



**FIFTH EDITION**

**GUIDE  
FOR  
CHARTER  
COMMISSIONS**

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National Civic League



The National Civic League gratefully acknowledges the **Murray and Agnes Seasongood Good Government Foundation** of Cincinnati, Ohio for funding the first printing of this edition of *Guide for Charter Commissions*.

# **GUIDE FOR CHARTER COMMISSIONS**

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**Fifth Edition, 1991**

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1445 Market Street, Suite 300, Denver, Colorado 80202-1728**

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# FOREWORD

Charter commissions almost always are made up of prominent, respected, influential citizens who are suddenly faced with an unfamiliar task of the utmost importance to the future of their communities. Usually, these citizens know little or nothing about charter-making. How could they know? Charter revision comes once in a lifetime, if that often, in most communities.

The National Civic League (formerly the National Municipal League) has for many years made available for charter commissions the *Model City Charter* and the *Model County Charter*, which reflect the advice of leading charter experts as to what a good charter should contain. The *Guide* supplements the models with accumulated experience on how to proceed in order to achieve sound decisions on such vital matters as form of government, methods of assuring popular control, and objectives and scope of the charter.

In 1945 the League appointed a special Committee on a Guide for Charter Commissions. Using materials prepared by Edwin A. Cottrell and his associates at Stanford University, the committee conducted a thorough review of charter commissions and their work. The final draft, largely the work of William Anderson of the University of Minnesota, a widely recognized authority on municipal charters, went through a rigid refining process by Committee members, consultants, critics, and charter draftsmen and was tested in manuscript form by about twenty charter commissions.

The first four editions of the *Guide* have been used by a majority of charter commissions organized since 1947. In a period of unprecedented charter revision activity, the *Guide* has been thoroughly tested by hundreds of lay commission members and scores of professional consultants.

This fifth edition of the *Guide* has been prepared as part of the Model Charter Revision Project which has produced the Seventh Edition of the *Model City Charter* and the revised edition of the *Model County Charter*. It supplements the text and commentary of the two models and has benefited from the extensive input made by those who were advisers in the revision of the models. This edition of the *Guide* is

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the first to have been designed for use by both city and county charter commissions. While the section on “principles of charter-making” continues to be directed primarily to the problems of municipal charter commissions, in large part it is also applicable to county charters.

William N. Cassella, Jr., who served as executive director of the National Municipal League from 1969-1985 and as coordinator of the Model Charter Revision Project, prepared the Fifth Edition of the *Guide for Charter Commissions*. Production of this edition of the *Guide* was made possible by a grant from the Murray and Agnes Seasongood Good Government Foundation of Cincinnati, Ohio.

John Parr  
President, National Civic League  
September, 1991

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# INTRODUCTION

## American Cities and Counties in the Twentieth Century

This has been a century of astounding changes, and a multitude of signs and voices tells us that even greater things are yet to come as we approach the beginning of the twenty-first century. Science, technology, industry, and agriculture simply will not stand still.

Social, economic and political changes still lag behind, but they have been speeded up tremendously in recent decades. This has become an age of international-mindedness and of striving, albeit at an uneven pace, for a new international order through institutions to maintain peace and promote human welfare. It is also an age of large nation-states, big governments, multi-national corporations and a global economy. At their centers these modern giant states have developed tremendous energy and programs of intense activity. There are many who bemoan the centralization of functions that has taken place, and the increased scale of central government activities. In spite of moves to decentralize, the private economy is characterized by increased centralization through corporate mergers.

Is there any place left in this modern scheme of things for local governments? Have American cities and counties any important functions left in the face of the national and state centralization that has already taken place?

To get the answers to these questions we must keep our minds receptive to the facts of life about us. Here are some facts:

1. Two-thirds of the people in the United States live, work and play in urban places; and the urban population is likely to increase even more.
2. Local governments today provide more services for the American people and raise and spend more money on public functions, in total and per capita, than they every did before. Their usefulness is steadily increasing.
3. Local governments of all kinds are being called upon constantly to cooperate with national and state governments in the performance of mandated functions. No sooner is a power or function centralized at the national or state level than the central administrators find they cannot do everything from the center. In one way or another the administration of most functions must be localized.
4. It is in cities, counties, towns and villages that the people have to learn the practice of democratic, responsible self-government. It is there we find a training

ground for democratic leadership of both state and nation. Many persons of recognized wisdom believe sincerely that without self-government in our communities popular government on a national scale cannot succeed. Therefore local government must be made and kept as effective and democratic as knowledge and intelligence will permit, to the end that citizens will learn at home the best available principles and practices of democratic government in general.

Good local government is, then, not only an end in itself because of the better services it can achieve but also an educational process of tremendous importance to the nation and to all nations. New generations are forever coming upon the scene and the leaders of each generation need to learn over again, by precept and experience, what the previous ones had come to accept as true. And always there are dissenters who scoff at the old wisdom and a few inventors who find ways to make genuine improvements.

## Importance of the Charter

How can better local government be achieved in the United States today? There is no royal road to the desired goal. Many things must be done and done continuously and well.

Among the methods of maintaining and raising the standards of government are: education in schools and colleges; the informational services of press, radio and television; widespread participation in elections and unremitting effort to elect better men and women to office; investigations by citizen groups, experts in public administration, bureaus of governmental research, and even grand juries and prosecutors into the conduct of governments and their officers.

The improvement activity to which this guide is devoted is the making of better charters. At one time even informed persons thought it sufficient, when the local government was corrupt, wasteful or ineffective, to "turn the rascals out" and install better people in office. This is and probably always will be a useful thing to do.

On the other hand investigations in many places reveal that even the best officials are handicapped or frustrated in their endeavors to improve public services by ill-advised or out-of-date provisions of the charter and laws. Until such provisions are eliminated or improved, little can be done. Furthermore, when better charter provisions are established even the less competent public officials can achieve a better result than before, while the spoils-seeking official is prevented from plying his trade to the limit at public expense. Good men and women are reluctant to accept office in an unworkable system and are attracted to one which is well organized and effective. For these reasons the National Municipal League

(now the National Civic League) began in 1897 to formulate and to publish the principles of sound government in the form of *A Municipal Program* which later became the *Model City Charter* and still later led to the *Model County Charter*.

What is a local charter? It is the basic law that defines the organization, powers, functions and essential procedures of the municipal or county government. It is comparable to the state constitution and to the constitution of the United States. The charter is, therefore, the most important single law of any local government. Through change in the charter, almost any desired change can be achieved in governmental organization, powers, functions, and procedures. All the effects of a new charter may not be felt immediately but in the long run a charter has important effects, for better or for worse, on everything that the government does. Faulty governmental machinery is responsible for more governmental ills than most people suspect. Other things being equal, the better the charter the better the government.

## Home Rule

It is in states that authorize home-rule charters that charter commissions are most common.

Every state has control over the local governments within its limits. Originally there were practically no restrictions on the state legislature's power to create, abolish, organize, and reorganize the governments of local units. In general, state legislative control over counties has continued to be greater than over municipalities. Further, even restrictions on legislative control of counties have been contained in state constitutional provisions which establish county boundaries, mandate a form of county government and restrict the powers of counties.

It was the early legislative practice to organize each city separately by passing a special or local law which became the charter of the municipality. By subsequent legislation—applicable to the particular place—the legislature would change the municipal organization, enlarge or decrease the city's area, change its powers and functions and make other alterations. Each place was treated as a special case and each city accumulated a body of special legislation applicable to it alone which, taken as a whole, was the charter of that city. Similarly, every city had a charter different from that of every other.

Many legislative abuses developed in connection with this special and local legislation. Partisanship frequently prevailed over principle. A legislature dominated by one party would impose unwanted boards, officers and expenses on a city controlled by another party. Special interests obtained franchises in city streets that the city government would not have authorized. Much of this type of legislation was

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passed at the state capital without notice or hearing for the citizens and officials of the city concerned. The very principle of local self-government in local affairs was flouted and violated time and time again.

Leaders in cities began to demand amendments to the state constitution to put an end to this regime of special legislation. A movement for such prohibitions began a century ago and soon New York, Indiana, Ohio and Michigan, to mention a few, had put into their constitutions various restrictions upon or prohibitions against special and local laws. This movement spread until about three-fourths of the state constitutions now contain clauses that in one way or another attempt to limit or prohibit the evil of special legislation. A strong argument for all such roll-backs was the right of local self-government.

Unfortunately, a prohibition against special state legislation on local matters is not equivalent to granting local home rule. As already stated, each city had a separate and distinctive local charter. It also had peculiar circumstances to some extent and its people and leaders had their own ideas as to how to satisfy local needs. Cities were growing, their needs were changing and their old special charters were constantly getting out of date and out of step with the times. But when the legislature had been forbidden to pass local or special laws for cities, the legislative road to change was at least partially closed. Furthermore, the legislature could not meet all local needs and wishes by blanket general laws; these simply could not be made to fit all local circumstances. How then could particular cities get their charters modernized?

In 1875 the Missouri constitutional convention adopted provisions for St. Louis and future cities with populations over 100,000 that proved in practice to be a very satisfactory answer in many states. It was simply this: Permit cities, within the limits of state laws, to frame, adopt and amend their own charters. This arrangement, embedded in the state constitution, is known as "constitutional municipal home rule." Coupled with a constitutional provision that prohibits the legislature from enacting special and local laws for cities, it has the effect of transferring the power to make special or local laws from the legislature to the people of the city concerned.

The Missouri idea spread until more than half the states had constitutional provisions permitting one or more cities to frame, adopt and amend their charters. Beginning in 1911 with a California county home rule constitutional amendment, now counties in almost half the states have similar powers.

In a number of non-home rule states local charter-drafting bodies prepare special charters that must be approved by the legislature. In New Jersey charter commissions determine which of several ready-made optional charters provided by law should be submitted to the voters. Citizen participation in charter-making is, therefore, a significant feature of local democracy in a substantial majority of the states.

**Municipal charters are much more than legal documents, for they establish the basic “rules of the game.” Although there are many common characteristics of home rule charters...each charter reflects the unique needs and aspirations of each municipality.**

**—Delbert A Traebel,  
*A Citizens Guide for Home Rule Charters  
in Texas Cities.***

# Chapter One

## THE WORK OF CHARTER COMMISSIONS

### The Role of the Charter Commission

It is hoped this guide will be useful to a wide variety and a large number of citizen agencies interested in the improvement of local government even though it is designed primarily for the use of charter commissions.

