manager shall be appointed for an indefinite term and may be removed by a majority vote of the council. At least 30 days before the removal becomes effective, the council shall notify the municipal manager of its decision to remove him from office, by a majority vote of its members, stating the reasons for his removal. The municipal manager may reply in writing and may request a public hearing, which shall be held not earlier than 20 days nor later than 30 days after the filing of the request. After the public hearing, if one is requested, and after full consideration, the council by majority vote of its members may adopt a final resolution of removal. By the preliminary resolution, the council may suspend the municipal manager from duty, but may, in any case, cause to be paid immediately any unpaid balance of his salary and his salary for the next three calendar months.

Section 3061. Inability of municipal manager to perform duties

The municipal manager may designate a qualified administrative officer of the municipality to perform his duties during his temporary absence or disability. In the event of his failure to make a designation, or if the absence or disability continues more than 30 days, the council may appoint an officer of the municipality to perform the duties of the manager during the absence or disability until the manager returns or his disability ceases.

Section 3062. Powers and duties of municipal manager

The municipal manager shall have the following powers and duties:

(1) To be the chief executive and administrative official of the municipality.

(2) To execute all laws and ordinances.

(3) To appoint and remove department heads and the deputy manager, if one is authorized by council, and appoint subordinate officers and employees under procedures established in section 3122 (relating to appointment of subordinate officers and employees).

(4) To negotiate contracts for the municipality, subject to the approval of the municipal council, make recommendations concerning the nature and location of municipal improvements and execute municipal improvements as determined by the municipal council.

(5) To assure that all terms and conditions imposed in favor of the municipality or its inhabitants in any statute, public utility franchise or other contract are faithfully kept and performed and, upon knowledge of any violations, to call the same to the attention of the municipal council.

(6) To prepare the agenda for and attend all meetings of the municipal council with the right to take part in the discussions, but without the right to vote.

(7) To make such recommendations to the council concerning policy formulation as he deems desirable and keep the council and the public informed as to the conduct of municipal affairs.

(8) To prepare and submit the annual budget to the council together with such explanatory comment as he deems desirable and to administer the municipal budget.

(9) To perform such other duties as may be required of the municipal manager by ordinance or resolution of the municipal council.

(10) To be responsible to the council for carrying out all policies established by it and for the proper administration of all affairs of the municipality within the jurisdiction of the council.

Section 3063. Preparation and adoption of budget

The municipal manager shall submit to council his recommended budget, together with any explanatory comment or statement he deems desirable. The budget shall be in such form as is required by council for municipal budgets and shall in addition have appended thereto a detailed analysis of the various items of expenditure and revenue. The budget as submitted and adopted shall be balanced. Council shall upon introduction of the proposed budget fix a date for adoption thereof which shall be not later than December 31 immediately following submission.

Section 3064. Amended budget

During January next following any municipal election, council may request the manager to submit an amended budget to council which shall consider it in the same manner as provided in section 3063 (relating to preparation and adoption of budget), except that final adoption of the amended budget shall not be later than February 15 of the same year.

Subchapter E
Small Municipality Plan

Section 3071. Designation and applicability of plan

The form of government provided in this subchapter shall be known as the "Small Municipality Plan." It may be adopted by any municipality having a population of less than 7,500 inhabitants by the last Federal census. The plan, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), shall govern any municipality the voters of which have adopted it pursuant to this subpart.

Section 3072. Officers

Each municipality shall be governed by an elected executive (mayor) and council members, an elected district attorney in the case of counties and, if so provided under the plan, an elected treasurer or elected controller and any other officers as shall be appointed pursuant to this subchapter, general law or ordinance.

Section 3073. Election of council members

The council shall consist of the executive (mayor), who shall be elected at large, and two council members unless pursuant to the authority granted under section 2924 (relating to specificity of recommendations) the municipality is governed by an executive (mayor) and four council members, and executive (mayor) and six council members, or an executive (mayor) and eight council members. Members of the council shall be elected at large unless the plan provides that members shall be elected on a district basis in which each district is as equal in population as is feasible, or on a combination at large and district basis as determined by the government study commission or as specified in an initiative petition or ordinance of the governing body under the provisions of sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), at a regular municipal election by the voters of the municipality. The members of its council shall serve a term of four years beginning on the first Monday in January next following their election, except as provided in this subpart.

Section 3074. Organization of council

On the first Monday of January following the regular municipal election, the members of the council shall assemble at the usual place of meeting and organize. The executive (mayor) shall preside at all meetings of the council and shall have a voice and vote on its proceedings. The council shall select from among its members a president of the council who shall serve in place of the executive (mayor) in the event of his absence or disability.

Section 3075. Powers and duties of council

The legislative power of the municipality shall be exercise by the council, except as may be otherwise provided by general law. A majority of the whole number of the council shall constitute a quorum for the transaction of business, but a smaller number may meet and adjourn from time to time.

