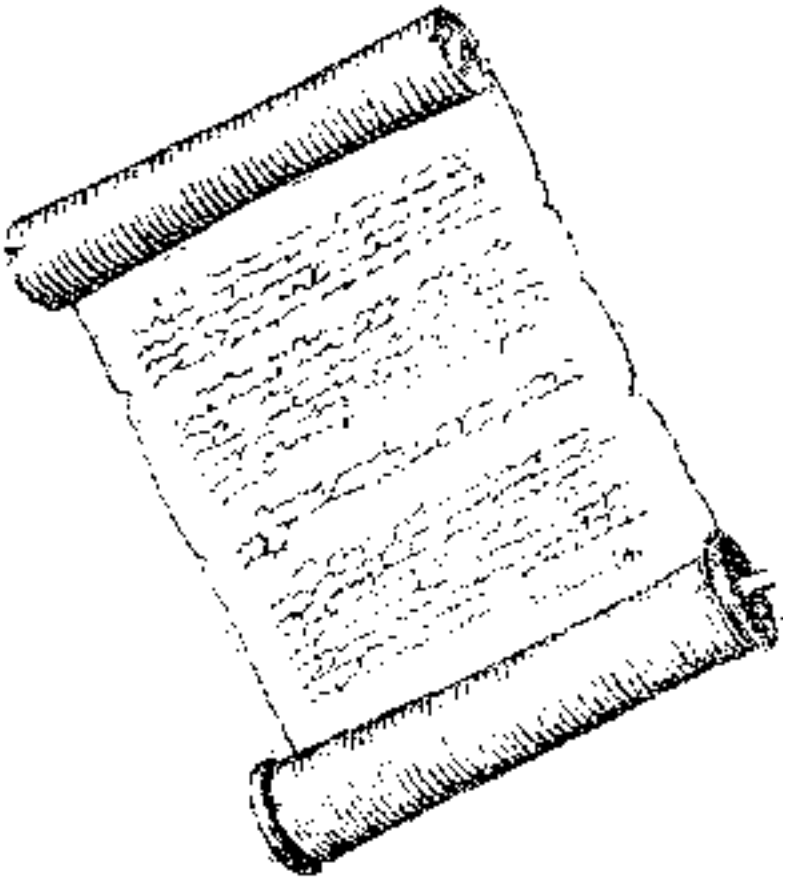
WAYNE COUNTY CARTER ISSUES . . .

The Legislative Branch

By Kenneth VerBurg



CITIZENS RESEARCH COUNCIL OF MICHIGAN

1666 City National Bank Building
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Lansing, Michigan 48933

Report No. 270

March, 1981

WAYNE COUNTY CHARTER ISSUES...

THE LEGISLATIVE BRANCH

by
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INTRODUCTION

Legislative bodies, whether at the state capitols, in city halls, or county courthouses, often do not get the most favorable treatment by the media. Newspapers commonly headline their stories in demeaning, if not derogatory, tones. And television and radio reports criticize particular legislative bodies for stalling or for a seeming inability to reach a decision that to everyone else seems obvious.

The general public may thus have less than a respectful attitude toward legislative bodies. (We note, however, that while citizens may think in negative terms about a legislative body as an entity, they commonly do not think about their individual legislators in the same way, at least if their willingness to reelect them is an indication.)

Reporters do not help things along by periodically running columns or lists of "dumb" things legislators say. For example, "How much will we owe on June 31?" or, "We'll have the tail wagging the dog instead of its head, if we don't watch out;"

Why does this occur? We think there are several reasons. First, this type of coverage results from the openness with which legislative bodies function—much of the activity is in full public view.

Second, our community and state legislative bodies are as likely as we to get their words twisted in the heat of debate or the excitement of a long-fought battle about to be won. Errant statements or public arguments make attractive reading and interesting listening on radio or TV. The fact that such reports do not appear daily is an indication that such conduct is not characteristic of all legislative behavior.