The charter commission, a distinctly American contribution to the art and practice of local government, is a body authorized by law, usually elected by the voters, that is set up for the sole function of drafting and submitting to the voters a new charter or revision of an existing charter. Such a body has a unique and important service to perform. Like a constitutional convention at the state or national level, it investigates the existing government and charter, studies the experience of cities or counties elsewhere under other charters and forms of government, ascertains the best principles of local government to insert in a new charter, and then drafts and submits to the voters for their approval a new and presumably improved charter or amendments. Free from the necessity of engaging in actual government and party strife, it can turn its full attention to the improvement of governmental machinery. If its work is well done and forward-looking, and if the voters choose to adopt it, the commission may have a positive influence for decades after its work is done.

A charter commission provides an opportunity for local statesmanship that comes infrequently. It is important, therefore, that members be chosen who will rise to the exercise of high-minded leadership. This puts an obligation on sponsors to

offer the voters or appointing authority a slate of outstanding eligibles and to press for selection of a commission that will justify the confidence of the community.

Charters, like other social arrangements, need to be revised and improved from time to time to keep them abreast of community needs and modern knowledge. The charter submitted by the commission will be a test of the vision, courage and statesmanship of the commission's members.

To summarize, the function of a charter commission is to prepare and present to the voters the best and most forward-looking basic law it can. In particular, this requires the commission:

1. To take an overview of the entire local government such as few if any officials or ordinary citizens can;
2. To probe deeply into the procedures and the interrelations of the different parts of the government to discover weaknesses and defects;
3. To look elsewhere to discover the best practices that might be applied and adapted;
4. To learn from all its studies how a better government can be arranged;
5. Having decided upon the major elements, to set them down in clear, logical and consistent form as a proposed charter;
6. To conduct its affairs in such a manner as to win the respect of the citizens and to educate and stimulate citizen groups and leaders to get the charter adopted.

In general, the best rule for charter commissions is to take high ground and to "make no small plans." Appropriate timing of action and due proportion between means and ends must always be observed. A commission should not be easily satisfied or permit itself to be lightly brushed aside. Where the voters have elected a commission to revise the charter there usually is considerable dissatisfaction with the government. Few communities have reached the point where substantial improvements can no longer be made; and charter revision is one of the most important ways of making progress.

## Charter Experts—How to Get and Use Them

Those elected or appointed to a charter commission are unlikely to be experts in charter drafting. Their function is to be representative, forward-looking and zealous protagonists of the general welfare. They need the wisdom, sound practical judgment and enthusiasm of amateurs. By studying community problems they may come to know how to distinguish sound advice from quackery and nostrums—but expertness must as a rule come from quite different sources.

Who is an expert on city charter making? Where can such an expert be found?

Local government, including politics, elections and administration, is a complicated, ever-changing field of study. Only a few people master its broad, general principles and their interrelations. Furthermore, one who has this knowledge is not necessarily one who can also draft a good charter. And even if one person had competence in both these matters he or she might not know all the constitutional and legal points that must be considered in drafting a charter in any particular state. In short, several kinds of competence are required by one who is to be a well rounded expert consultant and draftsman for a charter commission.

Many commission members think first in terms of the legal profession when it comes to finding the charter expert. This is all right as far as it goes. Lawyers with a certain training and experience have a contribution to make, but a commission needs to exercise great caution in making its selection. The study of the law is by no means a study of local government, politics, administration and taxation. It ordinarily deals instead with the law of private property, contracts, sales, torts, marriage and divorce, wills, criminal law, evidence and court procedure, to name some of the principal legal studies. Many law schools do not offer regularly even a course on the law of municipal corporations. Furthermore, the approach in the study of law is almost entirely from the viewpoint of what is legal, not "how does it work" or "what are its results." To know the legal procedures by which a government may take property by eminent domain, for example, is highly important, but it is also necessary to know about the best organization and administrative practices in this field and the relative costs and efficiency of different methods.

It is not too much to say, therefore, that most lawyers do not qualify as experts on local government or on the drafting of charters — and most of them will say so themselves. There are many exceptions, of course, and some of these occur because the lawyers in question have been active in public affairs and have made studies and had experience over and above what the average lawyer has. A certain amount of public experience and practice, as a municipal law officer or county attorney, for example, will be helpful. These attorneys must know the existing charter and ordinances and the pertinent state laws. This knowledge may qualify him or her as an expert and even an indispensable aide to the person who drafts a new city charter, because the attorney will be able to point out legal difficulties that the draftsman may not have encountered. In short, a lawyer with this type of experience may be of inestimable value when it comes to checking the charter draft for legal difficulties. Even so, a charter commission must pick its lawyer with care. The attorney's knowledge must be greater than an acquaintance with the local charter. One charter, drafted by a lawyer with municipal experience in a small city, had five provisions that clearly violated the state constitution. Anyone working for a charter commission should be open-minded as to the possibility of improving the charter. The city attorney may prefer an old charter that has already been interpreted by the courts,



no matter how inadequate it is in other ways, to one that may achieve more public good but has not yet been challenged in the courts.

Generally speaking, the best charter draftsmen are those who have made a special study of local government against a background of the study of politics, government and public administration generally. In many cases they are teachers of political science and public administration in colleges and universities who have had experience with charter problems. In some cases they are governmental researchers. Some are engaged in various branches of public administration, some in consultant work. It is not claimed that every one who has made a broad and deep study of local government and administration is well qualified to draft a charter. Some have drafted many charters and a few home rule states are blessed with one or more high-grade craftsmen whose services to charter commissions have contributed substantially to the improvement of local government.

Good charter consultants and draftsmen are artists as well as technicians and students of government. This means that while all will agree on fundamentals no two will have precisely the same work habits and ways of presentation and expression. Having selected its consultant on the basis of established knowledge and competence, a charter commission is wise, without abdicating its leadership responsibilities, to rely heavily on the consultant's experience and guidance. Its decisions and report, however, must be unquestionably its own, representing its conviction as to what is best for the community.

If the consultant is to do a satisfactory job the commission must have no secrets from the consultant, who is entitled to know about any preconceived ideas or objectives entertained by the commission or its members, as well as any special problems of politics or public opinion that might affect the work of the commission. An outside consultant is not, presumably, an expert on local politics; but if properly briefed can help evaluate objectively the real importance of local political factors so that the commission can select the best methods of dealing with them. One of the functions of a consultant is to help a commission overcome mental hazards by showing how other communities have dealt successfully with similar difficulties.

In short, a local government expert can perform a number of useful services for a charter commission. These include:

1. Gathering, selecting and summarizing pertinent information locally and from other places;
2. Presentation of a comprehensive view of the municipal or county government as a whole and of comparable governments elsewhere which will provide a wholesome corrective of the local and particularized knowledge that commission members may have;

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3. Preparation of materials for discussion at meetings and participation in the discussion;

4. Drafting, first, sections of the proposed charter and, finally, the complete integrated document.

The consultant is to act, in other words, as the servant and mentor of the commission and is to present information and ideas so that the commission may make its decisions advisedly. It cannot be too strongly emphasized that the earlier the commission gets its consultant the more it will get for its money and the better use it will make of its own time. A good consultant can also help the commission with its public relations by guarding against untimely public commitment on issues on which it might change its mind in the light of further study.

Suppose a charter commission cannot find enough money to engage a general consultant? What then? All is not lost but, unless the commission has the good fortune to have one or more members who qualify as professional consultants, it will be necessary to make up for the lack by dint of ingenuity and industry. Some professional guidance and help is a must. In the first place, someone should be found who — whether for love, expenses, or nominal compensation — will sit down with the commission at one of its earliest meetings and help it think through its program and the procedure for obtaining the information necessary for sound decisions on major issues. Such a person might be obtained from a university or other educational or research institution, or might be a former charter commissioner of a neighboring city who has gone through the mill with a good consultant and can pass on some of the lessons learned. It should also be possible to arrange with one or more qualified persons to submit questions to them from time to time or get them to check tentative proposals or drafts.

Finally, no matter who its chief draftsman may be, whether the city attorney or a member with legal training, the commission should seek an expert, outside “audit” of its final draft before presenting it to the public. With such assistance, hard working charter commissions have come up with excellent results. However, doing without a general consultant should be out of the question for a commission in a large city or county and it is at best a penny-wise and pound-foolish method of dealing with the important business of writing the basic law for even a small community.

### Organizing the Charter Commission

A charter commission is an official agency. Consequently, the first rule is to

follow the law of the state in every matter covered by law. The law may provide that the mayor or some other official shall call the first meeting. If there is no provision of this kind some members should get together and issue the call themselves or ask some official to do it. To the person issuing the call the only advice needed is to be fair and considerate. Choose a public place and a time convenient for the members and give adequate notice to all.

### ***First Meeting***

At the first meeting there is no need to hurry things. There should be no effort to “railroad” anything then or ever. How much can be accomplished at the first meeting will depend to a degree on how well the members know one another and what if any unofficial consultation there has been among them. Everything possible should be done to avoid factionalism and launch the commission with a sense of unity and determination to work together for the best possible charter. Unless all members are already well acquainted, it is usually best that only temporary officers be chosen at the first meeting — a chairman pro tem and a secretary pro tem — then hear from those who proposed that a charter commission be elected to find out what they had in mind.

Receive sympathetically and openly any petitions or suggestions from any citizen or group. Take steps to get the names of possible consultants or expert advisers and draftsmen. Get your calendar firmly in mind and start planning accordingly. If time is limited some procedures will need to be foreshortened. In any event, be sure to schedule the work in order to avoid the last minute rush to meet a deadline that leads to hasty, unwise decisions and sometimes to serious errors. Make a list of the commission members, with addresses and telephone numbers, and get their views as to the best time and place for meetings. Agree if possible on a time and place for the next meeting.

One definite action is necessary at this first meeting. Appoint or elect a committee of three or five members to report on organization, rules and next steps. This will be a temporary steering committee. Its task should be to prepare the following:

1. A simple plan of organization and set of rules;
2. Nominations for the offices set forth in the plan of organization—at least a chairman, vice chairman and secretary. A treasurer may also be needed, but this office may be combined with that of secretary. (it would not be immodest for this committee to nominate some of its own members);
3. A tentative but flexible schedule of meetings with a view to getting the work done within any legal time limit;
4. A tentative estimate of the commission’s financial needs;
5. Suggestions for the employment of a consultant;

6. A program for the next meeting, which might include one or two speakers who know the municipal or county home rule law of the state and the powers and duties of charter commissions.