Section 3076. Municipal clerk or secretary, solicitor and agencies

(a) **Municipal clerk or secretary. –** A municipal clerk or secretary shall be appointed in the manner set forth in the administrative ordinance, as provided pursuant to section 3146 (relating to passage of administrative ordinance). The municipal clerk or secretary shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and compile its ordinances and resolutions as this subpart requires and perform any functions as may be required by law. The clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

(b) **Solicitor and agencies. –** The council may, consistent with statutes applicable to that class of municipality, provide for the manner of appointment of a solicitor, any planning board, zoning board of adjustment, zoning hearing board or personnel board in the municipality and may create commissions and other bodies with advisory powers.

Section 3077. Powers and duties of executive

The executive power of the municipality shall be exercised by the executive (mayor). The executive shall see that all laws and ordinances in force and effect within the municipality are observed. He shall address the council and report to the residents, annually and at any other times as he deems desirable, on the condition of the municipality and upon its problems of government. The executive (mayor) shall also appoint a finance committee of the council, which shall consist of one or more council members, and may appoint and designate other committees of council of similar composition.

Section 3078. Appointment of officers and employees by executive

The executive (mayor) shall appoint subordinate officers and employees with the advice and consent of council under procedures established in section 3122 (relating to appointment of subordinate officers and employees), except that, in counties, the office of prothonotary and clerk of courts, register of wills and clerk of orphans court shall be filled by appointment by the president judge of the appropriate court with advice and consent of a majority of the council.

Section 3079. Preparation and adoption of budget

The municipal budget shall be prepared by the executive (mayor) and shall be submitted to council in the form required by council. The budget as submitted and adopted shall be balanced. Council shall, upon introduction of the proposed budget, fix a date for adoption thereof which shall be not later than December 31 immediately following.

Section 3080. Amended budget

During the month of January next following any municipal elections, the executive (mayor), upon his own initiative or at the request of council, may submit an amended budget to council, which shall consider it in the same manner as provided in section 3079 (relating to preparation and adoption of budget), except that final adoption of the amended budget shall not be later than February 15 of the same year.

Subchapter F
Optional County Plan

Section 3091. Designation and applicability of plan

The form of government provided in this subpart shall be known as the "Optional County Plan" and shall, together with Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), govern any county the voters of which have adopted this plan pursuant to this subpart. This option shall be available only to counties.

Section 3092. County officers

(a) **Enumeration. –** The county officers shall be as follows:

(1) County commissioner.

(2) Controller or auditor.

(3) District attorney.

(4) Public defender.

(5) Treasurer.

(6) Sheriff.

(7) Register of wills.

(8) Recorder of deeds.

(9) Prothonotary.

(10) Clerk of the courts.

(b) **Election and term of office. –** County officers, except for public defenders, who shall be appointed as provided by law, shall be elected at the municipal election and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, and until their successors are duly qualified. Vacancies shall be filled in the manner provided by law.

(c) **Salaries and fees. –** County officers shall be paid only by salary as provided by law for services performed for the county or any other governmental unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the commonwealth or as otherwise provided by law.

(d) **County commissioners. –** Three county commissioners shall be elected in each county. In the election of these officers, each qualified elector shall vote for not more than two persons, and the three persons receiving the highest number of votes shall be elected.

(e) **Coroner or medical examiner. –** The coroner or medical examiner shall be a statutory office elected at the municipal election and shall hold the office for the term of four years, beginning on the first Monday of January next after election, and until his successor is duly qualified. He shall be paid only by salary as provided by law. Vacancies shall be filled in the manner provided by law.

(f) **Jury commissioners. –** Jury commissioners shall be statutory officers and shall be elected at the municipal election and shall hold their office for the term of four years, beginning on the first Monday of January, next after election, and until their successors are duly qualified. The salary board shall fix the salary of the jury commissioners. Vacancies in the office of jury commissioner shall be filled by the president judge of the court of common pleas.

Section 3093. Powers

All county officers may exercise those powers granted by general law to county offices of the class of county to which it belongs.

Section 3094. Additional options for election of county sheriff

A government study commission created and constituted as provided in Subchapter B of Chapter 29 (relating to procedure for adoption of a home rule charter or optional plan of government) for counties, or an initiative petition or ordinance of the governing body as authorized by sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question), may recommend and cause to be placed on the ballot, as a part of the question submitted to the voters for approval, additional options as part of the optional plans as set forth in this chapter providing for the election of the county sheriff.