Third, our legislators, for the most part, are amateurs in the business of government. Most have built their occupations and careers in other fields and will leave government after a few years. Those that do manage to stay longer often develop the finesse and polish that we sometimes admire in executive and judicial leaders.

A fourth reason is that not all that goes on during legislative deliberations is readily apparent or understood. The motivations, the strategies, the bargaining and trading, the influence of personal loyalties are not always evident to casual observers, or even to those who watch on a regular basis.

And fifth, legislative bodies are a form of committee, and their work product is based on various compromises of competing interests. As anyone who has spent time on an official committee knows, committee decisions are seldom as neat and clear as the decision of an individual. In fact, the idea that a camel is a "horse designed by a committee" is not without its validity.

Governors, mayors, managers, even the courts, do not have the same kinds of problems with their public image. Internal contradictions and inconsistencies are much less apparent in the products of these offices or are easily explained away by official spokespersons.

Little wonder. Governors and other executive officers usually have writers—for program statements, speeches, news conferences, etc. Their ideas and words are carefully crafted before being made public. Governors and mayors are rarely put in a position where they speak at length without careful consideration. And when they are, executive officers usually get into the same kind of trouble as legislators do.

The courts usually carry on their business in a similar way. Debates among the judges are carried on behind closed doors and the product is usually carefully reviewed before being released to the public.

Administrative versus political efficiency. Why should we begin with this? It is to remind ourselves that legislative bodies are different from the other branches of our governments. We begin here to call attention to the fact that the legislative process is not neat and orderly. Someone once said, (and others have repeated), "There are two things a person should not watch being made—sausage and laws."

Is it necessary to remind ourselves of this? We believe it is because in part a whole movement of reform of state legislatures across the nation got started because the participants believed that effective legislatures were those what were administratively efficient.[1]

We see the main goal of legislative bodies differently—a legislative body should be politically efficient. That is, an effective legislature is continually seeking a balance of the interests that have something at stake in the proposal the legislative body is considering. The task of the legislative body is not merely to reject or accept a proposal in an administratively efficient manner. Its task is to consider and evaluate the arguments for and against, to weigh them, and to produce a result that is politically acceptable.

It is in the legislative process that the weak and strong can make their views known. It is here that the individual citizen can object to the costs being imposed or to the benefits being denied.

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[1] See The Sometimes Governments: A Critical Study of the State Legislatures. Citizens Conference on State Legislatures (now called Legis 50). Bantam Books, N.Y., 1971.

To be sure, the legislative process often results in delay and almost always in a compromise. Moreover, the legislative process tends to preserve stability and to favor the status quo, a fact we may often find frustrating when we want change and comforting when we oppose changes being proposed. But this reality does remind us that in our democratic system, the majority must deal with the resources a minority view can bring to the fray.

Are we saying then that a legislative body should not be concerned with its administrative efficiency? Hardly. There have been times when the administrative inefficiencies of our legislative bodies have rendered them incapable of acting at all. Clearly that is inappropriate. Legislative bodies must have rules that permit the exercise of power and procedures that enable them to act after those with something at stake have had their say and have exhausted their resources.

The task of the Wayne County Charter Commission, which is itself a kind of legislative gathering, is to seek a balance in the charter provisions by creating a board of commissioners that is both politically and administratively efficient.

Developing the Legislative Provisions

Designing provisions for the proposed charter that will contribute significantly to a politically and administratively effective county legislative body is a difficult task. But it is also one of the major tasks of the charter commission—the charter commission has more latitude regarding the legislative body, perhaps, than for any of the other institutions of the proposed charter government. Although the charter commission will be able to propose a number of provisions regarding the executive branch, it is also true that the Charter County Act already stipulates a great deal with respect to the executive officer and the powers of that office.

The public, and perhaps some charter commissioners as well, may believe the current difficulties of Wayne County are the fault of the board of commissioners. If so, charter commissioners may be tempted, at least subconsciously, to correct those problems. But the danger for the charter commission is "over correction."

