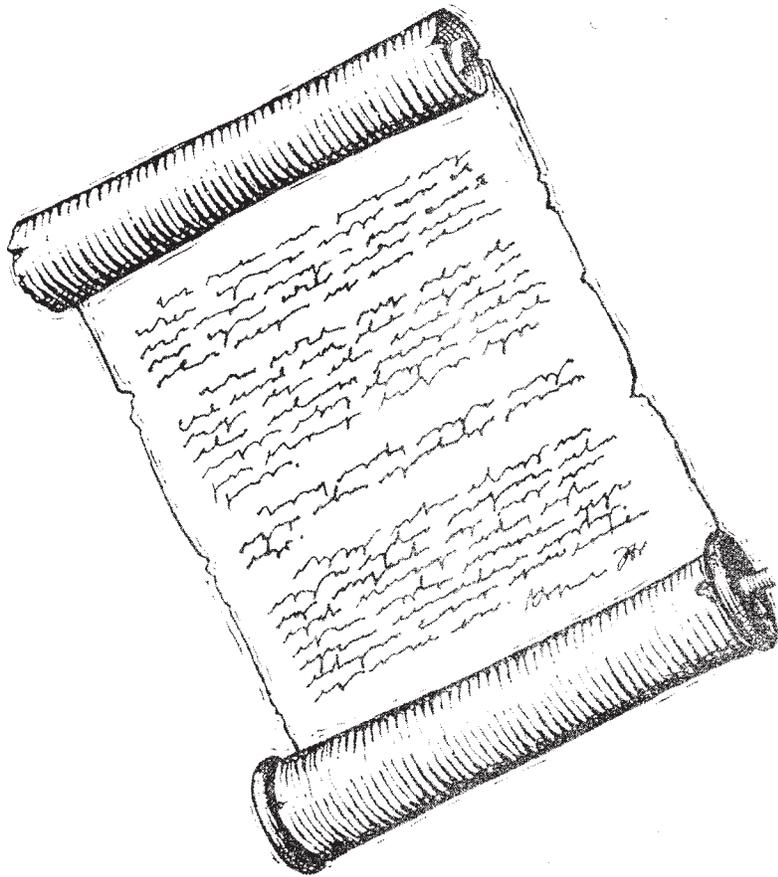


WAYNE COUNTY CARTER ISSUES . . .

# ELECTED COUNTY EXECUTIVE/CHIEF ADMINISTRATIVE OFFICER

By Sinclair Powell



**CITIZENS RESEARCH COUNCIL OF MICHIGAN**

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Report No. 265

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WAYNE COUNTY CHARTER ISSUES . . .

ELECTED COUNTY EXECUTIVE CHIEF/ADMINISTRATIVE OFFICER

by

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## TABLE OF CONTENTS

I. INTRODUCTION .....	1
Traditional County Organization .....	1
Advantages .....	2
Disadvantages .....	2
Reform Efforts .....	2
II. THE COUNTY EXECUTIVE OR CHIEF ADMINISTRATIVE OFFICER	
The Appointed Chief Administrative Officer .....	4
Advantages .....	4
Disadvantages .....	4
The County Executive .....	5
Advantages .....	5
Disadvantages .....	5
Term of Office, Selection, Qualifications, Removal, Filling	
a Vacancy .....	6
Term of office .....	6
Method of Selection .....	7
Qualifications .....	7
Removal .....	8
Filling of Vacancy .....	9
Powers, Duties and Responsibilities .....	9
General Powers .....	9
Organization of the Executive Branch .....	10
Relations with the Legislative Body .....	11
Fiscal Affairs .....	12
Appointment Power .....	14
III. CONCLUSION .....	16

# ELECTED COUNTY EXECUTIVE/CHIEF ADMINISTRATIVE OFFICER

## I. INTRODUCTION

### Traditional county Organization

Counties have been an integral part of local government in America for well over three centuries. During much of this period the traditional commission plan has been utilized as the county's basic organizational structure. This form, exemplified by Wayne County, is characterized by a central governing body – in most instances called a board of commissioners – which functions primarily as a legislative unit but also shares considerable executive and administrative authority with a variety of independently-elected officials, and a number of quasi-independent boards and commissions. These central governing bodies have varied in size from two or three persons to one hundred or more, although in recent years the very large boards of commissioners generally have had their membership sharply reduced (this has been particular true in states where ex-officio and appointed boards representing various governmental subdivisions in the county have given way to directly-elected bodies under the one man-one vote doctrine). Members of small-sized boards often tend to be elected at large; whereas in the case of larger bodies election by single-member districts has been the general rule.

