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NO. 967 September 1987

HOME RULE IN WAYNE COUNTY: III

Implementation of a System of Checks and Balances in Wayne County

The traditional organization of governmental functions in the United States divides authority and responsibility among legislative, executive, and judicial branches. The authority to make, implement, interpret, and review government policies, laws and programs is split among the branches to insure the freedom and protect the rights of the people by preventing the concentration of power in any branch. County structure was not patterned after the model in the U.S. constitution, but rather after an older English model, because county government was originally viewed as an administrative arm of the state to provide decentralized services and not as a representative governmental unit. The traditional, general law, plural executive-commission structure of county government does not provide an adequate system of checks and balances to insure efficient administration and responsible decisions in a complex, urban county. The experiences of Wayne County; the only county in Michigan to adopt a home rule charter, may be instructive to residents of other counties who are considering reorganization to improve the efficiency of county operations.

Prior to the adoption of a county charter, Wayne County government was administered by a county board of commissioners which performed both legislative and executive functions. After implementation of home rule under a charter which reallocated executive authority from the county board of commissioners to an elected county executive, executive branch functions not under the control of other direct elected executive officers were reorganized into a true execute responsible to the chief executive officer. Thus the framework within which policy is determined and programs implemented was modified to promote efficiency and accountability. This, the third article in a series on the effects of home rule on Wayne County, focuses on the establishment of a system of checks and balances within that framework. The series summarizes a 50 page report entitled **A Review of the Effects of Home Rule on Wayne County**, which is available upon request.

This series and the report from which it derives were made possible by a grant from the Hudson-Webber Foundation.

Act 293 of the Public Acts of 1966 as amended (the Michigan Charter County Act) requires that county charters provide for a legislative county board of commissioners, and in counties of less than 1,500,000 population (all Michigan counties except Wayne), an elected county executive. In counties of over 1,500,000 population, two proposed charters must be prepared, one containing provision for a board-appointed administrative officer who lacks a veto, the other containing an elected county executive who may veto an ordinance or resolution passed by the board. The two charters are in all other ways to be identical. Wayne County electors chose the stronger, elected chief executive officer (CEO), and thereby approved the implementation of a meaningful system of checks and balances in Wayne County government.

The Michigan Charter County Act specifies mandatory and permissible provisions for local charters, including the minimum powers and duties of the appointed or elected executive officer, and reflects the basic checks and balances concepts of veto and override, and advice and consent. The Wayne County Charter, developed to provide "more efficient, responsive, and accountable government," requires a more extensive system of checks and balances by giving the legislative board of commissioners the authority to approve the CEO's reorganization plan, executive appointments and administrative rules; set purchasing policy; and subpoena records and witnesses. A concrete system of checks and balances has become institutionalized as the interactions and limitations imposed by state law and the charter, the actions of the elected CEOs to mold and establish control of the executive structure, and the efforts of the Wayne County Board of Commissioners to exert its authority have been interpreted and defined by legal opinions and court decisions during the first years of operations under the Wayne County Charter. A brief description of these interactions and limitations, and the legal opinions that defined them, may be instructive.

Reorganization Plan. One of the goals of charter adoption was to reorganize the structure of Wayne County government to increase the efficiency of county operations. State statutes mandated independently elected executive branch officials; the charter itself removed functions from the legislative branch and placed them in a redefined executive branch. The charter also required that the CEO develop a proposed organization plan for the functions under his authority. That plan and any subsequent amendments must be submitted to the county board, which has 90 days to approve or reject the proposal; if the board takes no action, the proposed executive branch reorganization becomes effective. Thus the authority of the CEO to structure county government is checked not only by state statutes and the charter, but is also limited by the county commission, which must review the CEO's plan.

The original reorganization plan submitted by the first CEO was approved by the board, but a May 1984 attempt by the board of commissioners to amend the plan by an ordinance which reestablished the Wayne County Soldier's and Sailor's Relief Commission was declared illegal in a judgment which affirmed that the CEO proposes and the board of commissioners approves or disapproves. A corporation counsel opinion clarified that the CEO's appointment of a "director" is ineffective to create a department outside the reorganization plan.