### ***Second Meeting***

At the next meeting there will be much work to do, including any of the following not disposed of at the preceding meeting:

1. Complete any steps required by law, such as taking the oath of office, in order to qualify all members for their offices and duties;

2. Adopt a plan of organization;

3. Receive nominations for officers from the committee on organization and rules. Give an opportunity for other nominations. Elect officers, using written ballots if there is a contest. Install these officers at once;

4. Receive next from the committee on organization and rules its proposed rules of procedure. Discuss them, amend them if necessary and adopt them. Keep them simple and not hard to amend. Provide in them for such matters as regular public meetings, the method of calling special meetings, quorum and vote required for decisions, and duties of officers. Adopt a standard book of parliamentary law to cover matters that do not have to be tailored to the specific needs of the charter commission;

5. Hear from anyone who has been invited to discuss the legal powers and duties of the commission;

6. Discuss next the problem of time limits, if any, within which the commission's work must be completed. If the commission may determine the time of submission, careful study must be given to a number of matters, including the dates of coming elections and other public events, the tenure of the existing elected officials, and the timing of the inauguration of the proposed charter. There is, for example, no open-and-shut case for or against a special as against a general election. As indicated below, this is partly a public relations problem and should not be settled in haste. It would be well to wait for a final decision until it is possible to discuss the matter with the consultant;

7. Consider also the commission's financial needs and how they can be met. Take any action that may be necessary to assure initial financing. The commission should not try to determine its total needs until it has conferred with its consultant;

8. Next take up the question of the employment of a consultant or consultants to advise the commission, provide it with information, and prepare the draft charter.

This list may be more than the commission can cover in a single meeting. Some things may have to go over for another session. For instance, a consultant cannot

be employed until the availability of funds is assured and until a proper search for one has been made. Merely getting the money may take much time and effort, but it should not be necessary to wait for money in the bank to have a preliminary conference with one or more possible consultants.

At the first or second meeting each member should be given a loose-leaf binder to receive material as it is prepared. As pages are re-written they can be replaced. Commission members then become accustomed to bringing their binders to meetings and referring to notes on questions upon which they desire further information. This simple expedient saves time and helps in keeping the discussion factual and to the point.

## Commission at Work

The commission will probably hold many meetings. Each meeting should be planned not in any rigid sense but with the idea of having something worth while to do every time. There will be talks by persons on invitation, reports on special topics, debates on important issues of policy, discussions of the drafts prepared on particular subjects, and public hearings on major issues. (See section on Public Relations below.)

To plan the meetings and give some direction to them there might be an executive committee of the three principal officers and not more than two others.

Evening meetings will allow most time for discussion. Meetings at lunch time are probably the least desirable. Mid-afternoon or late afternoon meetings are sometimes satisfactory.

Don't rush things to a decision. Hear everyone who has a contribution to make and give a little time for thought. Group discussion and group decisions are sometimes slow but they pay good dividends.

In the early meetings it should be a firm policy that all decisions are tentative only. This rule will facilitate the work of the commission. People who are new to the problem are hesitant to take final action. The answers become easier as members become familiar with the entire program.

It is possible and desirable to be both businesslike and informal at the same time. The presiding officer should see that members stick to the business in hand and that they do not waste the time of the group, while retaining an atmosphere of friendly informality.

## Financing the Commission

Every charter commission must have some money for its necessary expenses. The amount will run into thousands of dollars in a large city or county where a

complete job of charter revision is undertaken. In a smaller place the commission will need less.

Wherever the law makes specific provision, the commission should estimate a modest but sufficient budget and take the necessary legal steps for getting the money.

Where the law makes no definite provision, the commission, as a public or official body, should make a request to the local authorities for the needed funds. At this point a finance committee may be of considerable importance.

Where public funds simply cannot be obtained, local circumstances may justify a dignified appeal to the citizens for contributions.

Some services may be obtained in-kind from the city or county government, from a local governmental research bureau, or from other private sources. These may include duplication of memoranda and drafts, secretarial work and, sometimes, technical assistance.

The commission should pay no salaries or honoraria to its members. Necessary expenses only should be covered. These will include fees to consultants, compensation for secretarial services, and whatever is needed for postage, stationery, printing and publication. Although visits to other cities by commission members may occasionally be desirable, junkets at public expense are inadvisable. It may be worth while to bring in persons from other places to testify.

Accounts should be kept of all receipts and expenditures and an auditor or auditing committee should examine the books at the close of business.

Most commissions are fairly small and can meet around a large table and carry on their work like a committee. All the major issues need to be thrashed out before the commission as a whole, and no member should be given reason to think that committee reports or the suggestions of a consultant are being jammed through without adequate consideration by the whole group.

The grant of powers to the city or county government, the general form of the government, and the controls to be exercised by the voters are examples of broad issues that must be decided by the commission as a whole. Details of draftsmanship are rather far toward the other end of the scale. The commission as a whole simply cannot do the drafting.

When everything possible has been conceded to the need for united group action it still remains true that the commission as a whole cannot make all the required preliminary investigations of the subjects to be considered. This is one of the reasons why it is important, if at all possible, to engage a consultant early. A good consultant will have readily available information that members of the commission might not uncover in weeks of digging. In matters on which commission members should do some homework the consultant can save them time by providing good leads. Financial powers, organization and procedures, planning and

zoning, and civil service provisions are examples of secondary but important matters that may call for special study by designated members to supplement information supplied by the consultant.

Unless the commission is a very large one, more like a constitutional convention than a typical charter drafting body, continuing subject matter committees should be avoided. In the drafting of one city charter months were wasted by subcommittees working independently of one another. The commission and the consultant found the task of putting together the work of the separate committees so difficult that it was simpler to start all over again.

One danger in assigning different parts of the charter to continuing subcommittees is that influential members of particular committees may have axes to grind. If such members win the support of their subcommittees, it becomes difficult for the commission as a whole to reassert itself and to produce a coherent document that represents the best thought of a majority of its members.

Except in the largest charter commissions, any necessity for division of labor can be met by occasional designation of from one to three members to investigate particular subjects and report findings to the whole commission, subject to immediate discharge with appropriate thanks. Time that members would otherwise spend on standing committees can be used to better advantage in getting the background needed for participation in all major decisions and for understanding the charter as a whole — for getting a view of the forest as well as a few of the trees.

## Public Relations

The best charter is of little value if the voters do not approve it. The effort to win public understanding and acceptance should begin the day the charter commission is selected and continue without a break. The importance of building understanding and good will is indicated by the informed comment that writing the charter is about 50 percent of the job and the other 50 percent is sound public relations. Many well written charters have been lost at the polls for lack of a good public relations and voter education program.

The heart of a good public relations program for a charter commission is intelligent citizen participation, which may be achieved in many ways. One of the most important is through open public hearings. One advantage of such hearings is that they bring to commission members ideas, suggestions and attitudes which they might not receive otherwise. But the public hearing is a two-way process which not only educates members of the commission, but also, directly and indirectly through the press, radio, and television, informs leading citizens that a charter commission is active, that its members are sincere and hard-working, that it is

considering complex and debatable issues on which the thought of various groups in the community is desired, and that charter writing is a serious task involving the use of good judgment. Any charge of "railroading" or undemocratic tactics can be answered at such public meetings by the facts.

The head of the charter commission should invite all citizen groups — including labor, commerce, industry, professions, churches, veterans, women's organizations, lunch clubs, social service, human relations and environmental groups — to submit their suggestions and send representatives to public hearing. Such invitations should go by letter and also be issued generally through the media.

Among the most important of the groups to be consulted by the charter commission are the local officials and employees. These individuals can provide a wealth of assistance by supplying essential information and advice on the operation of the city and the possible effect of various charter proposals. By turning to the public officials for assistance whenever possible, the commission may disarm antagonism and gain support of this influential group for the proposed charter. Of course, advice given by public officers, as that offered by other individuals, must be subjected to careful evaluation by the commission.

The commission should not be discouraged if only a handful of people come to public meetings. This has been the experience in places small and large where charter commissions have been successful. Most of those who do come are representatives of groups and their attitude toward the final draft of the charter will carry great weight with the "man in the street" who cannot or will not attend personally.

As the commission progresses with its work it should keep the public informed. The newspapers, radio and television are always important, as are local magazines, club publications and house organs. Commission members should appear before audiences from time to time, either singly or in panels, to explain what the commission is doing. By these same means the commission can keep itself informed as to what the public is thinking and saying about the commission's work.

The commission must function so as to create a more thorough citizen understanding of what local government is all about — and specifically what the charter is and what it is not. In a sense every time the commission meets, it is holding a session of a civics seminar which should help enlighten citizens generally, as well as the commission. The existence of the commission is the ideal time for the media, educational institutions and civic groups to have special programs on local government. Increasingly, meetings of charter commissions are carried on public access cable television.

Public opinion polls on certain issues may have some strictly limited value but they should be used, if at all, with the greatest care. Before any poll is attempted the commission should be sure that the polling organization and the sampling tech-



niques used are entirely reliable. No questions should be put to the people unless there has been adequate preliminary educational work. It would be a denial of the major purpose of the commission to make decisions as it goes along on the basis of uninformed public opinion. Indeed, the commission would be violating its mandate and abdicating its responsibilities for leadership if it were to base important decisions primarily on opinion polls no matter how good the preparation.

Results of preliminary polls on issues standing by themselves do not necessarily indicate how the people will react on them when they consider them as elements of the whole charter after it has been presented and thoroughly discussed in the campaign. If it made sense to draft a charter on the basis of public opinion polls, there would be no need for a charter commission. All that would be necessary would be an expert in framing the pertinent questions and an expert in translating the answers into a charter draft. The people elect a charter commission to advise them on the best way to improve the charter after the kind of study that the people could not make themselves.

In general, decisions reached by the commission prior to the presentation of the final draft should be tentative. A member may change his stand on "tentative" decisions without the necessity of face-saving explanations. When final decisions are made too early, members may feel obligated to continue their support for particular items which, in light of additional information, they no longer favor.

A good practice which has been increasing in recent years is to publish a tentative charter draft and invite public scrutiny and criticism. Reactions to the tentative draft obtained at public hearings and in other ways serve several purposes: They afford an opportunity for genuine popular participation; they enable the commission to make adjustments which may strengthen the charter and improve its chances of success; and they provide valuable information as to public attitudes for those who will be responsible for the adoption of the charter.

