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Detroit City Charter Revision

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On November 2, 1993, as provided in the 1974 charter, voters of the City of Detroit will determine whether a charter commission will be established to revise the current charter. This series is being financed in part by grants from Community Foundation for Southeastern Michigan, Hudson-Webber Foundation, and Matilda R. Wilson Fund, and NBD Bank.

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THE NATURE AND PURPOSE OF A HOME RULE CITY CHARTER

A staff summary of a paper originally prepared in 1971 by David Morris, Attorney, Kalamazoo, Michigan who is now deceased. The paper has been updated and revised by William L. Steude, general Counsel, Michigan Municipal League and by Daniel C. Matson, City Attorney, Dewitt, Michigan and President, Michigan Association of Municipal Attorneys. Copies of the full paper (13 pp.) are available on request.

In Michigan, home rule charters provide the broad framework of city government. The challenges facing a charter commission are deciding what governmental structure will exercise power and determining how the government can be kept both responsible and responsive to the citizens. Home rule gives the citizens the right to form their own city government and the opportunity to innovate and invent in a search for the best structure to meet local conditions.

History

The word "charter" has a long history, including the Great Charter, or Magna Carta, of 1215, through the charters given the English colonies in America and the trading companies. A city charter is a basic law formulating the government for a city that, within the limitations of the state constitution and laws, establishes the framework of government, defines powers and duties, and identifies the rights and responsibilities of a city in fulfilling the needs of its citizens.

City charters are limited by federal laws, state constitutional provisions, and state statutes. Collective bargaining agreements negotiated pursuant to state law can supersede charter pro-

visions. While the charter sets forth the broad framework of city government, city ordinances, administrative codes, executive organization plans, and other means can be used to define and regulate the city government.

During the 19th century city charters took the form of general or special acts dictated from a 'distant legislature. These charters fixed the forms of city government and granted only such powers to local bodies as were expressly enumerated or necessarily implied. This is sometimes known as "Judge Dillon's rule" and contemplated that the city was a mere political subdivision of the state and, regardless of the city's needs, it could exercise only such powers as were expressly granted.

At the start of the 20th century great economic changes were bringing even greater social changes that placed new and heavy burdens on the cities. Large numbers of the rural population moved into the cities at the very time great waves of immigrants arrived. Cities experienced great growth and a need for many new services. As the industrial-economic-social revolution roared on, bossism, patronage, spoils, and the ward heelers appeared to be common-

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place, necessary evils. Even graft was common, and largely unchecked.

Home Rule

Thus the stage was set for municipal reform and the concept of “home rule.” It was reasoned that the vices of the past might be corrected or reduced if the local populace could frame its own charter, determine how best to secure representation on the city council, provide its own means for selecting the mayor and the administrators of the city activities, define the powers that might be exercised, and establish its own financial controls. The principle of municipal home rule was apparently first enumerated in the constitution of Missouri in 1875. It spread quickly to other states.

A major accomplishment of the 1908 constitution was establishing “home rule” for cities and villages in Michigan:

Article VIII, Section 21. Under such general laws, the electors of each city and village shall have power and authority to frame, adopt and amend its charter and to amend an existing charter of the city or village heretofore granted or passed by the legislature for the government of the city or village and, through its regularly constituted authority, to pass all laws and ordinances relating to its municipal concerns, subject to the constitution and general law of this state.

After voter approval of the constitution, the legislature adopted Act 279 of 1909, the Home Rule Cities Act, to enable the citizens of Michigan cities to frame, adopt and amend their own charters within the ground rules established by that act. One provision states the essence of home rule:

Each city may in its charter provide for the exercise of all municipal powers in the management and control of municipal

property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants, and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state.

The courts immediately appeared to drop the Dillon rule which held a city to be a political subdivision with restricted enumerated powers. Early cases declared that since the purpose of the home rule act was to give cities a large measure of home rule, it should be construed liberally and in the home rule spirit. The Michigan Supreme Court declared that a city with a home rule charter might enact and put into its charter any provision limited to purely municipal government which it might deem proper so long as such provision did not run contrary to the constitution or any general statute.

The Michigan Constitution of 1963 adopted verbatim much of home rule provisions of the 1908 constitution revision and then added the following language: “No enumeration of powers granted to ... cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.” It further reinforced home rule with this language: “The provisions of this constitution and laws concerning counties, townships, cities and villages shall be liberally construed in their favor.”