"Over correction" could result in a legislative body that is weak and impotent, a board of county commissioners that has little power to check the considerable power that the enabling statute already accords the executive officer. The charter could thus create a county government that is imbalanced and not subject to citizen influence and control.

Unfortunately there is not a sure-fire prescription or formula that one can recommend to bring about the precisely desired result. The people who hold the offices and the political environment also contribute to the chemistry of our governmental

institutions. Thus we suggest that the charter commissioners approach part of their task by focusing on the fact that (1) a charter county government will differ significantly from the present county; (2) the law provides for an executive officer with considerable formal power; and (3) the new board of commissioners will have to function in a truly and virtually exclusive legislative capacity.[2]

The goal then, we suggest, is to design provisions for the charter that will enable the legislative body to carry out its responsibilities in ways that are both politically and administratively effective; that will permit boards of commissioners under the charter county government to articulate the wants and needs of citizens; and that will give the board of commissioners sufficient political resources to bring about a balance in the legislative/executive "tuggings and pullings" that are essential to our democratic processes.

THE LEGISLATIVE FUNCTIONS

Traditionally, the textbooks classify the legislative functions into three main categories—lawmaking, legislative oversight, and constituent service. We review these three functions here generally and note an occasional application to Wayne County. Later we will draw upon this material in more detail as we address the specific questions relating to considerations of the charter commission.

Lawmaking

Strictly speaking, boards of county commissioners pass very few laws, or ordinances as we commonly refer to them in the community-level governments. In part, county boards pass so few ordinances because the process is rather cumbersome. State law requires most county ordinances to be passed by two-thirds vote of the county board and approved by the governor. A county board may override a governor's objection by a two-thirds vote of the members. Most county

[2] We note that the statutory board of commissioners has executive/administrative as well as legislative functions. Among such executive/administrative functions are the appointment and removal of personnel, supervision of various administrative departments, development and approval of regulations, and others. This dual role in many counties weakens both the executive/ administrative and legislative capabilities. Commissioners often lack the expertise and time to perform as executives or administrators. And as legislators they do not have sufficient detachment to evaluate proposals critically.

ordinances are also subject to referendum upon petition by 20 percent of the voters.

But the main reason county boards pass so few ordinances (Wayne County lists only 25 ordinances now in effect) is that state law has nearly eliminated county boards from passing ordinances. There are several reasons.

(1) County ordinances must relate to "purely county affairs."

(2) County ordinances may not "be opposed to the general laws of the state."

(3) County ordinances may not interfere with the "local affairs of any township, incorporated city, or village within the limits of such county."

(4) County government does not possess a general power to regulate for the health, safety, and welfare of its residents.

These limits have presented little difficulty for the county boards because state statutes also cover many of the subjects that counties might regulate and because so many of the board actions do in fact deal with internal county matters. County boards of commissioners thus rely almost entirely on resolutions rather than ordinances to enact their policies. The courts have long since ruled that an action is just as valid whether accomplished by resolution or ordinance unless a state law requires the action to be by ordinance.[3]

The difficulty arises, of course, when a county board seeks to regulate the behavior and conduct of its citizens. Legislation enacted by resolution cannot impose a criminal penalty for violation of a policy. Only by adopting an ordinance and following the somewhat lengthy procedure, can a board pass a "law" and provide a penalty (up to $100 or 90 days) for violators. Thus, resolutions are reasonably effective for regulating internal county affairs but are not of much use in regulating the general citizenry.

Ordinance powers under the charter. The Charter County Act addresses the matter of ordinance powers in Sections 14(h), 14(i).

> Sec. 14. A county charter adopted under the provisions of this act shall provide:
>
> (h) That all ordinances of the county shall remain in effect unless changed by the charter or an ordinance adopted under the charter.