The typical county governing board normally performs a variety of legislative-type functions – the enactment of ordinances and the passage of resolutions dealing with county matters, the adoption of budgets and the making of appropriations, the levying of taxes, the incurring of indebtedness, and the investigation of the conduct of various county offices and operations. In the administrative area, the governing board shares with other elected and appointed officials and quasi-independent boards power to coordinate and supervise the performance of numerous functions and programs, appoint various officers and employees, enforce county ordinances, rules and regulations and the laws of the state, award contracts, make purchases, maintain property, and monitor the expenditure of funds. The board, then, wears two hats – that of legislator and administrator. Under this form there is no true executive-administrative branch of government of the type found, for example, in the state or national governments, and thus no “separation of powers.” In an occasional jurisdiction, an effort has been made to vest in a single member of the board – almost always the chairman – some degree of executive authority. However, such an approach has been utilized only in a minority of instances, and in most counties working committees of the board of commissioners or the overall board have sought to resolve a wide range of executive and administrative problems. It must be emphasized that under the so-called commission form, various elected officials and semi-autonomous boards exercise exceptionally broad

executive and administrative authority independent of the governing body. Since these officials and boards often can establish policies and enact a variety of rules and regulations governing their individual operations, they may, in effect, also invade the legislative area from time-to-time. The result of all of this has been a complex structure of county government, with authority heavily diffused and responsibility very difficult to pinpoint.

Advantages. Various arguments have been advanced for retention of the commission plan of county government, sometimes termed a “plural executive” form. Among these have been the claim that this approach is supported by longevity and historical precedent; that a broad system of checks and balances is provided through independent election of a number of officials, thus lessening the possibility of corruption and “one man rule”; that with considerable legislative and executive power resting in a single governing board potentially divisive issues frequently can be compromised, conflict averted, and internal unity achieved; and that with governmental administration brought close to the people/by direct election of various department heads the system enhances democracy.

Disadvantages. During recent decades, with the expansion of population plus a vast increase in the number of public services performed by the typical major urban county, substantial disapprobation has been levied generally at this traditional structure of county government. Many have felt that the overall commission plan, while perhaps adequate in the period when county government performed a few simple services as an arm of the state, today is hopelessly antiquated and decidedly in need of change. Much of the criticism has been specifically directed at the loose organizational structure, and particularly at the absence of a single chief executive or administrative officer, in the commission form of county government. Critics have charged that the lack of such a single top official frequently results in a low standard of public service delivery to persons residing in the county; that responsibility for executive functions has been so broadly diffused among a large number of officials and special bodies that the citizens of the county are totally unable to hold anyone accountable for effective government; that no specific official exists who can adequately represent the county in its relationships with other levels of government; and that fiscal and budgetary affairs in particular are often apt to be poorly handled when executive and administrative responsibilities are vested in a scattering of semi-autonomous units.

### Reform Efforts

The drive toward restructuring of county government has gained substantial momentum in recent years. This has been particularly true in major urban areas, where at present a majority of county governments have been reorganized. The reorganizations have sought to achieve two basic goals. One has been the establishment in the county government of the position of elected executive or appointed chief administrative officer, together with the vesting in such an official

of considerable independent authority. The other has been the streamlining and integration of many of the typical county government's far-flung offices, departments, boards and commissions into a relatively small number of manageable units. In the majority of instances, these reorganizations have taken place through the adoption of some form of county charter, which often has permitted development of a governmental structure that satisfies state legal requirements but also is well-adapted to meeting the needs of the local jurisdiction. While charter adoption and structural reorganization have occurred most frequently in large urban counties, Wayne County remains an anomaly. It is the only major urban county (over 1,000,000 population) in the nation possessing both the constitutional right to adopt a charter and the statutory authority to reorganize its form of government which has failed thus far to utilize this power.

This paper will examine the role of the elected county executive or appointed chief administrative officer in a restructured county government based on experience in other reorganized counties. A separate paper in this series looks at an overall plan of organization of the executive branch.

## II. THE COUNTY EXECUTIVE OR CHIEF ADMINISTRATIVE OFFICER

As has been noted, one of the major goals in reorganizing county government has been to create the position of either elected county executive or appointed chief administrative officer (also often called county manager). The two positions have a number of similarities, but also certain specific differences.