Section 3095. Approval of plan

If the optional plan, including an additional option or options as provided in section 3091 (relating to designation and applicability of plan), is approved by the voters, the county shall be governed by the provisions of the subchapter providing the basic optional plan and by the provisions of Subchapter F of Chapter 29 (relating to general provisions and limitations for optional plan municipalities) and Subchapter A of Chapter 31 (relating to officers and employees), except that the elected sheriff shall be subject to the provisions pertaining to that office as provided in this subchapter.

Chapter 31
General Provisions Common to Optional Plans

Subchapter A
Officers and Employees

Section 3101. Adverse interest in contracts for purchase or services

(a) **General rule. –** If a municipal officer or official elected or appointed knows or by the exercise of reasonable diligence should know that he is interested to any appreciable degree, either directly or indirectly, in any contract for the sale or furnishing of any personal property for the use of the municipality, or for any services to be rendered for the municipality involving the expenditure of more than $300 in any year, he shall notify council. Any such contract shall not be passed and approved by council except by an affirmative vote of at least three-fourths of the members. If the interested officer is a member of council, he shall refrain from voting upon the contract.

(b) **Exception. –** This section does not apply to cases where the officer or official is an employee of the person, firm or corporation to which money is to be paid in a capacity with no possible influence on the transaction and in which he cannot possibly be benefited either financially or in any other material manner.

(c) **Penalties. –** Any officer or official who knowingly violates this section shall be liable to the municipality upon his bond, if any, or personally, to the extent of the damage shown to be sustained by the municipality and to ouster from office, and commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine not exceeding $500, or imprisonment not exceeding one year, or both.

Section 3102. Acceptance of services at more favorable terms

An officer or employee shall not accept or receive, directly or indirectly, from any person operating within the territorial limits of a municipality any interurban railway, bus line, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange or other business using or operating under a public franchise, any frank, free pass, free ticket, or free service, or accept or receive, directly or indirectly, from any person, any other service upon terms more favorable than is granted to the public generally, except that the prohibition of free transportation shall not apply to police officers or firefighters in uniform. Free service to the municipal officials provided by any franchise or ordinance shall not be affected by this section.

Section 3103. Gift or promise of thing of value to influence political support

(a) **General rule. –** A candidate for office, appointment or employment, or an officer, appointee or employee in any municipality shall not, directly or indirectly, give or promise to any person any office, position, employment, benefit or anything of value for the purpose of influencing or obtaining the political support, aid or vote of any person.

(b) **Penalty. –** Any person who violates subsection (a) shall be disqualified to hold the office or employment to which he may be or may have been elected or appointed.

Section 3104. Refusal or failure to appear or testify before court

Any person elected or appointed to any office or position in a municipality governed under this subpart who, after lawful notice or process, willfully refuses or fails to appear before any court, any legislative committee or the Governor, or having appeared refuses to testify or to answer any question regarding the property, government or affairs of the municipality, or regarding his nomination, election, appointment or official conduct on the ground that his answer would tend to incriminate him, or refuses to waive immunity from prosecution on account of any matter in relation to which he may be asked to testify, may be removed from office by the council of the municipality.

Subchapter B
Treasurer

Section 3111. Selection and duties of municipal treasurer

(a) **General rule. –** Under any of the optional plans as set forth in this subpart, except for the plan set forth in Subchapter F of Chapter 30 (relating to optional county plan), the office of municipal treasurer may be omitted, or may be filled by appointment or by election, as provided in the plan. If the office of municipal treasurer is to be filled by appointment, the appointment shall be made in accordance with the appointment procedures for other department heads.

(b) **Powers and duties of elected treasurer. –** The municipal treasurer, if elected shall perform the functions and duties and have the powers relating to the collection, receiving, safekeeping and payment over the public moneys, including municipal, county, institution district and school district taxes, as provided by law and shall have any other functions, powers and duties assigned to him by the executive of the municipality.

Subchapter C
Appointment Power and Personnel

Section 3121. Appointment of members of boards and commissions

The appointment power of the chief executive of the municipality under any of the plans authorized by this subpart shall include the appointment of members of boards and commissions authorized by this subpart, by law, or by action of municipal council. All such appointments shall be with the advice and consent of a majority of municipal council.

Section 3122. Appointment of subordinate officers and employees

(a) **General rule. –** Appointments and promotions of subordinate officers and employees within departments shall be made by the department head on the basis of a personnel system which shall include written procedures for appointment and promotion based on merit and fitness as demonstrated by examination or other evidence of competence for the position.

(b) **Personnel rules. –** The personnel system shall be governed by personnel rules which shall be prepared by the executive (mayor) or manager and submitted to the municipal council which shall adopt them with or without amendments unless otherwise provided for or arrived at by collective bargaining. The personnel rules may provide for:

(1) The classification of all municipal positions, based on the duties, authority and responsibility of each position, with adequate provision for reclassification of any position whenever warranted by change of circumstances.

(2) A pay plan for all municipal position.