[3] *Gale v. Board of Supervisors*, Oakland County, 200 M 399.

(i) For the power and authority to adopt, amend, and repeal any ordinance authorized by law, or necessary to carry out any power, function or service authorized by this act and by the charter.

The enabling section of the act, Section 15, also refers briefly to ordinance powers.

> Sec. 15. A county charter adopted under the provisions of this may provide for:
>
> (a) The office of corporation counsel, public defender, auditor general, and all other offices, boards, commissions, or departments necessary for the efficient operation of county government. The charter may also provide for the power and authority to establish, by ordinance, other offices, boards, commissions, and departments as may become necessary (emphasis added).

These provisions for ordinance powers for a charter county board of commissioners are probably adequate. But the act does not open up a wholly new vista for the legislative work of the county board. There are several problems.

First, there are the questions regarding the existing statutes on county ordinance powers. Is a county charter subject to the provisions of PA 156 of 1851, Sections 11 (13) and 12 (MCLA 46.11 and MCLA 46.12)?

These sections require a two-thirds vote of the commission to adopt an ordinance, for gubernatorial review, and a two-thirds vote of the county commission to override a governor's objections. The sections also limit county ordinances to county affairs, non-contravention of state laws, and non-interference with city, village, and township matters, as does the county charter act itself.

We do not believe that it is the intent of the Charter County Act to require a two-thirds vote for adoption of ordinances or for them to be reviewed by the governor. It is inconsistent with the idea of charter government. Moreover, the general statutes (MCLA 46.11 and 46.12) did not contemplate the presence of a county executive much less one with a veto power. Still there is no specific exclusion in the enabling legislation for charter counties. An attorney general's opinion or court decision will probably be necessary to clarify the question.

The new grant of authority to enact ordinances provided by the County Charter Act (Section 14 (i) and l5 (a)), together with a presumably less cumbersome process, will be helpful in the future. This is especially the case with respect to the development of municipal-type services in cooperation with the cities and townships. Also, the establishment and dissolution of departments by ordinance rather than by resolution may contribute to the legal standing of such legislative actions.

Orderly legislation. Perhaps the most important aspect of the lawmaking function of county boards is that the lawmaking product be orderly and state well the policies of the board.

Ordinances seem to meet this standard better than resolutions, probably because people see ordinances as having a higher legal standing. Units that operate through an ordinance system amend the ordinances to change policy statements. Old policies are then removed and new ones inserted. Officials and citizens, as a result, have a better opportunity to understand what the policy is.

Units that use resolutions as their primary lawmaking vehicle, tend to pass new policy statements without always clarifying what is to be eliminated or superseded. Those who have to work with resolutions, including the legislators themselves, do not always have a clear understanding of the action taken or how it might relate to a prior action on the same subject.

Ordinances may provide a more orderly legislative vehicle only because they are numbered and cataloged. In some of our work, we have encouraged local boards to make a distinction between policy resolutions that are intended to be governing for the employees in the courthouse and other resolutions that these bodies pass. We have suggested that policy resolutions be numbered and cataloged as are ordinances. And when a policy resolution is amended, we have suggested that the existing policy resolution covering that subject be referenced.

It might be well to include in the charter some instructions regarding the legislative product. Our state constitution's requirements regarding the state legislature may provide some beginning points.

The budget as a legislative product. Control of the purse strings through the budget process is perhaps the most important legislative power that the county board of commissioners has. Review of departmental budget proposals and oversight of the administration of the budget can provide an entry into virtually all the nooks and crannies of county activities. Moreover, the budget process will be one of the important battlegrounds between the executive departments and the county board

of commissioners.

We presume that another paper will deal in detail with the budget process. And, in fact, much of the groundwork for the process is provided in the state Uniform Budget and Accounting Act, as well as in the present county procedure. Furthermore, the change under a county charter with respect to the executive-proposed budget may not be great, because the county now follows at least the basic rudiments of the executive budget process. Regarding the administration of the budget, however, we may see greater change if only because department heads will likely be more responsive to executive directives than they are under the present arrangements.