Any charter commission is likely to find that certain groups and individuals are opposed to any diversion from the status quo. Elected officials often do not look with favor upon proposals that would change their offices and powers. However, movements are being led more and more by officials who from experience know of the need for improvement. Leaders of political parties and spokesmen for other influential groups with power or other interests at stake may be in opposition. It is necessary to learn the objectives and fears of such groups and their leaders in order to win them to the side of charter revision if possible, or counteract their influence if necessary. Often the cooperation of these individuals is lost because the unwarranted assumption that they are unalterably opposed to charter change. Sometimes a group may be won over by including a positive provision in the proposed charter which is not objectionable in principle but which otherwise would have been omitted.

It is individuals and groups that make up majorities. To a large extent the individual is reached and interested as a member of a group. This explains the axiom in public relations work that there is not one public but rather many publics with varied interests. Appeals must be made, therefore, to many groups interested in efficiency, economy, better personnel, greater financial control, more effective democratic control, a more representative legislative body, improved public services and the like.

Every local political situation is unique to a certain extent. Only the local leaders can understand it and lay plans for uniting in support of a new charter enough large and small groups of citizens to make a winning combination. To this end charter commission members should encourage broad gauge organization of citizens and groups for the purpose of promoting the formulation and adoption of a sound charter. Such an organization should be continuously active throughout the commission's labors and doubly so during the final campaign. It can counteract the pressures of special interest groups and make it easier for the commission to hew to the straight line of the dominant public interest in good government.

Despite any contrary impression that the clamor of special interests may create, the evidence is overwhelming that the vast majority of citizens in any community want good government. When this is not apparent it is because the people do not know what it is or how to get it. It is the first duty of a charter commission to help them find the answers to these questions. It cannot do this by trying to appease each pressure group by yielding to its selfish demands. The commission must be sympathetic and understanding in listening to the demands and views of all but it must take high ground and appeal to each group and to the citizens at large to support sound principles of government. The dignity, independence and effectiveness of the commission will be destroyed if it gives in to the demands of special interest groups in ways harmful to the public welfare.

Direct appeal to the people for a good charter may be more effective in meeting opposition than weak compromises which result in submission of an inferior document. A poor charter may get the same opposition as a good one without arousing the enthusiasm needed to carry it. It must be remembered that all the essential features of a charter must be in harmony and stand or fall together. More than one charter has failed either to win adoption or to give satisfaction after adoption because of compromise provisions incompatible with its basic pattern. One way of overriding stiff objection on small matters is to move boldly enough to excite and enlist a ground swell of public support. Ground swells do not come in response to half-measures and cheapening compromises.

The charter commission might be well advised to have a small subcommittee to help plan its public relations. At least the chairman of such a subcommittee should think of every action by the commission in terms of its effects upon public opinion

and good will and how it can best be presented to the public. The subcommittee should keep in touch with local leaders and groups that will conduct the campaign for the charter, to assist them and to keep them informed as to what the commission is planning. Individual members of the commission should be careful that any statements or speeches they make are consistent with an overall public relations strategy understood by the whole commission. It is particularly important that they avoid any appearance of committing themselves or the commission prematurely on controversial matters. The best answer to some questions raised in a public meeting is, "We are still studying the question."

It has been found helpful for the commission to have reprints of good speeches and articles on its problems and work for public distribution to interested members of audiences, clubs, debate groups, students and anyone who seeks information. The writing of a new charter is a splendid subject for citizenship education in the schools. It has dramatic quality and local importance that catch the interest of students and provide excellent material for essays, debates, scrapbooks and other exercises, including junior charter commissions. All this serves to educate those who will soon be responsible, as voters, for the success of the new charter. Of more immediate importance is the fact that the students, by bringing their discussions home, help to interest and inform the older members of their families. The charter commission should cooperate with the schools in such activities.

At the end of its work the commission should prepare and issue a "Report to the Voters," telling what principles it has followed and explaining the main features and merits of the new charter. It should be written like a letter to a friend, telling briefly in lay language and in a dignified fashion what benefits may be expected from the charter and why it deserves a majority vote. It is often helpful to include an organization chart of the government under the proposed charter. Such a report is generally printed at public expense and is frequently bound with the proposed charter so that every reader has the aid of this digest. Another reason for a "Report to the Voters" is that it can serve as a press release to accompany the draft of the charter when it is given to the newspapers, thus guiding reporters and editors as to what the charter commission itself considers the most important features of the new document. It is important that first impressions be correct impressions.

If the charter commission can determine the date of the election at which the fate of its work will be decided, it should consider the matter carefully in the light of local patterns of living. Some factors to be considered are weather, holidays, vacation periods, possible conflicts with other programmed events, as well as the political calendar. Sufficient time should be allowed between the filing of the

charter draft and the election for a thorough educational campaign.

## Completing the Draft of the Charter

Major decisions must not be hurried but they must be made before extensive drafting can begin. This is especially true of the following interdependent decisions: (1) The general form of the city or county government; (2) The extent to which the charter shall prescribe the details of the government's administrative organization and procedures; and (3) Whether to submit a complete new charter or amendments.

Problems involved in making the first two of these decisions are discussed later. The right answer to the third question depends on a number of factors, including the nature of the existing charter, the extent and nature of the changes contemplated, and the problem of the voters when asked to render the verdict on the commission's work. If a charter requires many or fundamental changes it is almost always better to submit them as a clean, new draft of a complete charter. This is especially true if they include a change in form of government.

Charters have so many interlocking provisions that it is difficult to produce a consistent, coherent result by submitting a series of separate amendments. Many places have been frustrated for years because of an attempt to produce a basic change in government by patchwork amendments. In some cases the result has been disillusionment and reversion to the earlier type; in others, after years of difficulty, a second charter commission has had to finish the job that should have been done the first time.

Another reason for complete revision as distinct from piecemeal amendment is that almost every old charter has minor defects in draftsmanship, organization and substance that ought to be cleaned up but that are not important enough in themselves to justify imposing them on the voters as separate propositions.

One of the common arguments for separate amendments is that opposition to a particular part of a charter might jeopardize an otherwise acceptable whole. Usually such overriding opposition would be centered on one or two features. If a commission fears, for example, that the method of electing the city council it considers best may generate such opposition as to endanger the charter, it can, in many states, submit the charter with alternatives on this one matter. In most of the known cases where this has been done the people have voted not only for the charter as a whole but also for the alternative preferred by the commissions. The burden of proof, therefore, is on those who advocate complicating the voters' task by giving them more than one overall question to decide.

The drafting will normally fall almost entirely on the principal consultant. The

commission as a whole should pass upon the draft article by article and decide all major questions. It goes without saying that petty quibbling over words should be avoided, but members should be satisfied that they understand the meaning of every word and the reason for its use. The consultant should be able to help commission members resolve verbal difficulties.

Before the entire draft has been completed a competent attorney might start to examine it article by article. In this way it may be double-checked for legal points almost as rapidly as the commission adopts the articles. Some revision will be required. In the end there must be one session at which the entire draft is approved and the consenting majority of commission members signs the requisite number of official copies.

As already indicated, it is good practice to adopt a tentative draft, give it to the public and hold public hearings on it. After the hearings the commission would meet to decide what if any changes to make before submission of the charter through the proper official channels to the voters. This helps to clear away doubts, resolve conflicts of opinion and, above all, to inform the voters. The people, in whose hands the final decision lies, never have too much information concerning vital issues.

## Some DOs and DON'Ts for Commission Members

Membership on a charter commission offers an unusual opportunity for unselfish public service. The greater the success of the commission in advancing the welfare of the community, the more honor will come to its members.

Charter commission membership should not be used as a springboard for an immediate dive into candidacy for office. The public welfare should be put first. See the charter through and help to get it into operation before you turn to other things. If a genuine citizen movement drafts you for office, well and good. In that case the office has sought you, not you the office, and you are in a more independent position.

Don't ride your personal hobby with respect to any part of the charter to unreasonable lengths. A hobby in this case is an idea more or less personal or peculiar to you that has not been tried out elsewhere or been advocated by others or, unknown to you, has been tried successfully and been found wanting. Advocacy of some widely accepted principle or form of government does not fall in the category of a hobby, but there is a limit beyond which the support of even such a principle or form does little or no good.

Of course, an idea is not necessarily unsound because it is new or relatively untried. There is still room for genuine political invention. If your idea is good and your colleagues decide against it, maybe you will be able to sell it somewhere else.

Don't think you can or should correct every abuse in the former government by writing a specific change or prohibition into the charter. Power is always subject to possible abuse in the hands of the wrong people. The problem is to establish a system that will enable the people to hold their officials responsible for the way they use power. There is no gain in setting up a new government and then hamstringing it by denying power essential to any effective government.

Remember that no one knows the formula for perfect fool-proof government. As to your particular solution, what experience supports it? How can you prove its value? Try it out on your fellow charter commissioners. Among them you should find common sense and shrewd judgment. If you can convince any of them, try it out also on your consultant and on some experienced and respected officials. In this way you may get some excellent suggestions for improving an idea you thought was perfect in its first form.

Try to find a basic pattern that, with active intelligent citizen participation, will offer the people a better opportunity to get good results. Get all the facts you can, before you make up your mind and then, when you have decided, go out in earnest for the plan you think offers the most for your city or county.

Be willing to compromise and to change your mind in the light of evidence. But to compromise does not mean to give up your good ideas and to accept inferior ones of others. It does not call for amiable surrender of sound principles to the stubborn opposition of a truculent adversary. It is not "practical" or "realistic" to compromise at every hint of opposition. Halfway measures have little appeal. Most citizens will respond to leadership which has the courage to offer real remedies for known ills or deficiencies. Compromise, properly speaking, is a group process of give and take in which the most practical ideas of all are blended together and made into a workable system. The end result may not please you in all respects, but it will represent legitimate consensus.

Don't refuse to support what is good, what is on the whole an improvement, just because you think something more nearly perfect could have been devised. Remember that perfection in social and political arrangements is humanly unattainable and that the perfectionist — the person who insists on perfection or nothing — may be non-constructive, if not an impediment to improvement. If Washington, Hamilton, Madison, Franklin and their colleagues could compromise in making the United States constitution, maybe you can do so (and also support the final result) in preparing a new charter.

When you accept membership on a charter commission you accept responsibility for leadership in the most important single civic effort that any community can undertake. The fact that a charter commission is authorized is usually indicative of an underlying popular urge for substantial improvement. The duty of leadership is to find the highest attainable level of improvement, not just a token advance. Statesmanlike compromise is simply a means to this end.