(3) Methods for determining the merit and fitness of candidates for appointment or promotion.

(4) The policies and procedures regulating reduction in force and disciplinary action, including suspension and removal of employees.

(5) The hours of work and provisions for sick and vacation leave and holidays and overtime compensation.

(6) Grievance procedures, including procedures for the hearing of grievances.

(7) Other practices and procedures necessary to the administration of the municipal personnel system.

Subchapter D
Filling Vacancies in Elected Office

Section 3131. Applicability of subchapter

This subchapter shall apply to the filling of vacancies in elected office in all optional plans and options except those set forth in Subchapter F of Chapter 30 (relating to optional county plan).

Section 3132. Manner of filling vacancies in office

(a) **Members of council. –**

(1) If a vacancy exists in the municipal council, the municipal council shall, by a majority of its remaining members, fill the vacancy, within 30 days thereafter, by electing a qualified person to serve until that first Monday of January when his successor is duly sworn into office for the remainder of the term of the person originally elected to the office. The successor shall be elected at the next municipal election occurring at least 50 days after the vacancy begins.

(2) In case vacancies should exist whereby the offices of a majority or more members of the municipal council become vacant, the remaining members shall fill the vacancies, one at a time, giving each new appointee reasonable notice of his appointment as will enable him to meet and act with the then qualified member or members of the municipal council in making further appointments until a bare majority of members of municipal council members have been qualified. At that time these members shall appoint persons to fill the remaining vacancies at a meeting attended by the majority members of municipal council, such appointees to receive a majority of the votes of the members present at the meeting. Each person selected to fill the vacancy or vacancies shall hold his office as provided in this subsection.

(3) If, by reason of a tie vote or otherwise, the vacancy shall not have been filled by the remaining members of municipal council within the time as limited in this subsection, the court of common pleas, upon the petition of ten or more qualified electors, shall fill the vacancy by the appointment of a qualified person for the portion of the unexpired term as provided in this subsection.

(b) **Other officers. –**

(1) If a vacancy occurs in the office of executive (mayor), municipal treasurer, if elected, municipal controller, if elected, county district attorney or county sheriff, if elected, the municipal council shall fill the vacancy within 30 days thereafter by choosing an executive (mayor), a municipal treasurer, a municipal controller, a county district attorney or a county sheriff, as the case may be, to serve until his successor is elected by the qualified electors at the next municipal election, occurring at least 50 days after the vacancy occurs, and is duly sworn into office. The person so elected shall serve from the first Monday of January next succeeding his election for the remainder of the term of the person originally elected to the office.

(2) If, by reason of a tie vote or otherwise, a vacancy in the office of executive (mayor), treasurer, controller, county district attorney or county sheriff has not been filled by council within the time as limited in this subsection, the court of common pleas, upon petition of ten or more qualified electors, shall fill the vacancy by the appointment of a qualified person for the portion of the unexpired term as provided in this subsection.

Subchapter E
Legislation by Council

Section 3141. Regular and special meetings of council

The council shall, by ordinance or resolution, designate the time of holding regular meetings which shall be at least monthly. The executive (mayor) or the president of council may and, upon written request of a majority of the members of the council, shall call a special meeting of the council. In the call, he shall designate the purpose of the special meeting and no other business shall be considered. All meetings of the council shall be open to the public. The municipal clerk or secretary shall keep a journal of its proceedings and record the minutes of every meeting.

Section 3142. Procedure and functions of council

(a) **Rules of procedure. –** Council shall determine its own rules of procedure, not inconsistent with ordinance or statute. A majority of the whole number of members of the council shall constitute a quorum, and no ordinance shall be adopted by the council without the affirmative vote of a majority of all the members of the council.

(b) **Adoption of ordinances and resolutions. –** Each ordinance or resolution shall be presented and considered as determined by council rules of procedure. The vote upon every motion, resolution or ordinance shall be taken by roll call, and the yeas and nays shall be entered on the minutes. The minutes of each meeting shall be signed by the officer presiding at the meeting and by the municipal clerk or secretary.

(c) **Administrative ordinance. –** Council shall adopt by ordinance an administrative ordinance which shall provide for the establishment and filling of additional administrative offices which it deems necessary and shall provide for administrative procedure not otherwise provided for in this subpart or by general law.

(d) **Compensation of controller and treasurer. –** The compensation of the controller and treasurer shall be fixed by the council.

Section 3143. Adoption of ordinances

(a) **General rule. –** Except as may otherwise be provided in this subpart, all ordinances shall be adopted and published as provided by law. Any ordinance may incorporate by reference any standard technical regulation or code, official or unofficial, which need not be so published whenever ten copies of the regulations or code have been placed on file in the office of the municipal clerk or secretary and in the office of the body or department charged with the enforcement of the ordinance.