One matter that the charter commission should consider in relation to legislative-executive budget powers concerns the question of whether an appropriation is a mandate to spend. Traditionally, our institutions have viewed appropriations as a permission to spend, not an order to do so. During the 1970s, however, when we became concerned with the "imperial presidency" and the executive power to withhold funds, Congress took away most of the president's "withhold" powers. And in the state legislature, we have a budget reduction process that gives the legislature the authority to review and negotiate gubernatorial proposals to reduce spending authorizations.

The present mood in the county may be to give the executive officer complete authority to reduce appropriations. The charter commission may wish to consider whether such an approach is not one of the "over corrections" we discussed earlier.

Legislative Oversight

A second function that textbooks usually ascribe to legislative bodies is the oversight responsibility. The idea is that legislatures have the duty and responsibility to inquire into and evaluate the work and activity of the administrative agencies of the government. The role gives the legislators the job of assessing and criticizing the work and proposals of others.

Although the responsibility for oversight often takes on political overtones, the task is basically to judge whether the agencies are following approved policies and practices; whether the service programs are meeting intended targets; and whether appropriations are adequate, being used efficiently, and for the intended purposes.

Formal and informal means of oversight. Members of legislative bodies have both formal and informal occasions for carrying out the oversight responsibility. Ordinarily, this is not a function that needs to be assigned to legislative bodies. The basis for the oversight activity lies in the other duties assigned to the legislative body.

The budget review and adoption process in the legislative body is perhaps the occasion where a legislative body carries out most comprehensively its oversight duty. Through a review of the executive budget and budget hearings a legislative body conducts, the members not only can review the proposals the executive makes but also inquire about program needs, effectiveness, and other concerns.

A similar kind of activity can take place as the legislative body considers proposals from the administrative branch for new legislation or changes in existing ordinances, resolutions, and policies.

The annual audit procedure provides another opportunity for legislative oversight. Traditionally, audits have been purely financial in nature. (Have all the funds been accounted for?) In recent years, though, audits have also looked at performance and policy compliance. In the case of audits, legislative bodies depend upon staff agencies or independent audit firms for information. The key to the success of the audit report as a tool for legislative oversight is legislators who will read the audit reports and follow up on the findings.

Legislative bodies also carry out the oversight duty through the use of special committees to investigate some particular problem or concern. In some instances these special committees have the power of subpoena and can compel witnesses to testify. Special committees with such powers, however, are rarely used in local government settings.

Another formal opportunity for oversight concerns the confirmation of persons recommended for or appointed to boards or commissions by the executive officer. The legislative body, of course, cannot make its vote conditional upon the appointee's agreement to perform the duties in a prescribed way. But the hearings for such appointments do give legislators an opportunity to make their wishes known and perhaps to develop some understandings about how they want the appointee to conduct the affairs of the office.

Skilled legislators find many ways to conduct their oversight informally. Such methods may involve casual conversation, thorough reading and analysis of official reports, follow-up questions on news reports and public statements or meetings with administrators—meetings presumably called for other reasons.

Some charter commissions and administrators have tried to curb these informal methods of oversight—for example, by attempting to prohibit city councilors to contact directly a department administrator and instead to require them to follow the chain of command and go to the city manager. In general, these are not very effective and may indeed stifle council members in their effort to obtain the information needed.

Problems in legislative oversight. There are several problems or difficulties in connection with the oversight responsibility. The first concerns legislators' own understanding and perhaps discomfort with the responsibility.

Legislators don't find much satisfaction in constantly complimenting administrators on the fine job they are doing. In fact, if they can't find any faults in an administrator's performance, legislators may think that somehow they have failed in their own job of legislative oversight.

