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# HANDBOOK

## Ohio County Commissioners

*Published by: County Commissioners Association of Ohio*

37 West Broad Street, Suite 650 • Columbus, Ohio 43215-4195  
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## CHAPTER 1

# BASIC STRUCTURE OF COUNTY GOVERNMENT

**Latest Revision  
November, 2002**

The General Assembly shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government....  
(Ohio Constitution, Article X, Section 1, in part)

### 1.01 INTRODUCTION

County government predates statehood. Indeed, by the time Ohio was admitted to the Union in 1803, nine counties had been established under the provisions of the Northwest Ordinance of 1787. Washington County was Ohio's first county, established in 1788. Ohio now contains 88 county governments.

The roots of county government can be traced back as far as 603 AD to an area of Southern England where the King divided the land into "shires". Shires were controlled by the monarchy who appointed a local governing official. The term shire was used until the 15th century when the term "county" was adopted. County government evolved in England over several centuries and was brought to the United States with the English colonizers. American independence fostered various changes to American government, including the strengthening of state governments and a more defined role for counties. Yet, the Saxon influence is still evident in county government today.

The Ohio Constitution, as cited at the beginning of this chapter provides authority for the organization and governance of counties. This chapter will discuss the general statutory form of county government. Chapter 2 will discuss county charters and the alternative form of county government as authorized by the Ohio Constitution and codified in Chapter 302 of the Ohio Revised Code (ORC). The General Assembly has no authority to provide separate forms of government for individual counties.

### 1.02 COUNTY ELECTED OFFICIALS

Each Ohio county organized under the general statutory law has eleven elected officials consisting of three county commissioners and an auditor, treasurer, prosecuting attorney,

clerk of courts of common pleas, engineer, coroner, recorder and sheriff. There is no chief executive officer; each elected official possesses some executive authority. A brief description of the duties of each elected official will be given later in this chapter.

### 1.03 COUNTY POWERS

County government does not possess home rule authority. That is to say, county officials may act only when and as specifically authorized by state law. An 1857 Supreme Court case established a general theory of the status of counties which is still relevant today. The court stated:

"Counties are local subdivisions of a state, created by the sovereign power of the state, of its own will, without the particular solicitation, consent, or concurrent action of the people who inhabit them.... With scarcely an exception, all powers and functions of the county organization have a direct and exclusive reference to the general policy of the state, and are, in fact, but a branch of the general administration of that policy. (*Hamilton County v Mighels, OS 109*)."

In addition, other court rulings have defined the nature of county government in Ohio. County government is viewed as "a constituent part of the plan of permanent organization of the state government (*State ex rel Godfrey v O'Brien, 95 OS 166*). Another court viewed counties as "serving as a mere agency of the state for certain specified purposes (*Cincinnati W.E.Z.R. Co. v Clinton County (1 OS 77)*). Many county officials who are concerned with the problems of state mandates become enraged when they are reminded that one court stated that "the county is a creature in the hands of the state as its creator, subject to be molded and fashioned by the state as the exigencies of the situation may require" (*Blacker v Wiethel 16 OS (2d) 65*).

Contrast these statements by the courts defining the basic nature of a county with Article XVIII, Section 3, of the Ohio Constitution, the Municipal Home Rule Amendment of 1912:

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

While the concept of municipal home rule is complex and has been defined over the years by a myriad of court rulings, the distinction is clear. Counties, not possessing home rule or powers of local self-government, may perform only those governmental functions specifically authorized by state law and in the manner specified in law. If the ORC is silent on the subject, counties do not possess the authority to act.

Municipalities, on the other hand, are generally free to act in areas where counties may not. The Home Rule Amendment to the Ohio Constitution grants municipalities almost unlimited authority to exercise powers of local self-government. In addition, municipalities may enact police, sanitary, or similar regulations if they do not conflict with general laws of the state. The courts have interpreted the constitutional provision "as are not in conflict with general laws" as applying only to "police, sanitary and other similar regulations" and not to "powers of local self government". The adoption of a municipal charter is not required in order to obtain home rule powers because municipal home rule is a direct constitutional grant of power.

For example, county commissioners are without authority to license and control cats, as

they do dogs, because the ORC is silent on the subject. Municipalities, however, are free to enact an ordinance requiring licensing of cats.

#### **1.04 RESPONSIBILITIES OF COUNTY ELECTED OFFICIALS**

Several chapters of the ORC must be consulted in order to gain a good understanding of county government. The following chapters of the ORC contain basic information on all county elected officials:

<b>Officials</b>	<b>ORC Chapters</b>
A. Board of County Commissioners	305, 307
B. Auditor	319
C. Clerk of Courts of Common Pleas	2303
D. Coroner	313
E. Engineer	315
F. Prosecutor	309
G. Recorder	317
H. Sheriff	311
I. Treasurer	321

No county elected official's office is established in the state constitution. The offices of all county elected officials are established by legislative act as are the duties of the various officials. Following is a summary of the major responsibilities of the county elected officials:

##### **A. Board of County Commissioners - ORC Chapters 305 and 307**

All Ohio counties organized under the general statutory law have three county commissioners, two being elected at the time of the presidential election and one at the time of the gubernatorial election. The county commissioner elected at the gubernatorial election takes office on January 1st, and the two elected at the presidential election take office on January 2nd and 3rd. Candidates for these two commissioner positions must file for either the January 2 or 3 position (ORC 305.01).

The organizational meeting of the board of county commissioners occurs on the second Monday of January each year by the election of one of its members as president (ORC 305.05). The commission must hold 50 regular meetings per year (ORC 305.06) and as many special meetings as necessary to conduct their business (ORC 305.07).