**The final arbiters will be the voters of the community. They will decide whether to accept or to reject the proposed charter. The task of achieving ratification will not be an easy one. Even if the charter commission recommends only minor changes in government structure, there will be opposition. As changes approach commonly accepted standards of being termed major changes, opposition will increase in almost geometric progression. The challenge hurled at the charter commission in either eventuality must be answered. An enlightened electorate is the best route to modern government. This being so, the charter commission cannot rely on its laurels, on the fact that it has done its technical job: that of producing a proposed charter, and hopefully a sound one. It has the obligation of fully explaining its contents, leaving no detail unattended to, and of selling the document to the people right up to the municipal election at which it is presented as a ballot proposition.**

**—Robert J.M. O'Hare, Ed.  
*A Guide for Charter Commissions***

# Chapter Two

## PRINCIPLES OF CHARTER MAKING

**T**his part of the *Guide* is necessarily written around the problems of municipal charter commissions because by far the most experience in charter-making has been in cities and towns. These principles are based upon that experience. Most future charter commissions will be at the municipal level. However, much of this discussion will apply perfectly well to a county charter. Counties of all sizes are assuming more and more functions previously confined to municipalities and, with the increase in county business, it has come to be recognized that the basic patterns of county and city government and administration should not differ widely.

The special problems with which a county charter commission has to wrestle arise primarily from the differences in the legal status of counties and cities in a particular state. The National Civic League, the National Association of Counties and the National Association of County Administrators can supply county charter commissions with additional materials on the forms and problems of county government.

### The Charter as a Document

#### *What is the Charter of a City?*

In popular discussions the charter is generally pictured as a single printed document issued under the title *Charter of the City of X*. It may have been conferred upon the city by special legislative act, or adopted by the home rule process, or acquired in some other way.

In law and in practice this important document is, as it were, only the central portion of the city's charter. At least, if the charter be looked upon as the basic law



that organizes, empowers and regulates the government, the citizen will have to look farther than simply to this one printed document. General and special state laws that regulate a city's taxing powers, for example, are fully as important as many provisions of the so-called charter. As the Minnesota Supreme Court stated many years ago, "If independent acts relate to the rights, powers, duties and obligations of the city, they are to be regarded as parts of the city charter."

This is an important principle for charter commissions to bear in mind. They are responsible for drafting or revising the central document of the city government — the city charter. They are not called upon to change all the laws that govern a city. Indeed, even under constitutional home rule the city may have no power to change some of the statutory provisions of law that bind it. This is a point on which each commission should get good legal advice so it may know the extent of the local power to change a city charter in the state concerned. No two home rule states have exactly the same rules upon this point and within any state the lawyers may differ considerably in their views on the issue. "Good legal advice" on home rule powers will not generally be obtained from a lawyer who is unusually timid, conservative or attached to things as they are. Unless the Supreme Court of the state has ruled otherwise, home rule provisions should always be interpreted liberally in favor of the right of the city to write a good, clear, forward-looking charter. A commission should not refrain from claiming a power or including a provision in the charter just because there is doubt of how it will stand up in the courts. The powers of many a city have been unduly limited not by the laws or courts of the state but by the timidity of the city's own lawyers or charter commission.

In revising the charter, or in writing a new one, the commission and its consultants must keep in mind, therefore, the other laws that control the city's government and also those that govern the county, school district and other local units. Not only must conflicts in provisions be avoided; in some cases positive provisions must be made to enable the city to take advantage of or to escape from certain state laws. In this way the city charter becomes a sort of harmonizing, integrating and controlling document.

### ***What are the Essential Contents of the Charter Document?***

These can be named only in part because they vary from place to place. Many cities have peculiar circumstances, unusual functions that arise from special laws or trust funds, special relations with semi-public organizations such as art institutes and library associations, or with the county, school district, courts and so on. In some cases these can be discovered by the commission and provided for in the charter only after careful search and consultation with those who know.

Recognizing that the amount of detail included in charters will vary greatly, and all local peculiarities aside, the essential provisions of most charters may be divided into five major groups:

1. The powers of the city, including corporate, proprietary and governmental powers;
2. Organizational provisions covering the local elected official: mayor and legislature or council; executive and administrative organization, including the manager, heads of departments and agencies; essential principles of organization within departments; and organizational relations among all;
3. Certain basic procedures or safeguards for such activities as council and board proceedings, adoption of ordinances, protection against conflicts of interest, and in some cases granting of franchises, tax assessment and collection, licensing, eminent domain and special assessments;
4. Modern administrative practices including budgeting, central financial management and accounting and adequate reporting, and in some cases personnel and planning procedures;
5. Popular controls over the government, including elections, charter amendments, and in some cases districting procedures and the initiative and referendum.

### ***What Are the Qualities that Make a Charter a Good Piece of Draftsmanship?***

1. Its language should be as simple, clear and compact as possible without sacrificing readability, which is an important quality in a document that regulates the local government. Like a constitution, a charter should be written for laymen as well as lawyers. Laymen, for the most part, will have to operate it. High school students and other citizens should be able to make fair sense out of it without the aid of a law dictionary. Long, involved sentences and unnecessary repetitious expressions — “heretofores,” “provided thats” — and other heavy and uninteresting terms should be avoided. Much of the best modern legal drafting is in clear, simple language. However, a clause which has been accepted by the courts as having a precise meaning should be preferred to a less legalistic expression that might not mean the same thing to the courts.
2. It should be consistent and uniform in language, in content and in the handling of comparable provisions. Lack of consistency is not only inartistic, it is confusing and may lead to needless litigation. Provisions of substance that do not harmonize with each other may breed disunity and unhealthy bickering and paralyze the government. A charter or a constitution is a single instrument, not a series of statutes which may safely be harmonized simply by having the courts, in case of conflict, give effect to the latest enactment. This is one reason why a charter cannot be written by pinning together the reports of a number of subcommittees, however good they all may be. It is also a reason why, once the commission has

selected a basic form of government, it should be wary about embellishing it with features borrowed from other forms. Responsibility in a so-called council-manager government can be destroyed, for example, by provisions that permit the mayor to wield administrative powers that would be more appropriate in a mayor-council government. Variations within a form are permissible but care must be exercised to avoid creating a system that is at war with itself.

3. As to content and length, the charter should be comprehensive in the sense of giving an overall pattern of government, but not in the exhaustive sense. To state all the essential and important things in a brief, terse way should be the objective. Details should be omitted as far as possible — most of them can be dispensed with. The more verbiage there is, the more uncertainty will prevail, the more litigation will be encouraged, and the more often the charter must be amended. On the other hand, brevity at the expense of clarity and precision is as bad as a surplus of vague words and phrases. The correct rule is to express the intended meaning with the fewest and best words, whether it takes ten or a hundred. In any case, a good charter will be a relatively short charter. How short? Who can say? Most recent well drafted city charters are much shorter than their immediate predecessors. The length of a particular charter will necessarily depend somewhat on state law, on whether or to what extent such matters as civil service, planning and elections need to be included in the charter.

4. A well drafted charter will leave far more discretion to the council than used to be the case. If details are omitted the council must supply them. A charter should confer upon the council a broad grant of powers to implement it and to promote the community welfare. This is in accord with the spirit of the age, a spirit that calls for active government in many fields of life. Furthermore, if urban people are to maintain local self-government they must free the hands of their principal elective officials instead of tying them. The only places where such restrictions as extraordinary procedural delays or mandatory referendum provisions are in order are in matters of such moment that posterity might be betrayed by irrevocable action, as in the granting of a long-term utility franchise or the issuance of long-term bonds.

5. A new charter, like a new dress or hat, should “do something” for the city. It should have some solid “talking points,” some modern and distinctive features that will draw attention to it.

6. Other desirable qualities in the charter document are: (a) a simple, flexible numbering system for sections (perhaps a decimal system) so that amendments can easily be inserted where they belong; (b) use of specific and definite repealers, if any are called for, instead of vague and general ones; (c) avoidance of or extreme caution about inclusions by reference. What is to be in the charter should be definitely stated, rather than merely referenced as it appears somewhere in the laws. This would not

necessarily apply to a reference to a well established procedure set forth in a general state law and commonly followed by cities in the state (e.g., a provision that property should be acquired pursuant to the state condemnation law). This does not preclude a charter provision authorizing adoption by reference of standard codes of technical regulation.

7. It is easier to draft a short, readable charter, limited to fundamentals, if it is provided or at least understood that the city council shall adopt an administrative code. An administrative code is simply a comprehensive ordinance or series of ordinances in which the council incorporates the details of administrative organization and procedures, and the more detailed procedures for protecting the rights of persons in their dealings with the administration. The administrative code is, of course, subordinate to the charter. All the provisions essential for protecting the citizens and other persons should be placed in the charter itself; so should any provisions needed to preserve the essential character of the basic plan of government and the correct relationships between the council and the administration. The precise number of departments under the mayor or manager, the allocation of functions among them and the internal organization of departments can best be left to the administrative code which can be changed by council as needs and experience dictate, without burdening the people with technical amendments to the charter.

Some older charters contain long, detailed chapters that outline procedures in eminent domain (the taking of property for public use), special assessments and other fields where procedures are involved yet important. Other charters omit these provisions entirely, with the understanding that the city will follow the applicable state laws and procedures. Another approach is neither to freeze the details of procedures into the charter nor to force the city to follow exactly the procedures set forth in state laws. The alternative is to claim for the city the necessary powers and prescribe desirable standards by ordinance, perhaps as parts of the administrative code. The code would then set forth details of both administrative organization and administrative procedure — two matters closely related.

If this plan is followed it might be well to set forth in the charter the essentials of due process that are to control all municipal agencies in their proceedings. What are these essentials? In all cases where any agency's decisions are judicial or quasi-judicial (i.e., where they take or seriously affect private or public rights, adequate notice and hearing should be required). Wherever a new rule or policy is contemplated (except in extreme emergencies like an epidemic) there should also be prior public hearings after adequate notice before it is put into effect. In certain cases there might be provision for administrative review of the decisions of lower administrative officers by their superiors. Such standards, set forth in the city charter, would control all administrative agencies, prevent the council from permitting any serious

injustices in administrative matters and tend to keep down the need for appeals to the courts.