### The Appointed Chief Administrative Officer

A county chief administrative officer is an official appointed by the county board of commissioners to carry out its policies in administering the affairs of the county government. The board of commissioners establishes county policies, adopts a budget, enacts ordinances and resolutions, and performs other basic functions of a legislative body. The chief administrator develops a proposed county budget for board of commissioner review and approval, implements and monitors the budget after adoption, appoints and removes department heads, supervises the operations of those county departments under his authority (usually this will include all departments not headed by elected officials), and in some instances may advise the board on policy matters. The chief administrative officer normally serves at the pleasure of the board of commissioners, and usually may be replaced by that body at any time.

Advantages. Advantages often cited in favor of the chief administrator plan of county government are that this approach is not too dramatic a departure from the traditional commission form and thus may reduce problems of transition; that the plan does separate policymaking and administration, thus properly defining areas of responsibility and to a considerable degree removing administrative functions from the political process; that an appointed administrator, if selected on the basis of merit, normally can provide strong professional leadership in the management of county operations; that since the chief administrator is directly chosen by and answerable to the board of commissioners, a harmonious relationship should exist between the two at all times; that should the chief administrator prove to be incompetent or out of step with the thinking of the board of commissioners, that individual can be quickly replaced by the board; and that a skilled and experienced administrator should aid greatly in the achievement of a sound fiscal performance by the county government.

Disadvantages. Disadvantages expressed with respect to this form are that because of the non-elective status of the administrator that person cannot provide political leadership, mobilize public opinion, or become a vigorous advocate on critical issues facing the county; that an appointed administrator may well be at a distinct disadvantage in dealing with elected officials who head county departments; that an administrator to a considerable degree is at the mercy of the board and thus simply cannot assert the influence that an independently-elected executive can; and that any appointed administrator recruited from outside the county may not fully understand local problems.

## The Elected County Executive

Establishment of the position of elected executive constitutes a much greater departure from the traditional commission form of county organization than does an appointed administrator. The executive, in addition to having authority over county departments of the same type as an appointed administrator, also, by virtue of having been directly elected by the voters of the county, is viewed as the formal head of the county government in a manner similar to that of a “strong mayor” of a city or the governor of a state. He thus usually will act as spokesperson for the county in its dealings with other units of government, and may develop and present programs and policies representing his views to the board of commissioners and strongly urge their adoption. The elected executive enjoys veto power over many actions of the board of commissioners (subject to override by that body), and through vigorous use of this power (or the threat of its use) can play an important role in the overall shaping of county policy.

Advantages. The advantages cited for the county executive approach stem largely from the directly-elected nature of the position. Thus, it is asserted that an elected chief executive should be highly responsive to public opinion, since he or she must face the voters at the next election; that such an official can be and usually is a strong political leader as well as an administrator and thus can help reconcile the diverse views found among the citizens of an urban county; that establishment of the elected executive position focuses on one individual an image of high prestige and leadership which could be of substantial value in dealing with outside interests and higher levels of government; that a clear separation of powers between executive and legislative branches is in keeping with the American tradition and often helps produce a healthy debate on policy issues; and that/an elected executive enjoys more permanent job tenure than an appointed administrator, which can be a decided advantage in a period of crisis.

Disadvantages. Criticisms of the elected executive form include the charge that the position demands far too much of any single individual, since few people can combine the skills of a political leader with those of an expert administrator; that one or more experienced administrators may well be required to assist the elected executive in performing many functions, thus increasing the cost of government; that an independently-elected top official leaves the way open to possible friction and even open warfare between executive and legislative branches, with detrimental results to county government generally; and that the concentration of political and executive power in an elected office of this nature may be so great that an all-powerful “boss” may be the inevitable result.

