**Municipal Home Rule and Charters**

Unlike a county or a township, a municipality like Columbus is more than a mere subdivision of the state; it is a separate legal and political entity created by the state as set forth in the Ohio Constitution. (Art. 13, § 6; Art. 18, § 2)

Prior to 1912, Ohio cities like Columbus had no right to exercise any powers of local self-government; they were considered wholly subservient to the power and the will of the General Assembly. That all changed when the people of Ohio adopted what is known as the "Home Rule Amendment" to the Ohio Constitution during the Constitutional Convention of 1912. Since that time, cities and villages in Ohio have enjoyed constitutional home rule rather than being controlled solely by the state legislative body.

So what is "Home Rule?" "Home Rule" was described by one of the delegates to that 1912 Constitutional Convention as "the right of the people…to control their own affairs." It has also been described as "The authority to exercise all powers of local self- government, subject only to the limitations imposed by the Ohio Constitution, and to choose the form of government to carry out these powers…." These powers are, of course, not without their limits – in particular, they are subject to the limitations contained in the United States Constitution and to certain other provisions of the Ohio Constitution but all in all, the Home Rule amendment allows for local government to organize itself.

There are two main sections to the Home Rule Amendment – Section 3 which distinguishes between the power of local self-government and the power to adopt local police, sanitary and other similar regulations as are not in conflict with the general laws of the state - and Section 7 which speaks to the authority of a City to do what we are here to discuss today – to frame and adopt or amend a charter for its government.

Just to spend a little bit of time first with Section 3. This section deals with the two types of powers municipalities are authorized to exercise – the power of local self-government and the power to exercise police powers concurrently with the state. Local self-government powers include the determination of the structure and form of a city's government, the power to tax and spend, and to incur debt and issue bonds. While these powers are not absolute and are subject to various restrictions applicable statewide, it is only the police powers that are actually subordinate to conflicting laws passed by the General Assembly. Now when I say "Police power" I am not referring solely to laws dealing with law enforcement. Instead police powers refers, generally, to the authority of the government to enact and enforce laws that promote or preserve the public health, safety, moral, or general welfare--matters such as licensing, zoning, code enforcement and public health. City attorneys spend a good deal of time debating whether a local police power law is or is not in conflict with a state law on a similar topic. As we think about potential amendments to the City Charter, the question of whether or not a given charter change would or would not be in conflict with an existing state law will need to be considered if that Charter change implicates a police power rather than a power of local self-government.

Which brings us to Section 7 – the authority to frame, enact, or amend a City Charter. Cities are not required to have a charter and many cities and villages do not. Those cities that choose not to adopt a Charter may instead choose to structure themselves and operate pursuant to one of a number of plans of government provided for by the General Assembly in the Ohio Revised Code. We call these statutory cities or statutory villages. While these statutory cities and villages do retain some measure of local self-governance under the provisions of Article 18, the cities that do choose to adopt a charter do so in order to exercise the full measure of the power and authority granted to them by the Ohio Constitution.

Seems easy enough to simply choose a pre-fabricated governmental structure as provided for in the Ohio Revised Code. But what the City may gain in ease, it loses in the ability to determine for itself how the City will function, how the City will organize itself to do the work of the people.

So just what is a city charter? Simply put, it is the Constitution of the City. As one treatise described it, it is "the constitution of the municipality, establishing the framework of its governmental organization and controlling the exercise of those powers of local self-government granted to it by the Ohio Constitution” but as may be limited by the General Assembly when acting within its constitutional authority to do so.

For purposes of this Commission, it is not necessary to have a comprehensive legal understanding of home rule authority and where it yields to the authority of the state. This a good thing because the law in this area is constantly evolving and is not amenable to definitive guidance. It is far easier to set forth some general principles gleaned from the abundant home rule case law than it is to predict any particular outcome in any given set of circumstances. That said, even though the courts have established some basic principles, some tests, and some analytical frameworks, they do not consistently apply them. There is sufficient leeway in the tests to reach varying outcomes. Some outcomes are fact specific. Sometimes the court decides to go another direction, abandoning legal precedent to achieve a particular outcome. Occasionally, a later refinement of a given legal test may be applied. It is difficult to simplify this area of law. This is why throughout the history of these Charter reviews, members have been advised that we simply cannot be certain how a court will rule on the constitutionality of legislative action affecting municipal corporations such as amendments to a City Charter.

Charter Adoption and Amendment Process

That said, let’s talk about how the Columbus City Charter came into existence. The process for adopting a city charter is set forth in Section 8 of Article 18 of the Ohio Constitution and it is a 2-step process.