(b) **Effective date. –** No ordinance, other than the local budget ordinance, shall take effect less than ten days after its final passage by council and approval by the executive (mayor) where that approval is required, unless the council adopts a resolution declaring an emergency and at least a majority plus one of all the members of the council vote in favor of the resolution.

Section 3144. Recording and compilation of ordinances and resolutions

The municipal clerk or secretary shall record all ordinances and resolutions adopted by council and, at the close of each year, with the advice and assistance of the municipal solicitor, shall bind, compile or codify all the ordinances and resolutions, or true copies thereof, which then remain in force and effect. He shall also properly index the record books, compilation or codification of ordinances and resolutions.

Section 3145. Filing and publication of rules and regulations

No rule or regulation made by any department, officer, agency or authority of the municipality, except as it relates to the organization or internal management of the municipal government or a part thereof, shall take effect until it is filed either with the municipal clerk or secretary or in any other manner provided by ordinance. The council shall provide for the prompt publication of such rules and regulations.

Section 3146. Passage of administrative ordinance

The council shall prepare and pass an administrative ordinance which shall provide for the manner of appointment of a solicitor, clerk or secretary, may create commissions and other bodies with advisory powers and may include additional provisions relating to the internal structure of the municipality as long as the provisions of the administrative ordinance are not in conflict with this subpart.

Subchapter F
Audit and Control

Section 3151. Exercise of financial management control functions

The council shall provide by separate ordinance or in the administrative ordinance for the exercise of a control function in the management of the finances of the municipality by the municipal controller or an independent audit or, in the case of the optional plan set forth in Subchapter F of Chapter 30 (relating to optional county plan), by the controller or auditors.

Section 3152. Post audit by independent auditor

The council may provide for annual post audits of all accounts by an independent auditor who shall be a certified public accountant registered in this commonwealth or a firm of certified public accountants registered in this commonwealth.

Section 3153. Selection of controller

Under any of the optional plans as set forth in this subpart, except for the plans set forth in Subchapter F of Chapter 30 (relating to optional county plan), the office of controller may be omitted or it may be filled by election by the electors rather than by appointment when recommended by the government study commission and adopted by the electors. If the office of controller is to be filled by appointment, a controller shall be appointed for an indefinite term by a majority of the members of the governing body.

Subchapter G
Transition to Optional Plan Government

Section 3161. Applicability of plan

Whenever the electors of a municipality adopt any of the optional plans provided by this subpart at any election for that purpose, the municipality shall be governed under the provisions of that plan, the provisions of law applicable to that class of municipality and this subpart from the first Monday in January following the municipal election occurring after the next succeeding primary election, except as provided in section 2924(c) (relating to specificity of recommendations).

Section 3162. Status and term of office of officials

(a) **Existing elected official. –** Any elected municipal official in office at the time of the adoption of any optional plan provided by this subpart shall continue in office only until the new plan of government goes into effect as provided in section 3161 (relating to applicability of plan), except as otherwise provided in subsection (c) and (d).

(b) **Members of council. –** At the municipal election next succeeding the adoption of one of the optional plans provided for in this subpart, if four or fewer council members are elected, they shall serve for terms of four years. If five are elected, the four successful candidates receiving the highest percentage of the votes cast for the office to which they are elected shall serve for terms of four years, and the candidate receiving the next highest percentage of votes shall serve for a term of two years. If six or more council members are elected, the five candidates receiving the highest percentage of the votes cast for the office to which they are elected shall serve for terms of four years, and the remaining successful candidates receiving the next highest percentage of votes shall serve for terms of two years. Thereafter, all council members shall be elected for terms of four years. Where the term of office for council members under the adopted plan is different from the term of office for council members under an existing form of government, the terms of office for council members so elected shall be established so that, at each subsequent municipal election at which council members are elected, the number of council members to be elected shall be as nearly equal as possible to the number of council members to be elected at every other regular municipal election at which council members are elected.

(c) **Treasurer, controller, district attorney and sheriff. –** If an elected municipal treasurer or elected municipal controller, elected county district attorney or elected county sheriff is in office at the time of the adoption of an optional plan under the provisions of this subpart, a treasurer, controller, district attorney or sheriff, as the case may be, shall not be elected or appointed to take office until after the resignation, death, removal or expiration of the term of the incumbent in the office. At the expiration of the term of the incumbent, a treasurer, controller, district attorney or sheriff, as the case may be, shall be elected or appointed for the full term for the office as provided by the optional plan adopted.

(d) **Continuation of existing members of council in office. –** Any member of a municipal governing body in office at the time of the adoption of an optional plan shall remain in office, continuing as an at-large or district council member, as the case may be, until the expiration of this term in office and shall receive the compensation provided by law at that time:

(1) If that council member was elected on an at-large basis, the newly adopted optional plan provides for a total number of at-large council members equal to or exceeding the total number of at-large council members under the existing form of government.