*Establishing the County Executive/Chief Administrative Officer in the Wayne County Charter. The enabling legislation in Michigan authorizing the establishment of a charter form of county government specifically mandates that, in a county with a population of 1,500,000 or more, such government*

*shall include the position of either elected executive or appointed chief administrative officer. The enabling act further provides that the two positions are to be incorporated in two separate proposed charters for voter approval or disapproval.<sup>1</sup> Sections 11a(4) and (8) of the enabling act read together state that the two alternative charters providing for the elected executive and appointed administrator shall not differ except as to method of selection, veto power, and removal. This appears to mandate that the two positions shall encompass identical duties, responsibilities, and powers other than as noted above and that all other charter provisions shall be identical. Such a provision relative to charter content is somewhat unusual, since, as observed earlier, fundamental differences do exist between the positions of elected county executive and appointed chief administrative officer.*

### Term of Office, Selection, Qualifications, Removal, Filling of a Vacancy

Term of Office. In most charters, the term of office provided for an elected county executive is different from that of an appointed chief administrator. Usually an elected executive will hold office for a specified term, such as two or four years (in a very infrequent case a charter may limit the total number of consecutive terms an elected executive may serve). The term often will be fixed to coincide with that of other elected county executive personnel, such as a prosecuting attorney or sheriff. On the other hand, a majority of charters do not set a specific term office for an appointed administrator. This official instead usually serves either for an indefinite term (such a provision is contained in the Model County Charter of the National Municipal League), or at the pleasure of the board of commissioners. Those charters which do specify a definite term of office for the chief administrator almost invariably also contain provisions for removal of such official by the board at any time; thus in effect providing the administrator with no guarantee of tenure.

*The charter enabling legislation applicable to Wayne County establishes a four-year term for the chief administrative officer, with a removal provision. The first term of office for the elected county executive is to be for a period ending at the same time as that of the incumbent governor. Thereafter the executive's term is to be four years in length, also concurrent with the term of the governor.*

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<sup>1</sup> The Charter County Act provides that "a charter shall be declared adopted by the electors if it receives more yes votes than no votes if both charters receive more yes votes than no votes, the charter which receives the higher number of yes votes shall be declared adopted. An elector may vote yes or no on either, or both, of the charters."<sup>2</sup>

Method of Selection. With respect to method of selection, as noted earlier in this report, county charters almost invariably provide that an elected executive shall be chosen by the voters of the county on an at-large basis. Charters also often specify whether the election is to be partisan or non-partisan, and may outline a nominating process (unless these matters are set forth in the general law governing counties). A county charter providing for a chief administrator usually will specify that the selection is to be by a majority of the board of commissioners elected and serving. This, of course, is consistent with the basic rule that the administrator is a person who serves as a representative of the board and thus is acceptable to a majority of that body.

*The Michigan Charter County Act provides that the elected chief executive is to be elected at-large on a partisan basis while the chief administrative officer is to be selected by a majority of the county board of commissioners elected and serving.*

Qualifications. Most charters to some degree also deal with the subject of qualifications for the positions of elected executive and appointed administrator. The matter of residency is one area which receives considerable attention. The elected executive almost invariably is required to be a qualified elector of the county at the time of election and also usually at the time of becoming a candidate. In addition, the person elected is required to maintain legal residence in the county during his or her term of office. Some charters require that the top elected official also have been an elector of the county for a stated period of time prior to election (one charter, that of Montgomery County, Maryland, specifies five years). The rationale for such a requirement presumably is to insure that any person elected to an important office have previously lived in the county a sufficient period of time to make possible a thorough knowledge of local problems. Whatever the merit of this viewpoint, it should be noted that so-called durational residency requirements of any length for elected officials have been subject to successful legal challenge in many federal and state courts in recent years.

Residency requirements relative to an appointed chief administrative officer present quite different problems to those persons charged with the duty of drafting a county charter. Many local government specialists feel that since the primary goal is to obtain a person with broad experience as a professional administrator, recruitment should be on a nationwide basis. If this reasoning is followed, no prior residency requirement would be imposed in the charter for the chief administrator at the time of appointment. Usually, however, such an official is required to become a resident of the county within a specified time following appointment, and to maintain such residency throughout the period of holding office.

Some charters list other qualifications for the position of elected executive (such as age), and quite a number specify certain types of training and professional experience for the appointed chief administrator post (“a person qualified by formal training in public administration, finance, or related fields, and by experience in an

administrative-executive position as . . . city or county manager” – Monroe County, New York, charter). The extent to which such provisions are legally enforceable may well be open to question, although they perhaps serve as useful guidelines to the board of commissioners in making an appointment. In a somewhat related area various charters contain provisions prohibiting the county executive or chief administrator from holding any other county office or county employment for which a salary or other compensation is paid, and a number of recently-enacted charters require the county executive or chief administrator to devote full-time to the duties of the office and not hold or accept other employment, public or private. An occasional charter may prohibit a member of the county board from being named to an appointed county office (including that of chief administrative officer) until one year after the expiration of the term .for which elected.