But there is a paradox here. Legislators do not particularly enjoy continually having to look for shortcomings and chinks in the administrator's armor. Being a constant critic, pointing out jobs that were botched, explaining how they could have been done better, and the like, is not a pleasant task for most of us. Yet, the oversight task, indeed the legislative task, requires a great deal of this kind of activity. Legislators who do not pursue the task with a willingness to be critical and to evaluate carefully the proposals coming to them, are likely to have the wool pulled over their eyes rather frequently.

Carrying out the oversight responsibility will probably be the most significant change that present commissioners will experience if they also serve as commissioners under the charter county. They will become increasingly aware of the separation of executive and legislative power. Such commissioners will undoubtedly take some time becoming accustomed to this new perspective, especially with respect to the oversight function.

A second problem with the oversight function is that the public and members of the media often do not understand it. A delay or rejection of an appointment, significant changes in an executive's budget proposal—or, in the case of the state legislature, the rejection of some proposed administrative rules—are quickly translated as political scraps. They are often just that, but they may also be the legitimate exercise of the oversight responsibility.

The public and sometimes the press may become uncomfortable with such goings on—and well they should if the scrap is protracted and crises result. But the public, we think, should also understand that some of this tension must be present if both the legislative body and the administration are to carry out their respective duties effectively.

A third problem is that legislative oversight can lead to protracted battles and deadlocks. In parliamentary systems of government, such fights can usually be resolved through a lack-of-confidence vote and a call for a new election. In our own system there is no easy way to get the two sides unlocked. We must wait until the next scheduled election or focus enough "political heat" through letters, telephone calls, and media attention to break the logjam. Our political and party system is such that written rules in a charter will do little to resolve the deadlocks. Fights can and will happen in political communities that are bitterly divided and where political leadership does not seek to bring out the best in the participants.

A fourth problem with legislative oversight concerns the tendency toward too strong an involvement by legislators in the administration. That is, legislators—especially committee chairpersons—exercising too much power over the administrative affairs. Generally, this results from informal uses of power. But written procedures may also be a part of this problem. At the state level, for example, administrative rules cannot become effective until the joint committee on administrative rules approves them. Often the fights over the statute itself are repeated in the adoption of the rules and regulations.

Legislative bodies should have legislative veto powers over some matters, but if the power is too extensive, the legislators tend to become too involved in administrative matters. They then diminish their capacity to carry out their principal role—that of evaluating and criticizing. It is difficult to evaluate effectively something that the critic helped create or establish.

Constituent Services

Legislators also exercise their oversight responsibilities through their third major responsibility, constituent service. Prior to the shift from the board of supervisors to the board of commissioners, a member of the county board no doubt saw the township or city he or she represented as their main constituent.

Today, members of the county board represent the people within a geographical area. In some instances the commissioner districts coincide with the boundaries of a city or township, or perhaps a combination of them. Other commissioners represent only part of one or more units. County commissioners, then, have mixed views as to their constituencies. Some commissioners feel that they represent only the people within the district; others see the local government bodies as part of their constituencies as well.

Just how much importance is placed on constituent service depends on how the individual commissioners relate to their districts and on how widely recognized they are as a district's county commissioner. Some commissioners will find greater opportunity to provide services than will others. However, it is likely that at the county level most citizens will themselves contact the agency from which they seek services rather than searching out the county commissioner to act as an intermediary. The latter seems likely only when the citizen is having difficulty in obtaining the service or is having some other dispute with a county agency.

County commissioners who represent a city, village, or township and who meet with the governing boards of these units frequently, are likely to be asked to act on behalf of the unit in the circles of county government. Should the charter county government become involved in more cooperative programming with the local units, the task of serving the governmental constituency could become even more significant.

The charter, it seems to us, does not have to address the question of constituent service directly. Some commissioners will develop relationships that generate requests for services; others will not.

However, the county charter may have an indirect effect on the constituent service role of the county commissioners. As we will discuss below, charter questions such as the size of the board of commissioners, the extent of the boards' staff, and conditions that may affect the fulltime or part-time status of the county board will determine in part how much constituent service county board members will be able to provide to the population and governmental units they represent.