(2) If that council member was elected on a district basis, the district from which that council member was elected remains unchanged and continues to encompass the exact same geographical area under the newly adopted optional plan as under the existing form of government and the number of council members to be elected from that district under the newly adopted optional plan is equal to or exceeds the number elected from that district under the existing form of government.

Any council member may, by writing filed with the municipal treasurer, direct that any portion of this annual compensation for serving in office be returned to the municipal treasury. For the purpose of this section, an executive or mayor who is also a member of the council under an existing plan shall be considered as a member of the council, and after the new plan goes into effect, his duties shall be only those of a member of council as prescribed by the new plan.

(e) **Number of members of council to be elected. –** At the municipal election next succeeding the adoption of one of the optional plans provided for in this subpart, the number of council members prescribed by the terms in the plan less the number of council members then in office whose terms do not expire on the first Monday in January next following, as may be determined by subsection (d), shall be elected.

(f) **Filling vacancies on council existing prior to election. –** If there are vacancies in council occurring by reason of resignation, death, or removal 90 days or more before the election, they shall be filled for the remainder of the term of the person originally elected to that office.

Section 3163. Compensation of elected officials

(a) **Officials elected prior to transition year. –** The annual compensation of the executive (mayor) and council members elected to their offices in the year prior to the transition year under any of the optional plans, except the plan set forth in Subchapter F of Chapter 30 (relating to optional county plan), adopted pursuant to this subpart, shall be established by the commission as part of its recommendations or by the initiative petition or ordinance of the governing body authorized by sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner submission of question).

(b) **Officials elected subsequent to transition. –** The compensation of the executive (mayor), council members, controller and treasurer elected to their offices subsequent to the transition to any of the optional plans set forth in this subpart, except for the plan set forth in Subchapter F of Chapter 30, shall be fixed by ordinance of council adopted at least two days prior to the last day fixed by law for candidates to withdraw their names from nomination previous to the municipal election. After the compensation is fixed by ordinance, only an increase or decrease thereof need be fixed by the ordinance.

Section 3164. Status of existing ordinances and resolutions

On the effective date of an optional plan adopted pursuant to this subpart, all ordinances and resolutions of the municipality to the extent that they are not inconsistent with the provisions of this subpart shall remain in full force and effect.

Section 3165. Abolishment of existing appointive offices

(a) **General rule. –** On the effective date of an optional plan adopted pursuant to this subpart, all appointive offices then existing in such municipality shall be abolished and the terms of all appointed officers shall immediately cease and terminate. This section does not abolish the office or terminate the terms of office of any alderman or constable or of any official or employee now protected by any tenure of office or civil service law, or of any police officer or firefighter, whether or not protected by a tenure of office law.

(b) **Use of resolution to govern interim proceedings. –** Provisions for officers and for the organization and administration of the municipal government under the optional plan may be made by resolution pending the adoption of ordinances, but any such resolution shall expire no later than 60 days after the effective date of the optional plan.

Section 3166. Pending actions and proceedings

All actions and proceedings of a legislative, executive or judicial character, pending upon the effective date of an optional plan, may continue. The appropriate officer or employee under the optional plan shall be substituted for the officer or employee exercising or discharging the function, power or duty involved in the action or proceeding before the effective date.

Subchapter H
Repeal of Optional Plan

Section 3171. Repeal of optional plan and establishment of new form of government

(a) **General rule. –** The procedure for repeal of an optional plan shall be the same as for adoption of an optional plan as provided in Subchapter B of Chapter 29 (relating to procedure for adoption of a home rule charter or optional plan of government), excluding the procedure provided in sections 2942 (relating to initiation of amendment by electors or council), 2943 (relating to petition for referendum or ordinance proposing amendment) and 2944 (relating to time and manner of submission of question). Whenever the electors, by a majority vote of those voting on the question, vote in favor of repeal of an optional plan and the establishment of a particular form of government, the municipality shall be governed under the form of government selected by the electors. The form of government so approved shall take effect on the first Monday of January following the municipal election at which the elective officials of the form of government selected by the electors shall have been elected. The government study commission shall provide in its report for the new form of government to be established.

(b) **Amendment procedure. –** This section does not prohibit or limit the procedure provided in sections 2942, 2943 and 2944 to amend an optional plan.