*The extent to which the Wayne County Charter Commission can deal with the subject of qualifications separately for the elected executive and appointed administrator positions may well depend on whether or not qualifications are considered to be part of the method of selection which the act exempts from the identicality requirement. If this is not the case the identicality provision again seemingly would apply, and a single set of qualifications would have to be established for both posts. It should be noted that Section 4(4) of the Charter County Act prohibits a member or former member of the county board of commissioners from serving as chief administrative officer until two years after termination of, membership on the board.*

Removal. A substantial number of charters set forth a quite detailed procedure governing removal of an appointed chief administrative officer. The goal here presumably is to protect such a person from hasty or ill-grounded removal action on the part of a board of commissioners. Many of the steps required in the typical charter to be taken to achieve removal may be considered as simply providing basic procedural due process in such a matter. These would include giving adequate notice of the intent to carry out removal, granting of an opportunity for public hearing if desired, etc. Other provisions may deal with substantive questions — i.e., the specific grounds or causes necessary to justify removal. Some of the grounds listed in various charters include malfeasance in office, conviction of a crime, failure to perform his or her duties in an honest and competent manner, physical or mental unfitness, etc. Charter provisions requiring more than a simple majority vote of the board to accomplish removal of the top administrator are fairly common, especially if quick action is taken. In the case of an elected executive many charters are totally silent as to removal. However, some charters provide for forfeiture of elective county office upon certain conditions (such as conviction of a crime), and others provide for recall. In many instances where the charter does not deal directly with the subject of removal, general state law presumably is relied on.

*As noted previously, the charter enabling act governing Wayne County permits the two charters to differ as to method of removal of the elected county*

*executive/ chief administrative officer. It states that the chief administrative officer may be removed from office only for cause by a two-thirds vote of the county board of commissioners elected and serving. Presumably the charter commission could incorporate in the charter provisions more exactly defining the words “for cause.” This may well be desirable since few phrases have been known to produce more controversy — and legal battles — than this one. Other than a requirement that recall of all county officials be provided for in the charter [14(n)], no language dealing with removal of the elected county executive can be found in the enabling act.<sup>2</sup> Present state law providing for removal of certain county officers by the governor for specific cause does not explicitly include the elected county executive.*

Filling of vacancy. Allied with the subject of removal are charter provisions dealing with the filling of any vacancy which may exist in the top county position. With respect to the appointed county administrator, a permanent vacancy would be filled by the board of commissioners. In the case of a vacancy of limited duration caused by temporary incapacity or short-term absence, charters often provide that the position be filled on an interim basis by a person designated by the county board or by someone named by the chief administrative officer) subject to board approval. In the instance of a temporary or permanent vacancy in the office of elected executive, many charters do not specifically deal with the matter (perhaps relying on general state law to cover the subject). Those that do cover the subject usually authorize the board of county commissioners by majority vote to fill a permanent vacancy until a successor county executive has been chosen at the next general election for an unexpired or full term.

*The Wayne County Charter Enabling Act is silent as to required procedures for filling a vacancy in the positions of appointed administrator or elected executive. The charter commission clearly could include provisions to deal with such a contingency. It should be noted that provisions do exist in general law for filling vacancies in elective and appointive county offices. These provisions, however, are incompatible with a strong executive form or government.*

### Powers, Duties and Responsibilities

General Powers. Many county charters state that the elected county executive or appointed administrator shall be the chief executive officer and administrative head of the county government (some charters, however, do not use the term “chief executive officer” in describing the status of the appointed administrator). Charters also may contain a provision granting to the top official all executive powers of the county which are not vested in other specific officials by such charter or other law.

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<sup>2</sup> General state law provides for the recall of all elected officials except judicial officers.

Language such as this may be viewed as desirable in helping establish the top-level status and broad general authority of the elected executive or appointed chief administrator position. Most charters also are quite specific in vesting in the elected executive or appointed administrator authority to supervise all county departments except those headed by elected officials (occasionally the language will read “supervise all departments” offices and agencies of the executive branch”) Such provisions make clear the extensive administrative and supervisory powers vested in the top officer, and may well aid in eliminating possible challenges to the authority of that office.