County commissioners make up the general administrative body for county government. As indicated above, they can perform those duties which are specifically authorized by the General Assembly and no more. They are the county government taxing, budgeting, appropriating, and purchasing authority. They hold title to county property. Individual

commissioners have no power to act independently. All formal and official actions must be taken by the board of county commissioners acting as a body by majority or unanimous vote.

Commissioners also have a myriad of other responsibilities including hearing and ruling on annexations, approving drainage improvements through the petition ditch process, establishing water and sewer districts and making improvements, and providing for solid waste disposal.

Commissioners also appoint department heads of offices for which they have responsibility and also appoint members to a variety of boards and commissions, and also serve on some boards such as the board of revision, the county records commission, and the planning commission.

Commissioners must work with all other county elected officials and with judges to assure that they are properly funded to perform their statutory duties.

But it is the non-statutory duties of county commissioners that make them different from other county elected officials. By necessity, county commissioners must take a broad view of actions necessary to make the county a better place to live and work. Many commissioners are thus active in promoting public/private partnerships in human services, economic development, health, and infrastructure development. Other commissioners take an active role in improving the environment, promoting job training programs, and improving agriculture in their counties.

County commissioners must be astute and have good business sense. Perhaps the most important attribute of a county commissioner is the ability to lead, to listen to the needs of the citizens and other elected officials, to compromise, and to develop a consensus on priority issues to improve the county.

## **B. Auditor - ORC Chapter 319**

The county auditor is the only elected official, aside from the one commissioner, that is elected in the gubernatorial election year. All other county elected officials are elected in the presidential election year. If the commissioners do not appoint a clerk, the auditor is, by statute, the clerk of the board of county commissioners.

The auditor is the chief fiscal officer of the county. As the county's chief fiscal officer, the auditor has the responsibility to keep the official record of all county government receipts and disbursements. The auditor is a very important office from the perspective of county commissioners because it is the responsibility of the office to certify to the commissioners an estimate of available revenue that they may appropriate for county agencies and departments. When the county makes a purchase or enters into a contract, the auditor must certify that funds are available or in the process of collection from the appropriate account. This assures that no agency spends more than the commissioners appropriate for various purposes. In addition, the auditor issues warrants to pay county bills, and serves as the "paymaster" for all county employees. The auditor prepares a detailed annual report of all revenue and expenditures by fund under rules of the state auditor.

Another major responsibility of the auditor relates to the administration of Ohio's property tax law. As the appraiser of real property, the auditor must assure that every parcel of land and buildings and improvements are fairly and uniformly appraised and then assessed for

tax purposes. The auditor directs a general reappraisal of real property every six years with an update being performed during the third year after the reappraisal.

In administering Ohio's real property tax law, the auditor must maintain accurate records of real property including the transfer of deeds, new construction, new parcels and lot splits, oil and gas wells, homestead exemptions, and special assessments.

Every year the auditor prepares an abstract of real property, an abstract of property exempt from taxation, an abstract of current agricultural use (CAUV) property, an abstract of tax rates, and the general tax list and duplicate. After taxes are collected by the county treasurer, the auditor distributes taxes and special assessments to various political subdivisions and county agencies or boards. The auditor also certifies a list and duplicate of delinquent taxes and must publish the list. The treasurer then pursues these delinquencies.

The auditor also has a variety of other significant responsibilities including:

- a. To distribute funds to various political subdivisions. This includes distributions of motor vehicle license taxes, gasoline taxes, estate taxes, fines, personal property taxes, and state local government fund monies to counties, townships, municipalities, libraries and certain park districts.
- b. To serve as an agent for the state Tax Commissioner for administering Ohio's tangible personal property tax law.
- c. To administer Ohio's manufactured home law by assessing manufactured homes, preparing a tax duplicate, and distributing manufactured home taxes in the same manner as real property taxes.
- d. To serve as an agent for the state Tax Commissioner to process estate tax returns of decedents who had residence in the county, including the inventory of safe deposit boxes. The auditor then distributes monies collected from the estate tax to the state and township or municipality of the decedent.
- e. To serve as the sealer of weights and measures by inspecting such devices as scales and gas pumps to protect the consuming public.
- f. To issue various licenses including licenses for dogs and kennels, vendors licenses, and cigarette licenses.

Finally, the auditor serves critical functions on certain county boards and commissions. The auditor is the secretary of both the county budget commission and the board of revision, and is the chief administrator of the automatic data processing board if the county commissioners have established one. He or she also serves on the board of trustees of the county sinking fund. The functions of these boards are detailed in other chapters of this handbook.

### **C. Clerk of Courts - ORC Chapter 2303**

The principal duty of the clerk of courts is to keep journals, records, books, and the papers pertaining to the court of common pleas and the court of appeals. The clerk's responsibilities involve not only the filing, docketing, indexing, and preserving of all

pleadings, but also with arriving at decisions regarding the procedures required by law and the issuance of writs including summons and subpoenas.

The clerk of courts is also responsible for issuing titles for motor vehicles and watercraft. As a part of this responsibility the clerk collects the sales tax on automobiles and remits this money to the state. In this regard, the clerk also issues memorandum copies of titles, duplicates, notations of licenses on vehicles and watercraft and fees associated with these responsibilities.

Some clerks also perform the duties of administrator for juvenile and probate courts, and a few serve as the clerk of the municipal or a county court. Clerks also generally accept passport applications and accept applications for hunting and fishing licenses.

Finally, the clerk of courts has the responsibility for collecting or disbursing millions of dollars in court costs, witness fees, juror fees, fines, appraisal fees and other costs. Clerks also file real estate sales persons and brokers licenses, optometrists licenses, coroners reports, and notary public commissions.

