

CHARTER COMMISSION
LAW, ROLE, TIMING, FUNDING, INPUT, LEGAL COUNSEL, DRAFTING
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The adoption of a charter is a multi-step process. A vote by the citizens of a municipality to form a charter commission, and the election of a fifteen-member charter commission, which is done at one election. Then a one-year period for the Charter Commission to draft a proposed charter, and a second election for the citizens to adopt or reject the charter. The Charter Commission has arguably the most important part in creating a charter for a municipality. The Charter Commission is responsible for drafting the proposed charter that is submitted to the voters. Neither the legislative authority, nor the citizens are permitted to modify the proposed charter that is submitted to the voters. Simply put, the citizens elect fifteen-members consisting of citizens to draft the proposed charter for a vote of the citizens. This is democracy in its most basic form.

Therefore, it is important for a Charter Commission to understand how it accomplishes its purpose. A discussion of the Law, Role, Timing, Funding, Input, Legal Counsel, and finally the Drafting of the proposed Charter for the voters to accept, or reject, is discussed herein.

LAW:

Article XVIII of the Ohio Constitution allows municipalities to have Home Rule both in statutory municipalities like Marion currently and in Charter municipalities. The difference is statutory Home Rule is for the most part dictated by actions of the State Legislature, while Charter municipalities decide for themselves what version of Home Rule works best for its citizens and the form can be changed by future votes of the citizens. Here are the Constitutional Provisions:

§ 3 Powers.

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

§ 7 Home rule.

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

§ 8 Submission of question of election of charter commission; approval.

The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

§ 9 Amendments to charter; submission; approval.

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the general assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

Marion is current at the § 8 step wherein the voters are asked the question of shall a Charter Commission be formed, and if formed, the election of a fifteen-member Charter Commission.

ROLE:

The Courts of Ohio have held that “If the majority of the voters in a city or village elect a charter commission to frame a charter, those voters should later be given the opportunity of voting on the charter so framed, and the existing legislative authority of the city or village affected is under the constitutionally enjoined duty to cooperate to that end: *State ex rel. Graham v. Pestrak*, 171 Ohio St. 221, 12 Ohio Op. 2d 339, 168 N.E.2d 544, 1960 Ohio LEXIS 508 (Ohio 1960). The charter commission is the sole authority for fixing the date for the submission of the question of a proposed charter to the voters of a municipality:” *Merryman v. Gorman*, 117 N.E.2d 629, 69 Ohio Law Abs. 421, 1953 Ohio Misc. LEXIS 340 (Ohio C.P. 1953), [Oh. Const. Art. XVIII, § 8](#)

The Charter Commission is charged to frame a proposed Charter and submit this proposed Charter to the voters at an election date of their choosing if it is within one year from their election as a Charter Commission. City Council is required to cooperate with the Charter Commission in framing Charter.

TIMING:

Ohio Constitution Article XVIII, § 8 controls the timing. It provides:

Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

I have discussed the one year time frame, however, I want to point out the timing of the ballot question must take into consideration the requirement that “Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein.” It must also be noted that the Proposed Charter becomes effective at a date fixed in

the proposed Charter. This forces the Charter Commission to discuss and decide the transition of government timing.

FUNDING:

As previously stated, the existing legislative authority of the city or village affected is under the constitutionally enjoined duty to cooperate with the Charter Commission to frame a proposed Charter to submit to the voters. *State ex rel. Graham v. Pestrak, 171 Ohio St. 221, 12 Ohio Op. 2d 339, 168 N.E.2d 544, 1960 Ohio LEXIS 508 (Ohio 1960)*. This means the City Council is required to provide input, funding and whatever assistance is requested by the Charter Commission to fulfill its obligation to frame a Charter.

INPUT:

Pursuant to the authority of *Graham v. Pestrak, (supra)* a city council and city administration is required to provide its input to the Charter Commission to the extent requested by the Charter Commission. The Charter Commission may also seek input from legal counsel, the public, and from other sources it deems appropriate and needed. It must be remembered the Charter Commission is under a very tight timeline and the Charter Commission alone is charged with drafting a proposed Charter. The only public vote on the content of the proposed Charter is after it is drafted by the Charter Commission and submitted to the voters. The voters may only accept or reject the proposed Charter.