Some of the subjects that could then be dealt with more fully in the administrative code, while the charter contained at most only brief and basic provisions concerning them, would be:

- Administrative organization
- Budgeting
- Accounting, expenditure, payrolls
- Auditing
- Purchasing
- Purchase, lease and sale of real property
- Safekeeping of public funds
- Bonding procedures
- Borrowing procedures
- Personnel recruitment, classification, discipline, removals, etc.
- Regulations of public property, assignment of space, concessions, permits, etc.
- Franchises
- Eminent domain
- Special assessments
- Tax assessment, levy and collections
- Licensing and revocation of licenses
- Abatement of nuisances
- Inspectional services
- Zoning, building and housing regulations
- Planning
- Public works procedures
- Public utility services
- Public records and reporting

## Grant of Municipal Powers

There was a time when some leading Americans believed they could get along almost without government. Restrictions of many kinds were placed in state constitutions, city charters and other public documents to prohibit governments from doing this or that. Cities especially were fenced in. The courts developed that rule of strict construction of municipal powers which said, in effect, that every doubt as to the possession of a power would be resolved against the city government.

During the 19th century it became the practice to enumerate in city charters in great detail every particular thing that the city government might do. These lists of

powers became very long, up to over a hundred sections, as charter draftsmen indulged in the vain effort to state everything. Examples will be found in most of the 19th century charters of major cities. A few items from one such charter will illustrate the point.

The city council shall have power by ordinance.

Sixth: To prevent the encumbering of streets, sidewalks, alleys, lanes, public grounds or wharves, with carriages, carts, wagons, sleighs, boxes, lumber, firewood, posts, awnings, or any other materials or substances whatever.

Fourteenth: To prevent all persons riding or driving any ox, mule, cattle, or other animal on the sidewalks in said city, or in any way doing damage to such sidewalks.

Thirty-third: To provide for and regulate the erection of hitching posts or rings for fastening horses, or to prohibit them in any portion of the city, in its discretion..

Forty-third: To regulate the piling of lumber, shingles or lath in said city, etc., etc., etc.

These are not entirely fair selections but they illustrate the attempt to cover everything in detail. Presumably the council could not legally regulate even hitching posts without specific authority. These selections show, also, how such provisions get out of date. When new things come along — automobiles, trucks, bicycles, kiddie cars, radio, airplanes, television — there must be new legislation or charter amendments every time. Furthermore, every stated power was construed narrowly; the power to regulate drays might not include that to regulate wagons even if wagons were used for the same purpose.

A charter commission should not hamstring the city government by following this old formula for stating municipal powers, itemizing every single thing it wants the council, mayor, manager and other officers to do. If it does it will almost certainly overlook something it should have included and so the process of charter amendment will have to begin almost before the ink is dry. There will be plenty of litigation, too, as interests that want or don't want the city to do some particular thing take their cases to court and split hairs over the meanings of words.

The modern movement is wholly against such detailed, niggardly and restrictive grants of municipal powers. Constitutional municipal home rule is intended to free cities from the necessity of running to the state legislature every time the public welfare requires something new to be done or an old function to be performed in a

new way. The purpose is at the same time to relieve the legislature.

For over a generation now the best advice to every home rule city has been to insert in its charter a broad grant of powers so as to take full advantage of home rule. Is there any real danger in this policy? None has appeared in practice and the reasons are fairly clear.

In the first place, most city councils are highly conservative and some are downright timid about undertaking new services or enacting novel regulations. In the second place, there is usually too little money available for a city to start out on important new ventures. In the third place, there are voters and elections to hold the city administration in line. Then, finally, even if it has all municipal powers a city will find itself still hemmed in by legal restrictions.

There are limits set by the state constitution, by the state legislature, and by court interpretations of municipal powers. And as if these were not enough there is always the United States constitution to prevent any city, as an agent of the state, from depriving any person of life, liberty or property without due process of law. There is no country that provides more legal checks upon the base of powers or more easy access to the courts for testing any possible abuse.

The particular formula of words to be used in conferring a broad grant of powers upon the city is a matter for the charter draftsman. There are various wordings for achieving about the same result. The home rule charter of Cincinnati and the *Model City Charter* are examples. Article I of the Cincinnati charter reads as follows:

“The city shall have all powers of local self-government and home rule and all powers possible for a city to have under the constitution of the State of Ohio. The city shall have all powers that now or hereafter may be granted to municipalities by the laws of the State of Ohio. All such powers shall be exercised in the manner prescribed in this charter, or if not prescribed therein, in such manner as shall be provided by ordinance of the council.”

## Plan (Form) of Government

This is not the place to go into a detailed discussion of the various plans of local government available to home rule cities. There are many other sources from which to obtain this information. This question is a most important one and it would be unfortunate to have the decision made on any basis short of a thorough study.<sup>1</sup>

The 19th century forms of American city government (mostly weak mayor, strong council with all members elected by wards, and various elective officers and boards, all dividing up the powers and confusing the voters) are still numerous but on the way out. The early 20th century drive for the so-called commission plan has spent itself. Virtually no cities have adopted that plan in recent years, whereas

abandonments have been numerous and continue.

The weak mayor form, lacking an integrated executive results in diffusion of authority and responsibility. Often this form provides for the election of several municipal department heads. Administrative direction is further diffused by dividing the responsibility for supervising the administration among council committees whose chairmen frequently act as if they were the heads of municipal departments. In addition, there may be administrative boards elected or appointed for overlapping terms.

The commission form of government has most of the defects of the weak mayor form plus additional defects that are peculiar to itself. There is, for example, no organizational distinction between policy making and administration. When splits occur in policy making, evidenced perhaps by a three to two vote, it is difficult to enforce resulting policy on minority commissioners in their roles as administrators. From the citizens' viewpoint, when they wish to determine responsibility for particular action or inaction, they discover that the commission form, with co-equal administrators is made to order for "passing the buck." There is also the added difficulty of finding and electing commissioners who have the unusual qualifications for effective work both as legislators and as administrators.

There remain **two general types of organization**, the so-called strong mayor-council plan and the council-manager plan. Both provide for broad council control over city finances, ordinances and policy, and both concentrate in the hands of one executive responsibility for supervising and directing the heads of the city's principal administrative departments. In the strong mayor-council plan it is the elected mayor who holds this important office. In the council-manager plan it is a manager, appointed, supervised and removable by the city council.

It is the virtually unanimous judgment of recognized authorities on municipal government and administration that unification of the city administration under one responsible head is a desirable thing. Most cities that have achieved this thorough structural reorganization during the last 40 years have concluded that the council-manager plan provided the most satisfactory arrangement for a responsible chief executive. For some time this plan, which is recommended in the *Model City Charter*, has been gaining rapidly at the expense of all other plans. More than half of all cities over 10,000 have this plan. The strong elected executive mayor and council plan is presented as the alternative to the council-manager plan in the *Model City Charter*.

In adopting either the mayor-council or the council-manager type of organization a charter commission is not bound to rigid requirements of detail. Many variations are possible, although not equally desirable, within each type. The council-manager plans in Cincinnati, Dallas, Phoenix, San Diego, and so on are not identical. There are, in fact, some strong and some questionable features in each. Even greater variations will be found among so-called mayor-council plans.

It is hard to draw up a categorical list of mayor-council charters because so few



fully conform to all the standard tests for such charters. This is partly because some mayor-council charters are the result of a gradual strengthening of the office of mayor over a period of years rather than a definite decision to adopt a new form. It is also the result of obvious reluctance on the part of the people of many cities to entrust a politically elected independent mayor with the same over all responsibilities with respect to operations and personnel that have commonly been given to the "controlled executive" or professional manager appointed by and continuously responsible to the elected council in the council-manager form. In that form the mayor is a member of the council, the chief legislator, not the chief executive.

In the council-manager plan all powers of the city (with minor exceptions) are in the council. In the mayor-council plan there is a separation of powers between the mayor and council. This is designed to provide a system of checks and balances but it also has the potential for conflict between the legislative and executive branches.

In recent years a number of larger cities (Newark, New Orleans and Philadelphia among them) have adopted what is known as the strong mayor-administrator plan. The substance of the plan is to provide the mayor with one or more high level administrative aides to assist him in managing the city. To the extent that these staff arrangements facilitate the work of the mayor as head of the city administration, they are commendable.

The so-called chief administrative officer (CAO) plan is identified primarily with California although variations of it may be found throughout the United States. An administrative officer is employed by the legislative body to serve its bidding. In many communities the duties of the office are those of a glorified clerk, while in others they may involve so much responsibility that in actual operation the CAO performs practically as a city manager. The CAO plan, however, tends to provide a less stable basis for good management than the council-manager plan.

A charter and a plan of municipal organization ought to be made to fit the community but it is a mistake to assume that one community is so "different" that its charter should depart from principles well tested by experience in a large number of places of all kinds and sizes. There are, for example, principles of organization and official responsibility which it is foolish for any charter commission to ignore. A good consultant will understand these principles and endeavor to persuade a hesitant commission to employ them.

A question which a charter commission must consider as it chooses a form of government is how the form may enhance the development of policy or political leadership in the city. Can the leadership role be best filled by a strong executive mayor in the mayor-council form or by a strong non-executive mayor in the council-manager form?

### ***Council Organization***

In any plan of city government the council is a most important body. Most American cities have a one-house council, of relatively small size (say five to

fifteen, although some are larger), elected for terms — two or four years — and paid modest salaries for the part-time service required except in small cities where the position is often unpaid. The idea is to make council service attractive to able candidates and to concentrate authority in a small, compact, visible body, in which every member is important and can be closely watched by the media and the voters.

In the granting of municipal powers it is the general rule that all the city powers not clearly delegated to some officer or board may be exercised by or at the direction of the council. Specifically, the council receives a general ordinance-making power and control over the city's finances (budgets, revenues, expenditures and borrowing) and its property.

For charter commissions a most significant issue which must be addressed is the representative character of the city council. This has always been the case but since the one person-one vote decisions of the courts and the passage of federal Voting Rights Act this issue has become paramount. For this reason the Seventh Edition of the *Model City Charter* presents several alternative methods for electing the council: (1) election at large; (2) election at large with district residency requirements; (3) mixed at-large and single-member district; (4) all single member districts; and (5) proportional representation. The choice will depend upon local conditions.

### ***Administrative Departments***

There must be administrative departments in every city government. It may be necessary or desirable to provide specifically for certain key departments, especially for those through which fiscal and personnel controls are exercised. In general, however, the less detail in the charter on departments the better. The council should have a good deal of latitude to keep administrative organization easily adaptable to changing requirements. Plans and proposals for administrative shifts and reorganizations generally should come from the manager in the council-manager plan or from the mayor in the mayor-council plan.