#### **D. Coroner - ORC Chapter 313**

The coroner is an important part of the criminal and civil justice system. The coroner has the responsibility to investigate the cause of any death resulting from criminal or violent means, accidents, or in other situations where someone in good health dies, or where a death is suspicious or unusual. In auto accidents resulting in a fatality, the coroner must determine the blood alcohol content of the person killed in the accident.

The coroner works with law enforcement agencies and the county prosecutor in preparing cases for trial; may conduct inquests to ascertain the exact cause of death; performs autopsies, x-rays, toxicology tests; and often testifies as an expert witness on the cause and manner of death in court. Larger county coroners maintain morgues with professional pathologists to conduct autopsies, as well as laboratory facilities. These services are often utilized on a fee basis by smaller counties.

The coroner or his or her designee also must serve on a county or regional Child Fatality Review Board established under ORC section 307.622. For more information on the county coroner see chapter 104 of this handbook.

#### **E. County Engineer - ORC Chapter 315**

The county engineer is the county's surveyor and civil engineer. The primary duty of the county engineer is to plan, design, construct, and maintain the county road system, including county bridges. The engineer also has responsibility for township bridges and for bridges within municipalities on through routes. Unlike most other county elected officials offices, the engineer is primarily funded with dedicated motor vehicle license and gasoline taxes.

The engineer is also responsible for maintaining the auditor's tax maps including reviewing deeds, land transfers, lot splits, and annexation petitions for proper boundary descriptions.

In addition, information from property surveys and surveying monumentation is also filed with the engineer. These functions are paid from the general fund.

The engineer also serves as the engineer for all townships, and in some counties provides assistance to the planning commission, building regulation department, zoning commission, or may be appointed as the county sanitary engineer by the county commissioners. In many counties the engineer spends considerable time on drainage improvement projects under Ohio's petition ditch law. For additional information on drainage and road and bridge functions see chapters 29 and 30 of this handbook.

#### **F. Prosecuting Attorney - ORC Chapter 309**

The prosecuting attorney is the county's criminal and civil attorney. While the prosecutor is best known to the public for prosecuting criminal actions in the name of the state, the office is also critical to county government because it is the legal advisor to the board of county commissioners and to "the board of elections, and all other county officers and boards....." (ORC 309.09). The office also represents libraries, townships, and county school districts (ORC 3313.35) with the exception of city school districts. These civil responsibilities include the rendering of opinions, prosecuting and defending the county or agency, and the review and approval as to form of all contracts. The prosecutor of the most populous county comprising a joint vocational school district also represents the district. A county prosecutor also has the responsibility to prosecute all juvenile cases including child neglect, dependency, and abuse along with juvenile felony, misdemeanor, and even traffic violations.

The prosecutor is often involved in child support cases including interstate criminal non-support cases and often enforces child support under contracts with the county child support enforcement agency (SEA). Finally, the prosecutor serves as a member of the county budget commission and works with the county treasurer to collect delinquent property taxes.

#### **G. Recorder - ORC Chapter 317**

The county recorder is the county's official keeper of records. The function of the office is to provide protection to persons and property by recording a variety of legally essential documents. Many of the instruments recorded by the county recorder relate to real estate transactions. The recorder accepts for recording deeds, mortgages, mechanic liens, powers of attorney, recognizance bonds, Internal Revenue Service liens, corporate franchise liens, partnerships and other instruments. In some counties land is registered under the Torrens system which is also administered by the recorder.

Under revised Article 9 of the Uniform Commercial Code (UCC), as amended by Senate Bill 74 of the 123<sup>rd</sup> General Assembly, which became effective July 1<sup>st</sup>, 2001, the vast majority of financing statements that are not related to real estate are now filed centrally with the office of the Secretary of State and are no longer filed at the county level with the recorder's office. The county recorder continues to record subdivision plats and records all county and township zoning resolutions and amendments. If the county commissioners have established a county microfilming board, the recorder serves as its secretary and as the chief administrator of the microfilm center. See chapter 131 for additional information on the county microfilm board.

#### **H. Sheriff - ORC Chapter 311**

The sheriff is the county's chief law enforcement officer, with duties to maintain the peace, operate the jail, attend the courts, investigate crimes, and execute processes. More

detailed information concerning the office of sheriff may be found in chapter 100 of this handbook.

## **I. Treasurer - ORC Chapter 321**

The treasurer is the county's banker. This office has custody of the county's money from the time it is collected, invests county funds, and redeems county warrants issued by the auditor.

The treasurer bills and collects taxes on real and personal property, manufactured homes, estate taxes, and vendors and cigarette licenses.

The office also receives all county monies whether they are received by the treasurer or by another county office. Pay-ins from other county officers are certified to specific accounts by the auditor and deposited by the treasurer.

When the auditor issues a warrant for the payment of a county obligation, the treasurer redeems the warrant and posts it to the proper account, thus providing a check and balance with the auditor. Total receipts, disbursements, and remaining funds must balance between the auditor and the treasurer monthly.

The treasurer serves as the county's investment officer under strict legal guidelines. Working with the county investment advisory committee, which the treasurer serves on with two county commissioners, idle county funds are invested to earn revenues for the county general fund. In many counties investment earnings are the third or fourth single largest source of income to the county general fund.

The treasurer also has primary responsibility to collect delinquent taxes. Working with the county prosecutor, special funds are available to pursue delinquent taxes, and help is available to taxpayers to avoid foreclosure actions. In certain counties treasurers have established real estate escrow programs that allows taxpayers to spread their tax payments over a six-month period. Others administer a linked deposit program that makes low cost loans available for small businesses to protect and create jobs in the county.