LEGAL COUNSEL:

While not required, I have never seen a Charter Commission perform its duties without the assistance of legal counsel. First, there are Constitutional requirements for the drafting, and time of submission to voters. Second, Charter Commission members are lay citizens who are not active in municipal governing. Third, legal counsel is needed to take raw ideas and turn these raw ideas into specific Charter language which accomplishes what the Charter Commission wants in its Charter language.

DRAFTING OF PROPOSED CHARTER:

The drafting of Charter requires consideration of many things. There are a few general assumptions I have learned over my 45 years career in local

government. First, the public does not like massive change, and the public is more intelligent than public officials give them credit for possessing. Second, the public wants to understand the pros and cons for a suggested change from the usual way of doing business. I would advise the Charter Commission to challenge city council and the city administration to explain why they want certain changes in the usual way business is done. I would also advise the Charter Commission to ask legal council to explain the pros and cons for changes he/she is suggesting to the usual way business is done. Second, remember if a charter does not address a matter, the default is to use the state law on how the matter is handled. Third, remember a Charter amendment provision can be initiated for a vote of the public by either the citizens, or the City Council. Finally, remember a Charter can always be abolished by a vote of the Citizens.

The first meeting of a Charter Commission should elect a Chair, Vice Chair and Secretary. Legal Counsel is the temporary chair for this purpose only, and turns the meeting over to the elected Chair once elected. City Council should be requested to provide recording ability of the meetings, and transcription and distribution of the minutes and drafts for Charter Commission work. I would suggest the Charter Commission adopt Roberts Rules and appoint its Legal Counsel as the parliamentarian. Because of the amount of work to be done, I would suggest using a committee system so various parts of the Charter can be worked on simultaneously. There should be a discussion of the work to be done, and a suggested timeline for completion to get the proposed Charter done in a timely matter.

Caveats for drafting. Do not proposed massive change from usually way business is done in Marion. Discuss pros and cons for changes from usually way business is done. Use majority vote of members at a meeting as method of deciding an issue. Make sure Charter Commission members understand what is being proposed in the Charter language. Remember, anything not in the Charter defaults back to state law. Finally, remember the Charter Commission must set forth a transition plan and time for implementing that plan.

In my opinion many Ohio's cities are now Charter, and I do not know any two that are the same. This is because a Charter is an opportunity to tailor city government to the needs and wants of its citizens and enables city government to efficiently, and timely, address quality of life issues that make Marion a great place to live and work. Having said that, below are usual topics in a new Charter:

PREAMBLE (proclaims city is enacting home rule rights)

ARTICLE I - Name, Succession and Boundaries (name: City of Marion; same boundaries as current and right of annexation)

ARTICLE II - Form of Government (could be same as statutory; or council/mayor; or council/city manager; or commission form of government; or any other form Charter Commission decides that works for Marion)

ARTICLE III - Powers (makes it clear that all existing rights of cities that are not in conflict with Charter are reserved)

ARTICLE IV - The Council (can leave as is or change to non-partisan; change terms to 4 years and staggered; keep wards or make all at large; increase or reduce number of council members, etc.).

ARTICLE V - City Manager or Mayor (depends for form of government selected, but defines the powers of the City Manager or Mayor, and in the case of a Mayor whether he/she is appointed by Council or elected, etc.)

ARTICLE VI - Administrative Departments (creates city department such as Legal officer (elected or appointed); finance officer (auditor and treasurer combined and elected or appointed; or keep current system); public service department; water department; police and fire department; all could be same as current or different)

ARTICLE VII - Boards and Commissions (A Civil Service Commission; a Planning Commission; a Board of Zoning Appeals; a Board of Parks and Recreation; and such other boards and commissions as may be created by Council by ordinance or resolution)

ARTICLE VIII - Finance, Taxation and Debt (accept or modify laws relating to budgets, appropriations, taxation, debt, bonds and notes, assessments, and other fiscal matters of the City).

ARTICLE IX - Nominations and Elections (current procedure or make elections non-partisan and set number of signatures to get on ballot, etc.).

ARTICLE X - Initiative, Referendum and Recall (set standards for initiative or referendum and add recall right).

ARTICLE XI - General Provisions (such matters as oaths of office; fees collected by city personnel; political activity; conflict of interests; etc.).

ARTICLE XII - Transitional Provision (Transition date; effect on current city officials; votes of council during transition; etc.).

CONCLUSION:

This paper is intended as information as to the Law, Role, Timing, Funding, Input, Legal Counsel and Drafting consideration when a Charter Commission is formed and has one year to draft a proposed Charter for the Citizen of Marion to accept or reject.