Apart from the general provisions noted in the preceding paragraph, charters vary greatly in the degree to which specific powers and duties of the top elected or appointed official are enumerated. An occasional charter will list in detail a substantial number of powers and duties, encompassing such areas as employee relations and labor contract negotiations, safeguarding of public funds, care and custody of public property, etc. Other charter documents are less detailed in this respect, and enumerate only more important powers, duties and responsibilities (several of these, including appointment power, authority in the area of finance, etc., will be dealt with in subsequent sections of this report). Many chapters provide that the enumeration of specific powers and duties does not imply limitation on overall authority.

*The state enabling act requires that any Wayne County charter, include as one of the duties and responsibilities of the top officer the supervision, direction and control of the functions of all departments of the county except those headed by elected officials. This provision to a substantial extent should establish clear-cut authority of the elected executive or appointed chief administrator over a broad range of county agencies, including any remaining boards and commissions. The act also mandates that another specific duty and responsibility of the top official shall be to coordinate the various activities of the county and unify the management of its affairs. This might well be interpreted to mean that the executive or administrator would be, responsible for coordinating operations headed by independent elected officials with overall county programs. Obviously the charter commission if it wishes can further define the general powers, duties and responsibilities of the top county officer, and do so in a manner which makes more specific the authority of the executive or administrator over agencies and functions.*

Organization of the Executive Branch. An occasional charter will vest in a chief executive officer the authority to establish new offices or departments, or modify an existing county organizational structure. This power almost invariably is subject to some form of ratification by the county legislative body. In some instances charters authorize an elected executive to propose organizational changes by so-called executive order, which become effective at the end of a stated period unless disapproved by a majority vote of the full council. Perhaps more often the authority to create, alter and abolish county administrative departments or transfer functions

is granted to the legislative branch, with an elected executive able to register disapproval through exercise of the veto power.

Relations with the Legislative Body. Since any county charter providing for an elected or appointed top officer in effect establishes an executive-administrative branch of county government, it clearly becomes necessary to define relationships between this branch and the legislative arm. This is particularly important since, under the traditional commission form of government, the commission exercises both executive and legislative powers. One subject often dealt with in this area is a prohibition against interference by the legislative body or any member thereof with executive or administrative matters. Thus many charters specifically restrict the board of commissioners or its members from giving orders to any officer or employee who is subject to the supervision of the elected executive or appointed administrator, from dictating the appointment or removal of any such subordinate officer or employee, or from interfering in any way with the executive-administrative function except for purposes of formal inquiry and investigation into the conduct of the affairs of the county and the operations of any department, office or agency thereof. Obviously provisions of this type are intended to make possible the effective operation of the executive-administrative function without domination by the legislative, while at the same time retaining in the legislative branch the so-called “oversight” power – the right to make certain that administrative units are functioning properly. In order to aid the legislative body in performing the oversight function, an occasional charter will specifically require that the top officer provide the legislative body with any information it may require for the exercise of its powers. At least one charter contains a section which seeks to balance the powers and duties of the two major branches of government in this specific area.<sup>3</sup>

Most county charters vest in an elected executive the power to veto legislation enacted by the board of commissioners (such authority is not granted to an appointed administrator because of the fact that such an official is the appointee of and answerable to the legislative body; thus a grant of veto power would be totally inconsistent with the nature of the position). Usually the veto power will extend to fill ordinances, and resolutions adopted by the legislative body, although an occasional charter will provide that an emergency ordinance (one basically defined as necessary for the immediate preservation of the public peace, health or safety) is not subject to veto. In the case of appropriations measures the veto normally need not be of the entire ordinance or resolution, but may deal only with a single item of expense. The legislative body almost invariably is granted the authority to override a veto, although this takes more than a simple majority vote (often required is the affirmative vote of a majority plus one of the members of the board, or of a specific

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<sup>3</sup> Atlantic County, N.J., Charter, which states: “It is the intent of this Charter to confer on the board general legislative and such investigative powers as are germane to the exercise of its legislative powers, but to retain in the head of the executive branch full control over the county administration and over the administration of county services provided for in this Charter.”

fraction – two-thirds or three-quarters – of the total body). Charters normally outline in some detail the procedure to be followed in the exercise of the veto power, including the number of days within which the executive must act and whether reasons for disapproval of the proposed legislation are to be submitted in writing.