Under House Bill 493 of the 123<sup>rd</sup> General Assembly, which became effective on October 27<sup>th</sup>, 2000, treasurers have greater flexibility in collecting delinquent taxes and are authorized to accept, under specified circumstances, partial payment of taxes.

Like the auditor, the treasurer serves on the county budget commission, the board of revision, the automatic data processing board, and the board of trustees of the county sinking fund. Along with two of the three county commissioners, the treasurer also serves on the county investment advisory committee established under ORC section 135.341.



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## CHAPTER 2

# COUNTY STRUCTURAL OPTIONS

**Latest Revision  
November, 2002**

### 2.01 INTRODUCTION

Article X, Section 1 of the Ohio Constitution provides that the General Assembly shall provide for the organization and government of counties. Under this constitutional mandate, the General Assembly has passed a variety of laws that together form the general statutory form of county government described Chapter 1.

This same section of the Ohio Constitution also allows for alternative forms of county government. Alternative forms of government must be approved by a majority of those voting on the change. Some legal scholars maintain that this section of the constitution also permits regional government or governmental services by providing that:

"Municipalities and townships shall have authority with the consent of the county, to transfer to the county any of their powers or to revoke the transfer of any such power, under regulations provided by general law, but the rights of initiative and referendum shall be secured to the people of such municipalities or townships in respect of every measure making or revoking such transfer, and to the people of such county in respect of every measure giving or withdrawing such consent."

This provision requires that the General Assembly provide by general law for the transfer and revocation of the transfer of power and the securing of initiative and referendum rights with respect to such transfers or revocations. The General Assembly has not, to date, so provided. Sections 307.14 et seq. of the Ohio Revised Code (ORC), do, however, contain provisions for the county and other subdivisions to enter into contracts whereby the county will exercise any power, perform any function, or render any service on behalf of the contracting subdivision.

Some persons might confuse the transfer of power granted by the Ohio Constitution with the provision for transfer of powers and functions allowed under Section 307.14 et seq. of the ORC. These sections allow the county and other subdivisions to enter into contracts whereby the county will exercise any power, perform any function, or render any service

on behalf of the contracting subdivision. However, this is a contractual arrangement under which the county agrees to perform another subdivision's function with the subdivision's consent, and does not constitute a transfer of that function from the subdivision. Under the constitutional "transfer of power," the subdivision would transfer its power to do something completely to the county; under the existing contract authorization, the subdivision can always regain the power simply by arranging for termination of the contract.

Ohio counties actually have two options for structural change - county charters and an alternative form of county government. Provisions relating to county charters are contained in both the Constitution and statutes as follows:

- Ohio Constitution, Article X, Section 3.
- Ohio Constitution, Article X, Section 4.
- ORC Sections 301.22 - .24.
- ORC Sections 307.94 - .99.

The alternative form of county government is provided for in Chapter 302 of the ORC and is also referred to in Section 301.22 of the ORC.

## **COUNTY CHARTERS**

### **2.02 GENERAL INFORMATION**

In November 1933, the Ohio Constitution was amended to specifically authorize the adoption of county charters after the formation of a county charter commission. In 1978 the Constitution was again amended to also allow county charters to be submitted directly to the electors by petition of the citizens who would frame a charter without using a county charter commission.

In 1933, proposals that county charter commissions be elected to draft charters were submitted to the electors of eight counties and were approved in four---Cuyahoga, Hamilton, Lucas and Mahoning. Charter commissions were rejected in Summit, Stark, Franklin and Montgomery counties. In 1935 county charters in these four counties were submitted to the voters. Only in Cuyahoga County did the charter receive a majority favorable vote.

The Cuyahoga County charter was, however, challenged in the Ohio Supreme Court (*State ex rel Howland v Krause, Board of Elections of Cuyahoga County* 130 Ohio St 455). The Supreme Court ruled that the charter could not go into effect because the charter vested municipal powers in the county, and while it had been approved countywide and by residents of Cleveland, that it also had to receive a majority favorable vote in the county outside of Cleveland and in each of a majority of the combined total of municipalities and townships within the county. This is commonly referred to as the "multiple majority requirement".

Section 3 of Article X of the Constitution was amended in 1957 to make it clear that the "multiple-majority requirement" is applicable only in those cases in which "a charter or amendment provides for the exclusive exercise of municipal powers by the county or provides for the succession by the county to any property or obligation of any municipality or township without the consent of the legislative authority of such municipality or township..." The requirement for these "multiple majorities," however, does not apply when a charter is limited to the form of government, specifies which officers are to be elected and

the manner of their election, and provides for the exercise of powers vested in counties and county officers by general law.

Since 1957 charter efforts have been sparse. Cuyahoga County has seen several subsequent attempts and Summit County had two proposed charters defeated before a county charter was adopted in 1979. Summit County remains the only county in the state to adopt a charter form of government. This followed a 1978 amendment to the Constitution and the enactment of Sections 307.94-.99 of the ORC. Two recent attempts to enact a county charter in Columbiana County also failed.

What follows is a brief summary of the major provisions of the Constitution and law pertaining to charters. Care should be taken in using this chapter for definitive guidance because the case law and interpretations of these provisions are sparse and often contradictory.

### **2.03 REQUIRED PROVISIONS OF A CHARTER**

All charters must contain the following provisions:

1. The form of government of the county.
2. The officers that will be elected and the manner of their election. This provision allows for the abolishment of county elected offices, which is one reason charters are so controversial. For example, one charter amendment in Summit County has eliminated the elected position of county recorder. Another has combined the offices of auditor and treasurer in to the single office of county fiscal officer. The effort to enact a charter in Columbiana County would have eliminated all elected offices with the exception of the county commissioners.
3. Provision for the exercise of all power vested in counties and provision for the performance of duties imposed upon counties or county officials by general law.