Appointment, Removal, and Confirmation. The power to appoint and remove had previously generally belonged to the county board; absent a county CEO, the most logical county appointing authority is the county board of commissioners, and many state statutes had specified that positions be filled by the board. The Charter County Act gave appointment and removal powers to the CEO, but the Wayne County Charter limited that authority by reserving some appointments to the commission, requiring commission approval of appointments except the chief financial officer, and restricting the CEO's authority in an introductory phrase: "Unless otherwise specifically provided by this Charter or law: The Deputy CEO, directors, deputy directors, members of boards and commissions, representatives of the County on intergovernmental bodies, and all other officials or representatives not in the classified service shall be appointed by-the CEO with the approval of a majority of Commissioners serving." The introductory qualifying phrase became the basis for challenges to the CEO's authority both to appoint and to remove.

In a case in which the CEO attempted to remove members of the Wayne County Economic Development Corporation who had been appointed to six-year terms, the judge determined that the prior law, which provided for removal for cause by the county commission, applied.

In a case involving the removal of members of the board of county road commissioners, the court of appeals ruling declared that the charter implicitly contained provisions of Public Act 300 of 1982, which required that the charter in'a county of over 1,500,000 population must give the CEO the power to appoint and remove members of the road commission.

Various corporation counsel opinions verified the CEO's right to remove and appoint department heads and members of boards and commissions at his pleasure, but the legislative board attempted to extend their right of advice and consent. The charter states that "If the Commission fails to act on an appointment within 30 days after its submission to the Commission, the appointment is effective." The commission attempted by ordinance to redefine the 30-day period to expand their time for consideration, attempted to restrict the choice of the CEO to make appointments by preventing him from resubmitting names that had been rejected previously, and tried to make appointments effective only upon express confirmation. The corporation counsel advised that all of these proposed ordinances were in conflict with the charter. The commission nonetheless attempted to withhold confirmation of candidates to influence executive activities.

Administrative Rules. A basic component of the separation of powers concept, but one which has caused contention in practice at the state and federal levels, is the process of legislative enactment followed by administrative rule making. At the county level, the CEO's ability to solve county problems and perform the role described for him in the charter was contingent upon his ability to impose and enforce rules. But this authority was also subject to checks and balances, as the county commission may "Approve, amend, or reject rules or regulations issued by any department or officer of the County," according to the charter.

The board of commissioners sought a corporation counsel opinion defining executive orders and administrative regulations. They were told that these orders and regulations establish internal departmental policy and do not directly affect the public, and so do not require legislative approval. The Corporation Counsel advised that only rules "referring to orders or actions of a governmental unit relating to the actions of those under its control for the conduct of third persons dealing with it" require approval. The commission then attempted in a proposed ordinance to distinguish between executive and administrative orders, and was informed by the corporation counsel that this was an "impermissible intrusion" into executive authority.

Two years later, the corporation counsel advised the CEO that the charter permits the county commission to amend rules issued by the CEO at any time, regardless of the charter provision that "If the Commission fails to act within 30 days of the submission of any rules or regulations, the rules or regulations become effective."

Veto and Override. The county commission is the supreme law making authority for the county; its enactments have the force of law unless successfully challenged in court. The executive veto allows the CEO to participate in the law making function and to thwart the passage of hasty or ill-conceived laws. A veto notifies the commission that a basic disagreement in policy exists, and forces the commission to review the matter and reject or reaffirm the action. Once a veto is overridden by a 2/3 vote of commissioners elected and serving, the executive has no recourse but to enforce the law.

The Michigan Charter County Act provided that an elected county executive could veto an ordinance or resolution adopted by the commission including an item of an ordinance which appropriates funds. The Wayne County Charter allowed the CEO to veto any ordinance or resolution having the effect of law, or approving a contract, or any line item of the appropriation ordinance. The Wayne County Corporation Counsel opined that the CEO could veto any ordinance or resolution passed by the county commission, that the veto must be delivered to the commission within the ten-day limitation prescribed in the charter to be effective, and that an ordinance actually takes effect at the end of the expiration of the veto period, or on the eleventh day following transmittal to the CEO.

Conclusion. The amended Michigan Charter County Act permitted the drafters of the Wayne County Charter to establish a county structure which separated powers between legislative and executive branches, thereby incorporating the system of checks and balances which prevails at the state and federal levels. During the first few years of operations under this new structure, the CEO, supported by the county corporation counsels legal opinions, established a strong executive role in spite of repeated challenges by the legislative body, the county commission, which sought to recapture authority lost in the reorganization.

No charter document can or should anticipate and resolve every problem that may arise in interpretation and implementation; many issues will be resolved through an interpretation made by legal counsel or adjudication. However, those considering writing or adopting other county charters may benefit from an understanding of the efforts and events which followed the implementation of the Wayne County Charter.