VIII. Counties and Municipalities That Have Adopted Home Rule Charters, Optional Plans and Optional 3rd Class City Charters

Counties

County	Effective Date	Charter Citation	
Allegheny	2000	302 Pa.Code 1.1-101	Home Rule
Delaware	1976	323 Pa.Code 101	Home Rule
Erie	1978	325 Pa.Code 1.1	Home Rule
Lackawanna	1977	335 Pa.Code 101	Home Rule
Lehigh	1978	339 Pa.Code 101	Home Rule
Luzerne	2012		Home Rule
Northampton	1978	348 Pa.Code 101	Home Rule

Municipalities

Municipality	County	Effective Date	Charter Citation	
Allentown City	Lehigh	1997	339 Pa.Code 11.1	Home Rule
Altoona City	Blair	2015		Home Rule
Bellevue Borough	Allegheny	1976	302 Pa.Code 41.1	Home Rule
Bensalem Township	Bucks	1987		Optional Plan
Bethel Park Borough	Allegheny	1978	302 Pa.Code 47.1	Home Rule
Bethlehem City	Northampton	1964		Optional 3rd Class City Charter
Beaver Falls City	Beaver	2022		Home Rule
Braddock Borough	Allegheny	2021		Home Rule
Bradford Woods Borough	Allegheny	1978	302 Pa.Code 43.1	Home Rule
Bristol Township	Bucks	2012		Optional Plan
Bryn Athyn Borough	Montgomery	1978		Home Rule
Cambridge Springs Borough	Crawford	1976	320 Pa.Code 41.1	Home Rule
Carbondale City	Lackawanna	1977	335 Pa.Code 13.1	Home Rule
Carlisle Borough	Cumberland	2016		Home Rule
Chalfont Borough	Bucks	1976	309 Pa.Code 41.1	Home Rule
Cheltenham Township	Montgomery	1977	346 Pa.Code 21.1	Home Rule
Chester City	Delaware	1981	323 Pa.Code 11.1	Home Rule
Chester Township	Delaware	1990	323 Pa.Code 35.1	Home Rule
Clairton City	Allegheny	1990	302 Pa.Code 15.1	Home Rule
Coatesville City	Chester	1980	315 Pa.Code 11.1	Home Rule
College Township	Centre	1976		Optional Plan
Concord Township	Delaware	2017		Home Rule
Dubois City	Clearfield	1980		Optional Plan
Easton City	Northampton	2008		Home Rule
Edinboro Borough	Erie	1976	325 Pa.Code 41.1	Home Rule
Elk Township	Chester	1975	315 Pa.Code 33.1	Home Rule
Erie City	Erie	1962		Optional 3rd Class City Charter
Farrell City	Mercer	1976	343 Pa.Code 11.1	Home Rule
Ferguson Township	Centre	1976		Home Rule
Franklin City	Venango	1976	361 Pa.Code 11.1	Home Rule
Grant Twp	Indiana	2015		Home Rule
Green Tree Borough	Allegheny	1975	302 Pa.Code 45.1	Home Rule
Greensburg City	Westmoreland	1989	365 Pa.Code 11.1	Home Rule
Greenville Borough	Mercer	2020		Home Rule
Hampton Township	Allegheny	1982	302 Pa.Code 35.1	Home Rule
Hanover Township	Lehigh	1978	339 Pa.Code 31.1	Home Rule
Harrisburg City	Dauphin	1970		Optional 3rd Class City Charter
Haverford Township	Delaware	1977	323 Pa.Code 23.1	Home Rule
Hazleton City	Luzerne	1988		Optional Plan
Hermitage City	Mercer	1976	343 Pa.Code 21.1	Home rule
Highland Township*	Elk	2017		Home Rule