### **2.04 PERMISSIVE PROVISIONS OF A CHARTER**

In addition to the previously enumerated provisions of a charter, the following provisions may be included in a charter:

1. The concurrent or exclusive exercise of all or of any designated powers given to municipalities by either the Constitution or statute. This could relate to the entire county or only to a portion of a county.
2. The organization of the county as a municipal corporation.
3. If the charter provides for concurrent or exclusive exercise of municipal powers by the county or for organization of the county as a municipality, it may then have provisions relating to succession by the county to the rights, properties, and obligations of the municipalities and townships. In addition, such a charter may divide the county into districts for purposes of administration, taxation, or both.
4. The establishment of a civil service commission or personnel office or department. If such a commission or department is established, and if the charter provides that employees will be appointed on the basis of merit by competitive exam, the civil service law (Chapter 124 of the ORC) does not apply to the charter county.

5. The establishment of a county department for the administration of public health services. If a health department is established pursuant to a charter it must exercise all powers that are vested in city or general health districts. The effect of such a charter provision is to abolish all health districts in the county.

If there is a conflict between powers granted by a county charter and those of a municipality or township granted by general law or the Constitution, the power of the municipality or township prevails, unless the charter is one that requires the multiple majority requirement.

## **2.05 VOTE ON COUNTY CHARTER**

Before any charter that alters the form and offices of county government or that provides for the concurrent exercise of municipal or township powers by the county is adopted or amended it must be approved by a majority of those voting in the county.

If the proposed charter or amendment provides for the exclusive exercise of municipal or township powers by the county or for the succession by the county to any property or obligation of a municipality or township without the consent of their legislative authorities, it must obtain "multiple majorities" as follows:

1. A majority in the county.
2. A majority in the largest municipality.
3. A majority in the county not including the largest municipality.
4. A majority vote in each of a majority of the combined total of municipalities and townships in the county if the county is 500,000 or less in population.

If more than one charter is being considered at the same election, the one receiving the greatest vote more than a majority becomes effective.

## **2.06 METHODS TO SUBMIT A COUNTY CHARTER TO VOTERS**

There are three methods by which a county charter may be submitted to the voters of the county:

1. If the county commissioners receive a petition from 10 percent of the electors of the county with a proposed charter attached to the petition it must be submitted to the voters. Procedures using this method will be discussed later.
2. If a petition from 10 percent of the electors of the county with a proposed charter attached is submitted to the board of elections and adequate valid signatures are contained in the petition, the board of elections submits it to the county commissioners and it must then be submitted to the voters.
3. If a county charter commission has been formed, the commission drafts the charter and submits it to the voters. The procedures to submit the charter will be specified later.

## **2.07 FORMATION OF COUNTY CHARTER COMMISSION**

A county charter commission is created only after a vote of the voters of the county. The question "Shall a county charter commission be chosen?" will be submitted to the residents if:

1. The county commissioners adopt a resolution to submit the question to the voters.
2. The county commissioners must adopt a resolution to submit the question if petitioned by 8 percent of the electors of the county.

After the commissioners certify the resolution to the board of elections, the question will be placed on the ballot at the first general election after 95 days have passed from the date of certification of the resolution to the board of elections. The ballot must also provide for the election of a 15-member commission from the county at large if the question to establish a commission receives a majority vote.

## **2.08 ELECTION OF COUNTY CHARTER COMMISSION**

If a majority votes to establish the county charter commission, a 15 member commission is elected at the same election. Candidates are nominated by a petition of one percent of the electors of the county. Petitions must be filed with the board of elections at least 75 days before the election. The 15 candidates with the greatest number of votes are elected except that:

1. No more than seven persons from the same city or village may be elected.
2. No more than four public office holders may be elected.

The county commissioners or legislative authority of a charter county must appropriate sufficient funds and pay all reasonable expenses of the charter commission.

## **2.09 SUBMISSION OF CHARTER TO ELECTORS BY COUNTY CHARTER COMMISSION**

The county charter commission must frame a charter and, by a majority vote, submit it to the electors at the next general election following the election of the commission. The charter must be certified to the board of elections at least 75 days before the election.

## **2.10 PROCEDURES TO SUBMIT A CHARTER BY PETITION**

There are two ways that citizens may directly submit a charter to the electors of the county:

1. A petition signed by 10 percent of the voters with a charter attached may be filed with the county commissioners. The following procedures then apply:
  - a. The petition must be filed at least 100 days before the general election.
  - b. The petition must be available for public inspection at the office of the county commissioners until 4 p.m. of the 96th day before the election.
  - c. The county commissioners must then certify the petition to the board of elections by resolution.

- d. The county commissioners may refuse to certify the petition if the signatures are insufficient or if the petition is otherwise invalid.
  - e. The board of elections then determines if the petition is valid and reports to the county commissioners not less than 85 days before the election.
2. The petition may also be submitted directly to the board of elections. The following procedures apply if this method is used:
- a. The petition must be filed 115 days before the election.
  - b. The board of elections examines the petition for valid signatures and other requirements of law and reports to the county commissioners at least 105 days before the election. This report must be available for public inspection at the board of elections.
  - c. If the board of elections certifies that the petition is valid, the commissioners must certify the petition by adopting another resolution and certifying it back to the board of elections by 4 p.m. on the 96th day before the election.