### ***Administrative Responsibility***

The first principles of sound administrative structure are simplicity and responsibility. A charter commission should resist attempts to introduce needless complexity or to deviate from straight lines of responsibility. Such deviations are often proposed ostensibly as safeguards, "checks and balances." If the history of local government has taught us anything it is that such "safeguards" are actually pitfalls both for efficiency and for popular control. Therefore, all administrative departments should be headed by persons appointed by and responsible to the chief executive — the mayor or city manager. (In cities like New Orleans where the mayor appoints a chief managerial assistant to ride herd on all or much of the administration, the appointment of department heads may well be given to this official.) The mayor is, in turn, responsible to the people, at least when the next election rolls

around. And the manager is responsible at all times to the people through their elected representatives in council, who can dismiss the manager at will, subject only to the right to a public hearing. These are essential features of the standard mayor-council and council-manager plans. Any appreciable deviation from them, such as council confirmation of appointments or special tenure for the manager, is almost bound to reduce the chances of satisfactory operation of the government.

This means that there is no room in either plan for independently elected administrative officers. Independent election of such officers defeats administrative responsibility and adds to the burden and confusion of the voter.

Neither should departments be headed by boards or commissions. Boards and commissions have their uses — for advisory purposes in some cases — to review administrative decisions or rules affecting persons or property, or to assist in developing and interpreting a new program which must be understood and accepted by the people before it can become effective in action.

Thus, there may be room in the administrative structure for an advisory health council, for a board of tax review, for a civil service board of limited function, for a planning board. But actual administration, involving direction of personnel and execution of policy in these as in all other fields should be the undivided responsibility of a single administrator responsible directly to the mayor or manager. Generally speaking, members of such boards or commissions should be unpaid, or at most paid necessary expenses and possible modest per diem rates for time necessarily spent.

Separate boards and agencies, more or less autonomous and more or less independent of the main city government, are found in many municipalities. It is no reflection on the unselfish service of fine citizens who serve on them to observe that many of these boards are hangovers from an earlier and sadder day in municipal government. Voters disenchanted with political mismanagement in decentralized weak mayor governments sought to insulate new or valued services — libraries, parks, health, welfare and the like — from “politics” by putting them under “citizen” boards.

The modern movement for simplified, responsible government along the lines of the council-manager and the mayor-council plans is partly the result of the fact that the multiplication of boards and commissions never cured and often intensified the basic ills. It is true that independent boards and commissions involved a number of selected citizens directly in governmental processes, with the result that certain functions were sometimes conducted on a higher level of integrity and service than the general government. Unfortunately, this frequently meant not more but less effective citizen participation in the essential task of making the whole city government what it ought to be. Good citizens, who might otherwise have led in a general clean-up, concentrated on a single service and, for fear of jeopardizing it,

left most of the city government strictly alone. And some boards, of course, were just as "political" as any other department in the city.

Hence, retention of these old boards is not only inconsistent with the basic principles of modern, responsible city government, it is also an unsatisfactory, self-defeating method of arranging for wide citizen participation. There is a limit to the number of citizen officials, paid or unpaid, who can function inside government without getting in one another's way. There is, however, no limit to the number of citizens who as individuals, as participants in local politics as members of voluntary citizen organizations or in some cases as members of official advisory or watchdog committees without governing functions, can contribute to the vitality and soundness of local government.

It goes without saying that the line of responsibility should not be broken by burying a board with managerial powers inside a department. A park board, for example, can be just as independent in fact whether it appears on the organization chart as a separate department or an agency inside a tent labeled "department of public property."

The general goal for the city government, therefore, should be to make it as far as possible a single, comprehensive unit because in unity there can be greater strength, better planning, surer progress and more effective overall control by an informed and alert citizenry. The trend in recent years has been to abolish all independent boards and commissions except school boards.

In no case should members of the council or council committees be permitted to engage in administration. Except for purposes of investigation or securing information, all council members' dealings with the administration should be by the council as a whole through the chief administrator-mayor or manager. Nothing is better calculated to impair the morals as well as the morale, efficiency and economy of a city government than to have individual council members exercising administrative discretion or influencing administrative acts.

### ***Fiscal Control***

Responsible government rests on sound procedures as well as on good structure and effective voting. The treatment of procedural matters generally is discussed elsewhere but the procedures for raising and spending money call for special attention. Much of the historic struggle for responsible government has been over the control of what goes into and out of the public purse. A government that looks good on an organization chart may be quite ineffective and irresponsible in fact if its fiscal arrangements and controls are inadequate.

Exactly what can and should be put in the charter on these matters will depend on the state constitution and law. With most major tax sources except property largely preempted by state and federal governments, cities should avoid putting arbitrary or unnecessary limitations on the taxing power of their own councils. Imprudent tax rate limitations, for example, have forced many a city to adopt un-

sound financial expedients to meet mandatory or urgent requirements. Fairness both to the taxpayer and to the city treasury requires that assessment and collection of taxes be uniform and certain. This means that assessment should be by qualified professionals, never by a board of amateurs. There is no place for elected assessors or collectors. In general assessment and collection are covered by state law and should not be dealt with in charters.

The specifications for a sound budget system, including a separate capital budget have been written into a large number of city charters as well as state laws.

Provision should be made to keep separate financial and accounting records for city-owned utilities. In general, such utilities should be on a self-sustaining basis, contributing to the general revenue of the city only an equivalent of normal taxes on a comparable private enterprise.

It makes for most effective and responsible administration of a city's fiscal affairs to include all financial administration functions in an integrated department of finance, the head of which is appointed by the chief executive—mayor or manager. In small cities some of these functions may be performed directly by the manager. The charter should include enough detail to ensure the basic soundness and integration of fiscal operations. There should, for example, be safeguards designed to ensure that the budget will be balanced in fact as well as on paper. The charter should clearly establish the responsibility of the chief executive for preparing, publicly explaining and administering a complete financial plan and the responsibility of the council for basic policy decisions as to the sources and amounts of revenue to be raised and the broad purposes for which they are to be spent. The objective of council control is to see that money is spent, with as little waste as possible, in support of the services and policies which it has called for. The council should be interested in the work performed. What to do is for the council to decide; how to do it, within the limitations of law and accepted principles, is a matter of administration.

The council should appoint its own auditor or qualified public accountant to do a post-audit as an independent check on the administration. Neither the council nor its special agent should be called on to approve or certify for payment claims or bills for goods or services. This practice is, at best, a waste of time; at worst, an impediment to responsible administration.

## Methods of Popular Control

The city is the people, and the municipal governmental organization that holds them together exists to enable them to promote their welfare. To this end they must have the means whereby they may control the city government. Consequently, a major goal in all city charter making is to make the city government more demo-

cratic, more responsive to the real will of the people. If they are not ready for this responsibility now they never will be unless they are given an opportunity to learn by doing — and perhaps by making a few mistakes.

Not all the things done in the name of democracy in the United States have actually advanced the cause of popular control over government. At one time it was argued, for example, that the more officers the voters elect the more control they will have over their government. This idea led to what is called the “long ballot.” Not only the mayor and the council but also various other officers, such as the auditor, treasurer, assessor, city attorney and even chief of police, and various boards for public works, parks and other services, obtained their positions through popular elections.

But did the voters really choose them? Hardly ever. Skillful manipulators, the bosses and the partisan political machines, were needed to make up the long and complicated lists of candidates. All the voter could do was choose between rival slates of candidates picked by somebody else. Furthermore, the city government itself became so disintegrated as a result of the long ballot that it took a partisan boss or machines behind the scenes to obtain any kind of unity. The era of the long ballot was the era of the worst American city government and of the least actual control by the voters. Where there was no boss or machine, as in many smaller communities, voters felt helpless and became apathetic under the burden of making so many decisions.

A charter commission may be somewhat restricted by the state constitution and laws in what it can do to improve popular control. Within the limits of what it can lawfully do, however, it will find the following arrangements helpful in achieving this objective.

### ***Majority Rule***

Whenever in any popular election or in any action by a legislative body more than a majority vote is required (say 3/5 or 2/3 or 3/4) the effect is to give a minority control over the majority. In certain important actions by small select bodies such as a small city council it is not unreasonable to require a majority of all the members to vote favorable on the decision to be made, or even to require some delay in action voted for the first time by such a majority, but anything more than that leads to minority rule. In popular votes on issues, a majority of all voting on the question should suffice.

### ***Short Ballot***

Have the voters elect only the most important public officials and representatives, those who will have something to do with deciding broad public policies. This may mean reorganizing the government so as to concentrate more powers in those who are elected but it will increase popular control. By directing their attention to the few offices to be filled by election and to a correspondingly small number of

candidates the voters can be helped to act far more effectively. The best plan is to elect only the council, except in mayor-council cities where the mayor must be separately elected. In council-manager cities the mayor is a member of the council.

### ***Ballots Without Party Designations***

National and state parties have limited significance in municipal affairs and it has proved unfortunate to have municipal elections and issues decided solely upon the basis of electing Democrats or Republicans. If candidates are labelled on the ballot as Democrats or Republicans, or if straight party voting is encouraged by arranging all the candidates of each party in a single row or column, or by permitting a straight vote with a single mark (X), the major parties or a single dominant party can often exploit a local government without ever presenting any genuinely local issues.

Approximately two-thirds of the cities over 5,000 have nonpartisan local elections, that is, elections with no party designations. It is generally agreed this development has resulted in considerable improvement. This scheme does not necessarily eliminate political parties but it tends to shift the basis of party division to one which makes more sense in terms of local issues. It also has certain other results. It tends to keep national party leaders more in the background in municipal elections. If they put up candidates, they cannot call for straight-ticket voting by any easy ready-made device, and they have to put up candidates who have some real merit and appeal as candidates for city offices. Ultimately a non-partisan tradition may come into being as it already has in many places. The voters, having a free choice among candidates for each office, frequently elect some candidates who are independents as well as some who in national and state politics are Republicans or Democrats. All these have to work together in the city government. As a result national party strife must be put side so that concerns of the city become the principal basis of municipal action.

### ***Non-Partisan Primaries***

To make elections without party designation more effective, and to guard against minority control, nominations are frequently made at primaries for which ballots are printed without party labels. To ensure a clear cut majority choice at the final election the laws usually provide that only the candidates with the highest votes in the primary equal to twice the number to be elected to any office shall have their names on the final election ballot. This arrangement discourages candidates from making a straight party appeal because to do so is to risk losing the support of voters who are independent or who belong to some other party. Thus the combination of primaries and elections on ballots without party designation helps to put municipal politics on its own and to free city governments from domination by national, state or county party organizations. It is an important part of genuine home rule.