*The Michigan charter enabling act applicable to Wayne County specifically requires the elected executive to be vested with veto power, including authority to veto “line items” of appropriation ordinances. Overriding a veto requires the vote of two-thirds of the commissioners elected and serving.*

It should be noted that an occasional county charter vests in the legislative body power to delegate to the elected executive or appointed administrator authority to make rules and regulations governing a wide range of county activities (often termed an administrative code). A number of charters also authorize the county executive or administrator to recommend measures for legislative action, and an occasional charter authorizes an elected executive to introduce ordinances or resolutions for consideration by the legislative body. The above-described types of authority clearly give the top official a good deal of input into the legislative agenda. A large number of charters provide that the executive or administrator shall periodically submit to the legislative body a general report on the affairs of the county, or more specifically recommend actions to be taken for the good of the county. An occasional charter requires the top official to prepare and submit to the legislative body and to the public an annual report describing the activities and accomplishments of the county government.

*The top elected or appointed officer is required by the Charter County Act to submit recommendations to the board for the efficient conduct of county business, report to the board on the affairs of the county and its needs, and advise the board not less than once each three months on the financial condition of the county.*

Allied with the subjects of legislation and reports is that of attendance of the executive or administrator at meetings of the legislative body. Various charters provide that the top official shall attend all meetings of the board of commissioners, with the right to participate in discussions but not to vote (some charters extend this to committee meetings). A very few charters authorize the executive to call special meetings of the legislative body. Obviously provisions of the type described offer to the executive or administrator the opportunity to very directly influence the legislative process.

Fiscal Affairs. The typical charter vests in the elected executive or appointed administrator broad responsibilities in the area of budgeting and finance. Almost universally the top official is required to submit to the legislative body in considerable detail a proposed operating budget and work program for each fiscal year, usually accompanied by a message explaining the budget and its accompanying work program. Many charters are very specific in stating exactly

what must be included in the recommended operating budget (for example, see the provisions in the Model County Charter of the National Municipal League, Sections 5.03 and 5.04). Most charters now also require that each year the executive or administrator also submit a capital improvement program and capital budget (with accompanying message), dealing both with the current fiscal year and a number of years (usually five) in the future. Charters often contain restrictions as to modifications which the legislative body may make in the proposed budget submitted by the top county officer (an example is a prohibition on increasing estimates of yields from existing and authorized revenue sources submitted by the executive or administrator). Following legislative adoption of the budget an elected county executive, through exercise of the veto power, usually may disapprove or reduce any item contained in it (as noted earlier, the appointed administrator has no such authority). If the legislative body fails to adopt a budget by a specified date some charters state that the proposed budget submitted by the executive or administrator shall become the official county budget. The executive or administrator has the basic responsibility for administering the budget once adopted. Many charters contain provisions directing that no expenditure of county funds be made or authorized by the top officer in excess of unencumbered appropriations. Some leeway often is given the executive or administrator in transferring unencumbered funds within a department or agency; however, transfers across departmental lines usually require action by the legislative body. Many charters require the top officer to make monthly, quarterly, or annual fiscal reports to the legislative body designed to show the exact financial condition of the county. It should be noted that general state law also may affect fiscal powers, duties and responsibilities of any county executive or administrator.

*The Michigan charter enabling act applicable to Wayne County states that a county charter shall require an executive or administrator to prepare and submit to the board of commissioners a recommended annual county budget and work program, and at least once each year also submit a proposed long-range capital program and budget. However, the charter also must include authority for an elected official or county road commission to appear before the board as to the officer's or road agency's own budget. This is a somewhat unusual provision, particularly with respect to a road agency whose members now are to be appointed (and subject to removal) by the executive or administrator. Other sections of the enabling act require that the charter provide for annual preparation, review, approval and adherence to a balanced budget in a manner which assures coordination among all county units. It should be noted, however, that the act provides that "responsibility for the determination of the expenditure of all funds for road construction and road maintenance. . . shall be vested in a 3-member commission."*

*Under the act, the elected county executive may veto any item of an ordinance enacted by the board of commissioners which appropriates funds. This provision clearly gives the elected executive considerably more power in budgeting than the appointed chief administrator; in other respects, however,*

*their authority in the field of fiscal affairs must be equal. Following budget adoption the top officer is required to administer the expenditure of funds in accordance with appropriations. The top official (executive or administrator) is required to advise the board at least every three months on the financial condition of the county. The charter must provide that if a budget deficit is incurred by the county in any fiscal year, a detailed and specific five-year plan for short-term recovery and long-term stability must be prepared and submitted to the governor and legislature for review prior to adoption of the next annual county budget. Responsibility for this plan is not specified in the act and charter language may be necessary to avoid possible confusion.*

Appointment Power. One of the key areas of authority of any county executive or chief administrative officer is the ability to appoint department heads and other high-level officials in the executive-administrative branch of county government. Virtually all county charters vest in the top officer such appointive power. Exempted from such authority of course are directly-elected officials heading departments. With respect to members of those boards and commissions which are continued under a charter, an elected executive almost always is granted authority to appoint such persons; an appointed administrator frequently is not given such power.