First, either by the city's existing legislative authority, on its own initiative, or upon a petition signed by 10% of the electors, a question is submitted to the electors with the question being, "Shall a commission be chosen to frame a charter." That charter commission is comprised of 15 at large members who, if the voters approve the question, frame a charter.

The next step in the process is that the proposed charter is submitted to the electors of the city at an election held within a year of the commission's election. If the proposed charter is approved by a majority of the voters, it becomes the city's charter.

But it does not stop there. Most important for purposes of this Commission, both the Ohio Constitution and our City Charter provide for amendment of the Charter after their initial adoption. A charter can be amended one of two ways. The first, and most common, way is for a two-thirds vote of the City Council to place a proposed amendment on the ballot. The second is for an amendment to be initiated upon the filing of a petition containing at least 10% of the electors of the municipality based on the total number of votes cast at the last preceding general municipal election.

Regardless of which of these two amendment processes is used, it is the voters who have the ultimate say over whether a charter amendment will be adopted.

Columbus City Charter

Less than 2 years after the adoption of the Home Rule Amendment to the Ohio Constitution, on May 5, 1914, the people of the city of Columbus voted to adopt a Charter. Many of the Columbus City Charter's provisions remain unchanged since their adoption in 1914, but there have been numerous proposals on the ballot to amend or repeal existing sections or to enact entirely new ones. The vast majority of ballot proposals, however, have been to amend existing sections.

Starting with the most recent activity and moving backwards in time, the Columbus City Charter has seen both comprehensive and targeted changes. This past November, voters rejected a controversial initiated charter amendment that would have diverted $87 million dollars in city funds to three different green energy funds controlled by an outside entity while just one year prior, voters approved City Council proposed amendments to the Charter resulting in the creation of the Civilian Police Review Board and Department of the Inspector General. In terms of a more comprehensive charter review, the 2016 Charter Review Committee, among other proposals, brought us a major overhaul to the structuring of the City Council resulting in the adoption of nine residential Council districts this past December in anticipation of the November 2023 general election. The 2014 Charter Review Committee brought forth proposals resulting in the first real updates to the city elections process in over 80 years as well as providing for the creation of this very commission. Prior to that, in 2010, the Charter was amended to allow for executive sessions by City Council as permitted by the state open meetings laws we just discussed. The comprehensive review of the Charter in 1998 resulted in seven amendments being approved by voters including issues such as the budget process, candidate filing petitions and unclassified employee appointments. Prior to that 1998 review, the Charter had last been comprehensively reviewed in 1993.

Considerations for the Commission

So where does this Commission fit in this extensive history? A comprehensive review of the Columbus City Charter is a daunting task.

There are many sections that would benefit from some measure of amendment to clarify, simplify or modernize language. The same could be said of any other 100-year-old governing document. However, you do have to keep in mind that every single change must be placed on the ballot for voter approval and you have a limited time frame to complete your work. In other words, there are practical limitations on the number of amendments you can consider and recommend to City Council. It will be up to you, with the guidance of your Chair, to exercise your own discretion in determining just what that limit is.

From the perspective of the City Attorney’s Office, we suggest prioritizing the elimination of archaic, obsolete, or unenforceable provisions. For instance, the Charter requires that all public bodies conduct all meetings in person, in accordance with state law, as we have recently discussed. And yet it is within the power of a City Charter to allow for circumstances where greater access to local government, greater transparency, and more flexibility in the conduct of public work can be had by allowing for virtual or hybrid public meeting options. These options came to be available to the City during the COVID 19 pandemic due to an emergency change to the state Open Meetings laws. But now, with the rise in cases due to the Omicron variant, the City has been unable to go back to offering such virtual or hybrid options due to the expiration of the state emergency legislation and the Charter’s obsolete reliance upon solely in person meetings. This is something that this body can address – not just in the event of a pandemic, but in recognition of the changes in technology available to us all.

Another consideration you should keep in mind, particularly as to proposed additions to the Charter, is that caution should be exercised in placing provisions in the Charter that can be better addressed legislatively. City Charters, like all constitutions, are intended to provide for a broad framework and a basic structure. Details are best left to legislation as legislation can more nimbly be amended to adapt to changes in circumstances, subsequent court rulings, or to address new technology. As you may recall, when the Ohio Constitution was amended to allow for casinos, significant time and effort was necessary to subsequently amend the Constitution for the sole purpose of changing a mistaken land parcel number. This could and should have been addressed legislatively in the first instance rather than in the Constitution. Matters that can and should be addressed legislatively do not belong in governing documents such as city charters for these reasons.

I look forward to working with this Charter Review Commission over the next several months and I am happy to entertain any questions you may have at this time or as the Commission’s work progresses.