SOME CONSIDERATIONS FOR COUNTY CHARTER PROVISIONS ON THE LEGISLATIVE BRANCH

We now turn our attention to some detailed questions concerning the provisions that the county charter should include. We will state each question and some information pertinent to the question. We will then seek to state briefly the implication for each of the alternatives.

1. *What constraints or requirements does the Charter County Act impose?*
   - Name; county board of commissioners
   - Term; 2 years, elected in even-numbered year (actually, concurrent with state representative)
   - Number of members; at least five but not more than 27
   - Compensation; provide by ordinance
   - Selection; partisan ballot
   - Districts; single-member, one person/one vote
   - Redistricting; by county apportionment commission after each decennial census
   - Advise and consent; majority of board for road commissioners within 60 days
   - Ordinance power; discussed above
   - Recall; commissioners are subject to recall
   - Amendment or revision of charter; the question may be submitted to voters by the board of commissioners

2. *How many members shall the county board of commissioners have?*
   - The County Charter Act permits from five to 27.
   - The present board has 27 members. The present statutory limit is 35 for Wayne County.
   - Under present law the apportionment commission determines the number. Under the Charter County Act, the charter will set the number. The apportionment commission will determine the district boundaries.

– The charter act requires a two-thirds vote for several actions—e.g., override of elected-executive veto and dismissal of the appointed manager. The charter itself may impose other requirements for a two-thirds vote. A number of commissioners that is a multiple of three (6, 9, 12, etc.) would provide the fairest number in terms of the two-thirds vote requirement. Any other number would require a greater than two-thirds vote to exercise this legislative power. (A county commission of only six would require a two-thirds vote for every final action.)

Exhibit I lists some of the implications of a decision on size of the county board. These political implications are general tendencies, not absolute outcomes. Although some are obvious on their face, we list these just to assure that they are not overlooked. And some may appear to contradict others. This is so because the politics that flow from the formal structure result from a combination of factors, including the political culture and society to which the structure relates.

EXHIBIT I
SIZE CONSIDERATIONS

The smaller the commission…

a. the more likely the election of prestigious people with well-known names.

b. the greater the financial costs per individual candidate to campaign for the position and, therefore,

c. the more important it will be for a candidate

-- to be wealthy, or

-- politically skilled at building a coalition of support.

d. the more likely commissioners will be moderate in their outlook.

e. the more likely commissioners will have to represent several political subdivisions.

f. the more likely commissioners will represent a combination of ethnic, racial, social, and economic groups.

g. the more likely citizens will approve full time status for commissioner.

h. the more likely the size and makeup of commissioner districts will be similar to state senate districts. (1982 state senate districts will have about 242,000 residents. The minimum number of commissioner districts (5) would result in 465,000 residents per commissioner district.)

i. the smaller the number of board committees and the broader the range of each commissioner's interests.

j. the more commissioners will rely on board staff for both board work and constituent service.

k. the more visibility each commissioner will have.

l. the less likely the board chair will accrue substantial power.

m. the more likely individual commissioners will be competitors for countywide elected offices.

n. the lower the rate of turnover on the board. (Several factors enter here. A commissioner who has a secure seat and who is being compensated competitively may be disinclined to risk the seat for a higher prestige office. However the coincidence of large commissioner districts with constituencies common to other offices—especially those with four-year terms and perhaps higher pay—will contribute to more risk-taking and, hence, to greater turnover.)