The authority to appoint administrative officials and members of boards and commissions often is not an unqualified one. In a substantial number of charters the legislative body is required to confirm such appointments. In many charters provisions for approval (or rejection) are relatively straightforward — the legislative body must confirm by majority vote. In some charters, however, more than a simple majority is required to defeat an appointment (for example, in Prince George's County, Maryland, a vote of two-thirds of the full membership of the legislative body is necessary to reject the appointment of an agency head by the elected county executive). A number of charters provide that failure by the legislative body to act on an appointment within a stated period is deemed approval.

Certain special appointment powers of an executive or administrator should be noted. Some charters state that the top official shall be empowered to appoint officers and members of boards, commissions and authorities which by general law are required to be appointed by boards of county commissioners.<sup>4</sup> A provision found very infrequently in county charters authorizes the elected executive to appoint a chairperson of the county legislative body when that organization has been unable by a specified date to select its own leader. In an allied area some charters state that, a county executive shall serve on all boards and commissions on which a member of the county board of commissioners was required to serve prior to charter adoption.<sup>5</sup>

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<sup>4</sup> See Summit County, Ohio, Charter, Section 2.03(2).

<sup>5</sup> King County, Washington, Charter, Section 320.20.

Closely associated with the power to appoint is the authority to remove. Interestingly, nearly all charters – including those which have strict requirements relative to legislative confirmation of appointments – give the executive or administrator unlimited power to remove those officers which he or she originally could appoint (the terms most often found in charters are: “and at pleasure remove,” “serve at the pleasure of,” or “may be removed at any time by the officer who appointed him”). Infrequently there is found in charters a provision requiring extensive public hearings prior to the removal of any appointed official, or approval of the dismissal by a simple majority or even an extraordinary majority (two-thirds or three-quarters) of the legislative body.

Since any elected county executive or appointed chief administrator is held responsible for the performance of his or her staff, it appears desirable – unless there is an overwhelming reason for legislative review – that the top officer be given relatively unfettered authority to both appoint and remove subordinate officers. Requirements that the legislative body approve a wide range of appointments or consent to the removal of an official tend to impair the concept of an independent executive-administrative arm of county government, and may well reduce efficiency. As noted earlier, any use of the term “for cause” tends to be particularly dangerous unless adequately defined.

The Michigan charter enabling act in section 11a(e) mandates inclusion in the charter of the power of the top executive or administrator, except in the case of elected officials, to appoint, supervise, and at pleasure remove heads of departments and all boards and commissions. The one exception to this general rule is in the case of the three members of the road agency, where the act makes power of appointment by the executive or administrator subject to the advice and consent of a majority of the board of commissioners elected and serving (removal is at the pleasure of the top official). It is clear that removal is to be solely at the discretion of the top official because of the phrase “at pleasure remove.” The act is silent on the question of whether the charter could make executive appointments subject to confirmation by the board of commissioners.

### III. CONCLUSION

The Michigan charter enabling act, in general, provides for establishment in Wayne County of a strong elected executive or appointed chief administrator form of government, although also retaining several directly-elected officials in the executive branch and continuing the existence of a road commission with some degree of independence.

The National Municipal League cites several characteristics of an elective executive office in local government, including:

- a. The power to appoint and dismiss substantially all department heads.
- b. The authority to supervise and direct most key administrative functions of the local government.
- c. The authority to prepare a comprehensive budget and to administer the budget when adopted.
- d. The right to submit recommendations on a wide range of matters to the county legislative body.

All of the above are provided for in the Michigan act. In addition, the charter commission undoubtedly would have authority to incorporate certain additional features in the charter further strengthening the top executive position. These might include the right of the top official to recommend specific items of legislation to the board of commissioners, and a prohibition against interference by the board in administrative matters.