The law also establishes detailed procedures to be followed if the board of elections determines that the petition is invalid or if there are an insufficient number of signatures. Although these are very complicated the following options exist:

- 1. The decision of the board of elections may be appealed, with the Secretary of State making the final determination.
- 2. The decision may be appealed to common pleas court.
- 3. If it is determined by the Secretary of State that there is not an adequate number of signatures, 10 additional days are given to obtain additional valid signatures.

Finally, the petition must also designate a committee of from three to five persons to be the formal representatives of the petitioners. If problems arise or protests are made, this is the responsible group. In addition, within five days after the petition is filed, informational statements as specified in Section 307.97 of the ORC must be filed with the county commissioners.

## **2.11 NOTIFICATION REQUIREMENTS**

If a charter is proposed each elector must receive a copy of the proposed charter at least 30 days before the election. This is a requirement irrespective of the method used to submit the charter to the voters.

## **2.12 AMENDMENTS TO AN EXISTING CHARTER**

Amendments to existing charters may be initiated in three ways.

- 1. A county charter commission adopts the amendment and submits it to the electors at the next general election after the election of the commission. The amendments must be certified to the board of elections 75 days before the election.

2. The legislative authority of a charter county, by a two-thirds vote, may submit amendments by certifying its resolution to the board of elections at least 60 days before the next general election.
3. If the legislative authority of the charter county receives a petition signed by 8 percent of the electors it must adopt a resolution submitting the amendment at the next general election that occurs at least 60 days after the resolution is certified to the board of elections.

Each amendment can relate to only one subject even though it may affect more than one section of the charter. If more than one amendment is to be submitted to the electors at the same election, the electors must be able to vote on each separately. If the provisions of amendments conflict, the one with the greatest vote more than a majority becomes effective.

### **2.13 NOTIFICATION REQUIREMENTS**

For charter amendments, copies must be mailed or otherwise distributed to each elector at least 30 days before the election, or the full text of the amendments may be published in a newspaper once a week for two consecutive weeks.

### **2.14 EXPENSES TO ADOPT OR AMEND CHARTERS**

The county commissioners or legislative authority of a charter county must appropriate money for the expenses of a county charter commission in the enactment or amendment of a charter and to study the problems involved.

The county commissioners must also appropriate funds to print and distribute a copy of the charter to each elector in the county. Funds must also be provided for the printing, distribution, or publication of proposed amendments, but only if they are proposed by a county charter commission. No funds may be spent for compensation to members of a county charter commission.

### **2.15 EFFECTIVE DATE OF CHARTERS**

All proposed charters or amendments to existing charters become effective 30 days after approved at an election, unless a different date is specified in the proposal.

### **2.16 RESUBMISSION OF DEFEATED CHARTERS OR AMENDMENTS**

When a charter or amendment has been defeated, the county charter commission may resubmit it to the electors. This can only be done once, and must be at the next general election or any other election held throughout the county that precedes the general election. The charter commission may make revisions. The same procedures apply as if it were an original charter.

### **2.17 REPEAL OF COUNTY CHARTER**

There are two methods to submit the question of the repeal of a county charter to the electors:

1. The legislative authority of the charter county adopts a resolution to submit the question of repeal.

2. The legislative authority of the charter county must adopt a resolution to place the question of repeal before the electors if it receives a petition signed by 8 percent of the electors of the county. In either case, the question appears at the first general election after at least 60 days has passed since the resolution was certified to the board of elections.

## **2.18 LEGISLATIVE POWERS UNDER A CHARTER**

The adoption of a county charter has been described by the Attorney General (OAG 85-047) as a way by which "the people of any county may increase the authority of their county government." Article X, Section 3 of the Ohio Constitution states in part that county charters "may provide for the concurrent or exclusive exercise by the county....of all or of any designated powers vested by the Constitution or laws of Ohio in municipalities". This language, the Attorney General has opined (also in OAG 85-047), authorizes counties to exercise substantially the same powers of local self-government and police and sanitary powers as are granted to municipalities.

These are very broad legislative powers, since the Constitution grants municipalities all powers of local self-government and the power to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws. Essentially, subject to the limitations discussed below, counties which adopt charters which contain the above quoted provision may enact legislation in whatever areas appear appropriate, whether or not they have explicit authority to do so under state statutes. However, there are two major limits on counties' legislative powers pursuant to a charter:

1. A charter must "provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law".
2. In the event of conflict between a county's exercise of legislative power and a municipality's or township's, the municipality's or township's power will prevail.

Thus, for example, while a charter county may transfer the sheriff's power to run jails to another county official, it may not simply declare to give itself the duty to run jails. This duty is imposed in counties by law and a charter cannot authorize a county to disregard it.

Also, if a county and a municipality or township legislate on the same subject, in the event of conflict the municipality's or township's legislation will prevail within its territory. Of course, if a county charter provides for the exclusive exercise of power by the county, the issue of conflict does not arise; but the adoption of the charter is then subject to the "multiple majorities" requirement discussed in section 2.05 of this chapter.

A further restriction on county legislative power under a charter has been developed by the Attorney General. In OAG 89-106, the Attorney General discerned a limitation, similar to the "statewide concern" doctrine for municipalities, inherent in Article X, Section 3 of the Ohio Constitution which prohibits charter counties from setting fees for sheriffs' and recorders' services which are different from the fees imposed by statute.

In other opinions, the Attorney General has approved the regulation by a charter county of the construction of agricultural buildings not used in the business of retail trade (OAG 89-025); approved the appointment, pursuant to a charter, of officials who are elected under state law, and approved a provision for the transfer of duties which are imposed on one county official by state law to another county official (OAG 85-039); and approved, so far as Article X, Section 3 of the Constitution is concerned, the establishment of an escrow

fund by a county treasurer for the prepayment of real estate taxes, although this proposal was found to be prohibited under another section of the Constitution (OAG 85-047).