Municipalities

Municipality	County	Effective Date	Charter Citation	
Horsham Township	Montgomery	1976	346 Pa.Code 33.1	Home Rule
Indiana Township	Allegheny	1976		Optional Plan
Johnstown City	Cambria	1994	311 Pa.Code 11.1	Home Rule
Kingston Borough	Luzerne	1976	340 Pa.Code 41.1	Home Rule
Kingston Township	Luzerne	1976	340 Pa.Code 31.1	Home Rule
Lancaster City	Lancaster	1966		Optional 3rd Class City Charter
Latrobe Borough	Westmoreland	1998	340 Pa.Code 43.1	Home Rule
Lebanon City	Lebanon	1994	338 Pa.Code 11.1	Home Rule
Lock Haven City	Clinton	1972		Optional 3rd Class City Charter
Lower Saucon Township	Northampton	1976		Optional Plan
Mahanoy City Borough	Schuylkill	2021		Home Rule
Malvern Borough	Chester	2009		Home Rule
McCandless Township	Allegheny	1975	302 Pa.Code 23.1	Home Rule
McKeesport City	Allegheny	1976	302 Pa.Code 13.1	Home Rule
Meadville City	Crawford	1968		Optional 3rd Class City Charter
Middletown Township	Delaware	1978	323 Pa.Code 31.1	Home Rule
Monroeville Borough	Allegheny	1976	302 Pa.Code 51.1	Home Rule
Mount Lebanon Township	Allegheny	1975	302 Pa.Code 27.1	Home Rule
Murrysville Borough	Westmoreland	1978	365 Pa. Code 41.1	Home Rule
Nanticoke City	Luzerne	2013		Home Rule
New Castle City	Lawrence	2022		Home Rule
Norristown Borough	Montgomery	1986	346 Pa.Code 41.1	Home Rule
O'Hara Township	Allegheny	1976	302 Pa.Code 21.1	Home Rule
Oil City	Venango	1972		Optional 3rd Class City Charter
Penn Hills Township	Allegheny	1976	302 Pa.Code 29.1	Home Rule
Peters Township	Washington	1976	363 Pa.Code 31.1	Home Rule
Philadelphia City	Philadelphia	1952	351 Pa. Code 1.1	Home Rule
Pine Township	Allegheny	1992	302 Pa.Code 37.1	Home Rule
Pittsburgh City	Allegheny	1976	302 Pa.Code 101	Home Rule
Pittston City	Luzerne	2013		Home Rule
Plymouth Township	Luzerne	2012		Home Rule
Plymouth Township	Montgomery	1976	346 Pa.Code 23.1	Home Rule
Portage Borough	Cambria	1996	311 Pa.Code 41.1	Home Rule
Quakertown Borough	Bucks	1976		Optional Plan
Radnor Township	Delaware	1977	323 Pa.Code 21.1	Home Rule
Reading City	Berks	1996	306 Pa.Code 11.1	Home Rule
Richland Township	Allegheny	1976	302 Pa.Code 31.1	Home Rule
Saint Marys City	Elk	1994	324 Pa.Code 11.1	Home Rule
Scranton City	Lackawanna	1976	335 Pa.Code 11.1	Home Rule
Sharon City	Mercer	2009		Home Rule
State College Borough	Centre	1976	314 Pa.Code 41.1	Home Rule
Titusville City	Crawford	1964		Optional 3rd Class City Charter
Tredyffrin Township	Chester	1976	315 Pa.Code 31.1	Home Rule
Tyrone Borough	Blair	1983	307 Pa.Code 41.1	Home Rule
Upper Darby Township	Delaware	1976	323 Pa.Code 25.1	Home Rule
Upper Providence Township	Delaware	1976	323 Pa.Code 33.1	Home Rule
Upper St. Clair Township	Allegheny	1976	302 Pa.Code 25.1	Home Rule
Warren City	Warren	1978	362 Pa.Code 41.1	Home Rule
Washington Township	Erie	1976		Optional Plan
Weatherly Borough	Carbon	1976		Optional Plan
West Chester Borough	Chester	1994	315 Pa.Code 41.1	Home Rule
West Deer Township	Allegheny	1976	302 Pa.Code 33.1	Home Rule
Wheatland Borough	Mercer	2021		Home Rule
Whitehall Borough	Allegheny	1975	302 Pa.Code 49.1	Home Rule
Whitehall Township	Lehigh	1976	339 Pa.Code 21.1	Home Rule

Municipalities

Municipality	County	Effective Date	Charter Citation	
Whitemarsh Township	Montgomery	1983	346 Pa.Code 31.1	Home Rule
Wilkes-Barre City	Luzerne	1976	340 Pa.Code 11.1	Home Rule
Wilkes-Barre Township	Luzerne	1976	340 Pa.Code 21.1	Home Rule
Williamsport City	Lycoming	1972		Optional 3rd Class City Charter
York City	York	1962		Optional 3rd Class City Charter
Youngsville Borough	Warren	1976	362 Pa.Code 43.1	Home Rule

Note: Home rule municipalities may set rates higher than the limits provided in state law for property taxes and for personal taxes levied on residents. Municipalities that have adopted optional plans or optional 3rd class city charters gain no home rule powers.

*In Seneca Resources Corporation v. Highland Township, the United States District Court for the Western District of Pennsylvania ruled that numerous sections of Highland Township's Home Rule Charter were invalid, unenforceable, and unconstitutional on various grounds such as: preemption by the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); preemption by section 3302 of the Pennsylvania Oil and Gas Act (55 Pa. C.S. § 3302); illegal exercise of legislative authority; de jure exclusionary zoning; violating the Petition Clause of the First Amendment of the United States Constitution; and substantive due process grounds. The Court severed the offending provisions. A similar outcome was reached via a joint application for a stipulated order in Pa. Dep't of Envtl. Prot. v. Highland Township, 123 MD 2017 (Pa. Commw. Ct. April 11, 2017).

[1] *Seneca Res. Corp. v. Highland Twp.* , No. 16-cv-289, 2017 U.S. Dist. LEXIS 152737 (W.D. Pa. Sep. 20, 2017).

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DEPARTMENT OF COMMUNITY
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