Erosion of the Home Rule Principle

There have been unfortunate reversions to the limitations of Dillon’s rule through the years with occasional references in court decisions to “mere political subdivisions” with only such powers as the state has granted. The greatest erosion to the home rule concept, however, has come from the legislature. Over the years the

legislature has superimposed state requirements on such subjects as local taxing and spending power, public meetings, public access to public records, conflicts of interest by public officials, political rights of public employees, mandatory collective bargaining and compulsory arbitration of police and fire labor disputes, thereby entirely or substantially preempting local home rule authority. In other areas, local authority has been subjected to rigid state standards.

Every year the erosion grows as bills are introduced which would diminish home rule discretion by prohibiting what a city might otherwise opt to permit, or by permitting what a city might otherwise wish to prohibit.

Home rule cities themselves have been partly responsible for this erosion of home rule principles. When in doubt about a given power, they have run to the legislature for an amendment spelling it out, thus dodging possible litigation. Many other statutes are expressly limited to cities in some specified population group, and thus infer that it is not extended to others. Many of these laws also supersede charter provisions, thus avoiding the necessity of selling a local charter amendment to the local electorate.

Unfunded state and federal mandates have become major forces eroding home rule. These statutes and administrative regulations impose major unreimbursed costs upon local budgets to comply with judicially enforceable deadlines, standards, and expenditures. Their cumulative costs diminish the resources available for self-government, distort local spending priorities, and have a staggering impact upon local government energy, time, and morale.

Home rule depends upon legislative and local restraint and municipal resistance to the power of the legislature to delimit home rule by general law. The home rule concept has to be jealously guarded, exercised, and nurtured with devotion if it is to remain healthy and meaningful.

Home Rule Act and Nature of a Charter

Essentially, home rule is the right of the people of the city to set up and change their own governmental structure. This is done through a written charter framed by an elected charter commission and adopted by the people. The home rule act fixes the procedures and establishes the ground rules within which charters are developed. The act contains long lists of mandatory, permissive, and prohibited powers and functions. A charter must cover all of the mandatory requirements with express provisions. It should cover the permissive powers desired either expressly or by necessary inference.

The act makes it mandatory that each city be a body corporate, have a legislative body, a mayor and a clerk, treasurer, assessor, and board of review.

The charter will establish the basic form of government of the city. The duties and qualifications of the council and mayor, and chief administrative officer or manager, if these positions are provided for in the charter, will have to be defined. The functions and responsibilities of the leading official should be delineated with care, so that they will be known to the officials and citizens alike and responsibilities can be fixed. Every official carrying responsibility should be given adequate authority to fulfill the expectation of the citizenry with regard to that responsibility. Power must match duty at every juncture in the performance of municipal functions.

The legislative body may be elected at-large, by ward, or a combination of the two. The charter determines the number of members of the legislative body, their terms of office and any limits on the number of terms. The mayor may be selected by the people or by the legislative body. The other officials of the city may be elected or appointed by the mayor, manager, or council as provided in the charter. Elections may be partisan or nonpartisan.

A tax limitation as high as \$20 per \$1,000 of state equalized valuation (20 mills) may be provided. Provisions must be made for the taxing procedure and for the protection of the public peace, health and safety of persons and properties. Ordinance adoption procedure must be established. All sessions of the legislative body and all records of the municipality are subject to public meeting and public records requirements. A journal shall be kept in the English language and a uniform system of accounts must be established.

The permissive charter provisions include the power to borrow money; provide for streets, sewers and water works, lighting and utilities; assessing the cost of public improvements; public buildings; condemnation; and many other municipal activities such as zoning; regulation of trades, gas stations, and billboards; initiative, referendum, and recall; civil service; rapid transportation systems; and city departments and municipal powers.

The prohibited powers are then discussed in the home rule act. No city may exceed the tax lim-

its established by law, call more than two special elections a years sell certain land or issue certain bonds except by a vote of the people, or repudiate any of its debts. Other sections of the home rule act relate to the activities of a charter commission and the adoption or amendment of the charter.

Most Michigan charters contain at least ten or twelve chapters covering the following subjects: incorporation and powers, the council, elections, legislation, administration, general finances, budgets and contracts, taxation, special assessments, borrowing, utilities, miscellaneous provisions, and a transition schedule. There may be other chapters especially addressed to matters of prime local concern.

The charter should be written with clarity and precision. Nothing is more frustrating than to find, several years after a charter has been adopted, that it contains inconsistent provisions, unworkable procedures, or fuzzy language. The city charter, adopted by the people themselves, constitutes the fundamental law for the city until amended or replaced.