### ***Separate Municipal Elections***

Another way to concentrate attention on local issues is to hold city primaries and elections at a different time from state and national elections. With most state and all national elections scheduled for November in the even-numbered years, the odd-numbered years are generally free for municipal elections. Many municipal elections are held in the spring. For clear thinking and intelligent action the voters need to have a separation of the issues presented to them. A separation of elections is an important step in this direction.

### ***Initiative, Referendum and Recall***

Singly and in various combinations these three devices of direct democratic control over government are to be found in many American cities. If legislative and executive branches of the city government can be simplified, strengthened and made more responsible to the voters, there will be less need for the initiative, referendum and recall. On the other hand, they do give local citizens a degree of confidence in their own ultimate control of their city. They have been characterized as "a gun behind the door." To have them or not have them for ordinary purposes can be left to local preference. The decision as to recall may well hinge on the decision as to the length of terms. There is greater justification to provide for recall with four-year than with two-year terms.

### ***Charter Amendments***

In the matter of charter amendments, the initiative and referendum are fundamental. The people should not be at the mercy of their elected servants in making important changes. The charter initiative gives them ultimate control of their own government. Any charter changes should, of course, require popular approval at a referendum.

### ***Access to Public Acts and Records***

Popular government depends on adequate information about the conduct of government. This in turn requires that government, so far as possible, be conducted in the open and that the people should have reasonable access to such public records as payrolls, tax rolls, accounts, etc. It also means that provision should be made for apprising citizens of contemplated public policies or administrative proceedings that may affect their interests so that they will have an opportunity to be heard and have a part in the making of policy. Charter provisions for publication of and public hearings on proposed ordinances, budgets and borrowings are of fundamental importance. If there is any doubt as to the adequacy of existing law giving citizens access to public records, the charter should clear it up. Provisions requiring that meetings of council be public and requiring the issuance of some sort of annual report are in almost all charters or in general state statutes. Some charters go even farther in spelling out the affirmative duty of the city government to keep the public



informed of its activities, but in this as in other matters detailed procedures can best be left to the administrative code.

**The most practical way of keeping a charter to moderate bulk is to restrain the tendency common among charter commissions of trying to solve all municipal problems right in the charter. This is not the proper function of a charter, which is rather to establish a framework within which the city government, representing the people, can solve its problems as they arise. ...It is particularly important not to go into too much detail with regard to department organization. The charter in this respect should be skeleton to which the flesh and blood is to be added...**

**—Thomas H. Reed**  
*Revising a City Charter*

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**Note**

<sup>1</sup>Some of the most successful charter commissions have been pledged in advance to a particular form of government. This may be done by a prior referendum or simply by the members of the commission having been elected on a platform calling for a particular form. Assuming that the prior commitment of the commission is the result of a careful city-wide program of public discussion and education, the work of the commission can then proceed in an atmosphere of public acceptance conducive to deliberate, untroubled decision on collateral matters and to a sound, clean job of drafting. The all-important point for the commission to keep in mind is its commitment to the essential features of a good charter of the type promised.

# Chapter Three

## SOME CONCLUDING OBSERVATIONS

**T**he goals of better charter-making are the same as those of better city and county government: better public services, greater efficiency in the use of human and other resources, and a more effective local democracy.

Some will argue that efficiency is not a test of good government at all, that it is a purely materialistic businessman's objective, without moral value. Don't let them fool you. Ask them to consider the moral implications of the doctrine of stewardship. When you are responsible for spending public money or other people's money under any circumstances, efficiency includes honesty and the avoidance of waste in any form. Thus it is a practical moral principle of a high order of value.

Answered on this point, some sophists ridicule attempts to make local government more democratic, more representative, and more responsive to the public's needs and will. They say government is bound to be an oligarchy and a promoter of special interests rather than of the general welfare. Again, don't let them put you on the defensive. Admit the frequent indifference of the voters and sometimes long continued rule of entrenched political machines. But how have some of these machines been eliminated? Where has a corrupt, inefficient local oligarchy been cleaned up most effectively if not where the voters aroused themselves and had the means at hand for a house-cleaning? A good city charter is certainly one of the important weapons in such a drive. A charter that establishes adequate democratic control, that puts power into the hands of the voters to regain control of their government when they need it, is essential to democratic morale and success. On the whole, in this country and abroad, the most truly democratic city governments have been the most responsive to the public welfare and the most progressive in terms of increased services, modern methods and efficiency.

The tests of good local government are always debatable. A low tax rate is not necessarily proof of good city government and neither is a low expenditure rate. Modern cities and counties are administratively alive and functioning. They need to raise and spend money for the results the people desire. At the same time, high

rates of taxation and expenditure are no proof, either, that the people are getting adequate services.

Getting the most possible in terms of public service and welfare out of every dollar spent is a partial measure of good government but it does not go far enough. An unprogressive city or county might well achieve such a result. Progressiveness, planning and looking to future improvements are also important tests. So, too, are a keen public interest and a high ratio of popular pride and participation in the work of the local government.

A charter cannot alone achieve all these ends but it is an important tool for making them possible. It is a key that can help a city or county unlock the door of opportunity. As a member of a charter commission, you have assumed a long-time obligation to help the people use that key wisely and effectively. After you have presented the charter, the people will have a right to look to you for help in understanding its merits and, later on, in making it work as it was intended. The better the charter to begin with, the lighter will be your responsibility in the years ahead, and the more fortunate will be your city or county.

**A final word of advice to charter drafters: Be realistic. This does not mean the abandonment of ideals, that indeed would be the worst kind of folly. It does mean, however, a recognition of the facts of life. There are "realizable ideals," as Theodore Roosevelt called them, which it is unwise to sacrifice to mere perfectionism. The charter commission should recognize the wisdom of listening to good professional advice. It is equally the duty of the draftsman or professional advisor to heed the practical good sense which should reside in the charter commission. Sometimes, of course, charter commissions fail correctly to interpret the public opinion of the community. It must not be forgotten that some of the world's most determined theorists are so-called "practical" individuals outside the fields of their usual activities. It may sometimes even become the duty of the charter technician to recall members of the commission to an attitude of realism.**

—Thomas H. Reed  
*Revising a City Charter*

# Appendix

## SOME USEFUL MATERIALS AND SOURCES

**C**harter Commission Members will not have time to read all important material on city or county government and city or county charters. The charter consultant should select for the commission the materials deemed most important. Extracts from longer and less available works should be duplicated for commission use if time and funds permit.

Some of the more technical works should be available for reference. Other items, like general books on local government, largely duplicate one another. Some commissions will have no need for some material which may be important to others. If a commission has special problems, it may wish to consult more detailed materials on particular matters. Up-to-date bibliographies on such matters may be found in the *Municipal Year Book (ICMA)*.

Special care should be taken in using charters of other cities or counties. There are good charters but relatively few can be recommended unreservedly to others as models. Many older charters, even of well governed cities, could be improved in the light of more recent experience. Most charters are too long and detailed. Many show marks of compromises with local tradition or prejudice which are not worthy of export to other communities, and do not even now fit the needs of the places that have them. Charters of other jurisdictions in your own state may be useful chiefly as indications of how other charter draftsmen have accommodated their work to the laws of your state. All charters should be read in the light of the circumstances, skill and care behind their preparation.

Following is a list of useful materials:

### **From Your Own Local State**

- Charter of your city or county and of others in your state
- Constitutional municipal or county home rule provision and home rule enabling act or acts of your state
- Leading charter and home rule decisions by your state supreme court
- Selected general or special laws affecting the government of your city or county
- Books, reports, pamphlets and articles on local government, charters and home rule in your state. Articles in local law reviews, state municipal league and state county association publications, and reports by state legislative councils and committees, university research bureaus and local bureaus of municipal research may be valuable. These include, in a few states, model charters and other items specifically for charter commissions.

### **Materials of a More General Nature**

**A. Model Charters** (published by the National Civic League, Inc. 1445 Market Street, Suite 300, Denver, CO 80202-1728; (303)-571-4343).

*Model City Charter* (with commentary) Seventh edition, 1989.

*Model County Charter* (with commentary) Revised edition, 1990.

### **B. Books on American Local Government**

There are many university-level textbooks on state and local government and on municipal government and administration which will provide useful background for charter commission members. A particularly valuable source of information is the *Municipal Year Book* published by the International City Management Association. It contains extensive statistical tables and analytical and bibliographical materials. These books can be found in any college or university library and in larger public libraries.

**C. Periodicals**

NATIONAL CIVIC REVIEW, (quarterly), National Civic League, Inc.

*Public Management*, (PM), (monthly), International City Management Association (ICMA).

In many states the state leagues of municipalities and state county associations publish periodicals which contain articles which will be helpful to charter commissions.

**D. Sources of Information**

National Civic League, Inc., 1445 Market Street, Suite 300, Denver, Colorado 80202-1728; (303) 571-4343.

Advisory Commission on Intergovernmental Relations (ACIR), 1111 20th Street, N.W., Washington, DC 20575; (202) 653-5540.

International City Management Association, 777 North Capitol Street, N.E., Washington, DC 20002-4201; (202) 289-4262.

National Association of Counties (NACo), 440 First Street, N.W., Washington, DC 20001; (202) 393-6226.

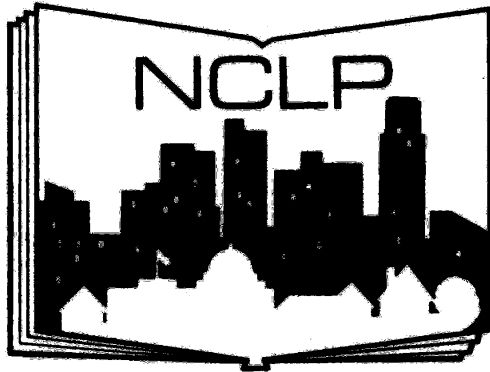
National Association of County Administrators, P.O. Box 34435, Bethesda, MD 20817; (301) 469-7460.

National Association of Towns and Townships (NATaT), 1522 K Street, N.W., Suite 730, Washington, DC 20005; (202) 737-5200.

National League of Cities (NLC), 1301 Pennsylvania Avenue, N.W., Washington, DC 20004; (202) 626-3000.

United States Conference of Mayors, 1620 Eye Street, N.W., Washington DC 20006; (202) 293-7330.

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