In other opinions in more recent years, the Attorney General has imposed a number of restrictions on the operation of county government in Summit County, which remains the only charter government among the state's 88 counties. The Summit County charter grants no authority to the county executive, through the establishment of an audit committee or a department of internal auditing, to examine the financial operations of the probate division of the Summit County Court of Common Pleas. OAG 2001-020. Nor can the county executive or county council mandate the adoption of personnel policies and procedures by the probate division of the Summit County Court of Common Pleas. OAG 96-043.

Nor does the county executive or the county council, absent a contrary provision in the charter or absent an appointment of legal counsel by the court of common pleas under ORC 305.14 (A), have the authority to bring an action for the recovery of monies found by the Auditor of State to be owed to the county. This action must be brought by the county's prosecuting attorney. OAG 95-035.

The Attorney General also has restricted the authority of a charter county to bring any of the following agencies under the direct control of the county executive or the county council: county MR/DD board, children's services board, veterans services commission or county ADAMH board. OAG 94-095.

## **ALTERNATIVE FORM OF COUNTY GOVERNMENT**

### **2.19 OVERVIEW OF ALTERNATIVE FORM**

There are two primary differences between county charter governments and those operating under an alternative form of county government. First, an alternative form does not permit the abolishment of any county elected official, as is possible under a charter. Second, and unlike a charter which has almost total flexibility as to content, the alternative form law is quite specific and is thus more limited in scope.

The alternative form of county government law (Chapter 302 of the ORC) was adopted by the General Assembly in 1961 (HB 855). There have been only sporadic attempts to enact this form of government since that time, most recently in Delaware County in 1991. No county now operates under an alternative form of county government.

The alternative form of county government concentrates on the enlargement of the board of county commissioners, the appointment of an appointed or elected executive, and the establishment of a series of departments. Under this form of government, county commissioners become the policy making body of the county and the county executive performs those administrative and executive functions that are the responsibility of county commissioners in a general statutory form of government.

### **2.20 INITIATION OF ALTERNATIVE FORM**

An alternative form of county government may be initiated in two ways:

1. The county commissioners may adopt a resolution to place an alternative form on the ballot.

2. The county commissioners must submit an alternative form if it receives a petition from three percent of the electors of the county.

The alternative form is then voted on at the next general election that occurs at least 75 days after the resolution is certified to the board of elections by the county commissioners.

## **2.21 STRUCTURAL OPTIONS FOR ALTERNATIVE FORM**

If an alternative form is submitted to the electors the following options are possible:

1. The alternative form must include either an elected county executive or an appointed county executive.
2. The alternative form must specify the number of members that will serve on the board of county commissioners, the number to be elected at large, and the number to be elected by district.

## **2.22 REQUIREMENTS FOR A BOARD ELECTED AT LARGE**

When the alternative form involves a board of county commissioners to be elected entirely at large, the board must be composed of three, five, seven, or nine members and this must be specified on the ballot. This applies to both the elective executive plan and the appointive executive plan. Following is the form of the ballot question:

Shall the county of \_\_\_\_\_ adopt the form of county government known as the county (name of plan) plan with a board of (number) county commissioners elected as provided for in sections 302.01, inclusive, of the Revised Code?

( ) For adoption of the county (name of plan) plan.

( ) Against adoption of the county (name of plan) plan.

The salary of the new board of county commissioners is the same as for other county commissioners as established in Section 325.10 of the ORC. The law is also quite specific concerning transitional elections when the number of members of the board is increased or decreased by the alternative form, however, this is too detailed for this handbook. It may be said, however, that depending on the number to be elected, a specified number are elected to four year terms and others to two year terms initially. Unlike the statutory form or an alternative form where commissioners are elected by districts, those candidates receiving the greatest number of votes are elected in that order. After the initial election, all terms are four years.

## **2.23 REQUIREMENTS FOR A BOARD ELECTED BY DISTRICTS**

When the alternative form provides that any commissioner will be elected by district, the board of county commissioners may consist of any odd number of at least three but not more than twenty-one commissioners. If there are to be seven or more county commissioners, not more than half may be elected at large.

In addition, the alternative form proposal using districts must establish the compensation of the commissioners as a percent of the salary established by Section 325.10 of the ORC. Finally, the board of elections must display a map showing commissioner districts at each precinct on election day. The form of the ballot is as follows:

Shall the county of \_\_\_\_\_ adopt the form of county government known as the county (name of plan) plan with a board of (number) county commissioners, of which (number) shall be elected at large and (number) shall be elected by districts, as provided for in sections 302.01 to 302.24, inclusive, of the ORC, under which form each county commissioner shall receive annual compensation equal to (number) percent of that provided in Section 325.10 of the ORC?

( ) For adoption of the county (name of plan) plan.

( ) Against adoption of the county (name of plan) plan.

Under the district representation approach, the total number of commissioners is elected at the next regular state election after approval of the alternative form. The board of elections assigns a number to each county commissioner position. Candidates for commissioner then file to be elected to a specifically numbered district. At the first election, the odd-numbered positions are four year terms and the even-numbered positions are two year terms. Subsequent terms, however, are four years in length.

## **2.24 ESTABLISHMENT OF COUNTY COMMISSIONER DISTRICTS**

There are three methods by which county commissioner districts may be established:

1. If the alternative form proposal does not detail the districts, it is the responsibility of the board of elections to create the districts at least 45 days before the election.
2. It is possible that the districts could be drawn and submitted with the alternative form by petitioners.
3. The districts can be detailed by the county commissioners.

The establishment of the districts must conform to generally accepted Constitutional standards. Finally, if the alternative form is approved, the county commissioners must, every ten years, create new districts using the most recent decennial federal census.

## **2.25 NOTIFICATION REQUIREMENTS**

At least 45 days before the election on the alternative form, the board of county commissioners must have a copy of the alternative form delivered to each elector in the county.

## **2.26 EFFECTIVE DATE**

If the alternative form is approved by a majority of the electors, the aspects of the proposal relating to the nomination and election of officers become effective immediately. All other provisions of the alternative form take effect on the first Monday in January after the next regular state election.

## **2.27 POWERS OF ELECTED EXECUTIVE**

Under the elective executive plan, the elected executive is elected at the first regular county general election after adoption of the alternative form. The elected executive serves a four year term. Any vacancy is filled by the board of county commissioners for the remainder of the term. The salary of the county executive during the first term will be

160 percent of that of commissioners as established by Section 325.10 of the ORC. After the first term, the salary will be set by the county commissioners one year before the term of office begins. Following is a list of the powers and duties of the elected executive:

1. To be responsible for the proper administration of the affairs of the county placed in his charge.
2. To serve as the head of any county department if directed to do so by the county commissioners, provided the executive has the qualifications required by law.
3. To perform all duties of an administrative nature vested in the board of county commissioners by state law or an agreement with any other governmental unit.
4. To administer the resolutions of the county commissioners and laws of the state relating to the office.
5. To supervise county departments established by the county commissioners.
6. To make certain appointments, made by county commissioners in a statutory county, with the advice and consent of the commissioners.
7. To appoint certain members to boards and commissions with the advice and consent of the county commissioners.
8. To promote the coordination of all county functions and to make an annual report.
9. To recommend the tax budget and appropriation resolution to the county commissioners.
10. To keep the county commissioners advised of the financial condition and future needs of the county.
11. To attend meetings of the county commissioners and to take part in their discussions.
12. To submit measures felt to be necessary for consideration, and to submit reports on the operation of the county when the county commissioners request.
13. To appoint, suspend, and remove employees.
14. To veto any ordinance or resolution of the county commissioners. Veto can then be overridden by a two-thirds vote.

## **2.28 POWERS OF APPOINTED EXECUTIVE**

The appointed executive has all the powers of the elected executive with two exceptions:

1. An appointed executive does not have the power to appoint, suspend, or remove employees. The executive may recommend such actions, but they must be approved by county commissioners.
2. An appointed executive does not have the veto power.

## **2.29 POWERS OF BOARD OF COUNTY COMMISSIONERS**

The board of county commissioners is the policy making and legislative body of the county. The board organizes the first Monday of January each year by electing one of its members as president and one as vice president. The board establishes its own rules and order of business and must maintain a journal. A majority of the full membership of the board constitutes a quorum and is needed to take action on any proposal. Following are some of its major powers:

1. To determine the officers and employees of the county that must file bonds and the amount and form of the bond.
2. To provide for the borrowing of money.
3. To acquire, construct, maintain, and administer property, buildings and other public improvements.
4. To accept gifts, bequests, and grants.
5. To request reports from the county executive, elected officers, and administrative officers and to require their attendance at meetings.
6. To authorize the county executive to employ consultants.
7. To adopt procedures for contracting and purchasing by competitive bidding.
8. To adopt the tax budget and annual appropriation resolution and to exercise control over expenditures. This can involve the adoption of a monthly or quarterly allotment schedule.
9. To determine the compensation of appointive heads of departments and divisions under its control by adopting a classification plan and pay schedule. The board may also designate the maximum number of employees that may be employed in each county office.
10. To cooperate or contract with other political subdivisions to plan, develop, construct, acquire, or operate any public improvement or common services. The board will also determine the terms by which the county will perform the services or functions of any other unit of government in the county.

## **2.30 ESTABLISHMENT OF DEPARTMENTS**

The board of county commissioners also has the authority to establish a variety of departments as follows:

1. Finance.
2. Human Services.
3. Health.
4. Purchasing.

5. Public Works.
6. Law.
7. Personnel.
8. Detention and Correction.
9. Water & Sewer.

In addition, the commissioners have the authority to establish other departments that they determine to be necessary. The county executive has responsibility for all departments. The specific duties of the departments of finance, law, personnel, detention and corrections, and water and sewers are specified in Chapter 302 of the ORC.

### **2.31 COMMENTS ON SELECTED DEPARTMENTS**

The power to establish departments is permissive. The following comments on certain departments should prove thought provoking:

1. Health Department - If this department is created, it would take over the functions and have the powers of general health districts.
2. Finance Department - The finance department would examine the legality and correctness of each expenditure. This comes close to the present function of the county auditor.
3. Detention and Correction Department - If this department is formed, it assumes all responsibility for county jails normally assigned to the sheriff by Chapter 341 of the ORC.

### **2.32 LEGISLATIVE POWERS GRANTED UNDER THE ALTERNATIVE FORM**

Possibly the greatest power granted to the board of county commissioners under the alternative form is that of home rule or limited legislative powers. Simply stated, the board has the authority to act on any matter unless state law or the Ohio Constitution *specifically prohibits* the action. The board, however, can only levy taxes authorized by law. Finally, if there is a conflict of powers of the county with those of a municipality or a township, the powers of the municipality or township prevail.

### **2.33 REPEAL OR CHANGE OF ALTERNATIVE FORM**

The same procedures may be used to discontinue the alternative form as are followed to adopt one. Amendments are not provided for, however, instead an entirely new alternative form may be submitted to the electors.

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