The larger the commission…

a. the more likely people who are not widely known will be elected to the commission.

b. the lower the financial costs per individual to campaign for the position and, therefore,

c. the less important it will be for a candidate to be personally wealthy or skilled at coalition building; but it may be more likely for a candidate to win by representing a single-interest group.

d. the more likely the commission will have some members with an extreme outlook.

e. the more likely commissioners will represent one or a portion of one political subdivision.

f. the more likely commissioners will represent a narrow range of ethnic, racial, social, and economic groups.

g. the less likely citizens will approve full-time status for commissioners.

h. the more likely commissioner districts will approximate state representative districts. (1982 state representative districts will have about 83,600 residents. The maximum number of commissioner districts (27) would result in 86,100 residents per commissioner district.)

i. the larger the number of board committees and the more specialized will be the interests of each commissioner.

j. the more likely commissioners are to do their own board and constituent service work.

k. the less visibility individual commissioners will have.

l. the more likely power will flow to the board chair and committee chairs.

m. the less likely board leaders will become competitors for countywide elected offices.

n. the higher the rate of turnover on the board. (See comment on opposite side)

3. *Should the charter state anything regarding qualifications for the office of county commissioner?*

   – Current general statutes state that a commission candidate must be a registered voter of the district. This requirement covers age (18), citizenship (yes), and residency (for at least 30 days.)

   – Some municipal charters require longer periods of residency in the district. The general idea is to curtail "carpet-bagging" from one commissioner district to another. It is doubtful that the courts would approve residency requirements longer than one year, or other qualifications that would tend to restrict one's liberty to run for the office and accept it if elected.

4. *What should the charter provide regarding compensation?*

   – The county charter act instructs the county board to provide for commissioner compensation by ordinance (Section 14(b)).

   – The act further states that commissioners may increase or decrease their compensation but that a change may not become effective during the term in which the change was voted.

   – This language, seemingly, does not forbid the charter's requiring the county board to provide for commissioner compensation through an ordinance calling for a compensation commission.

   – The charter could address, it appears, questions such as a retirement plan for commissioners, a limit on annual salary (perhaps in terms of a salary of some other position over which the county board does not have control or influence), an annual salary and/or per diem rate, mileage provisions, etc.

The problem of legislators' salaries has been a delicate and difficult one over the years. An early constitution set the limit for legislative compensation. Later, the state constitution allowed the legislative body to set member salaries. Neither was satisfactory. More recently voters changed the constitution to provide for a citizen compensation commission. The practice of having citizen compensation commissions set the salaries of legislators and other elected officials has spread to local units as well, even though we suspect there are those who also find this approach unsatisfactory.

Wayne County commissioners presently receive a salary of $16,190 per year, plus a cost of living allowance now being paid at a rate of about $4,000 annually. The chairman of the board of commissioners receives $22,190 and the vice-chairman $17,190. The board of commissioners established a compensation commission in 1979 pursuant to Act No. 485, Public Acts of 1978. The compensation commission determines compensation for all nonjudicial elected officials in the county. The compensation commission is composed of seven members appointed by the chairman of the board of commissioners for four-year, staggered terms. Recommendations of the compensation commission become effective unless rejected by a two-thirds vote of the members elected to and serving on the board of commissioners.

As noted, the charter commission has two basic chores. It can choose to state only the language of the enabling act, thereby leaving the county commissioner to take whatever political heat it generates by its actions. Or the charter commission can direct the county commissioners to provide for the setting of their salary through the creation of a compensation commission. It is possible, of course, that a court could later rule this an improper infringement on powers granted by the enabling act to the county commission. In this case, the matter of salaries would rest in the county commission, so not much is risked by the second alternative.

Not all the political outcomes of a policy on the compensation question are fully predictable. Exhibit II indicates some general tendencies showing that compensation is an important consideration in the political framework in which the board of commissioners will operate.

EXHIBIT II
SOME COMPENSATION CONSIDERATIONS

The higher the level of compensation...	The lower the level of compensation...
a. the greater the competition for the position of county commissioner.	a. the lower the level of competition for the position of county commissioner.
b. the lower the degree of turnover. (If pay is not competitive with that of state legislators, we might expect county commissioners to seek legislative seats and thus contribute to turnover rates.)	b. the greater the degree of turnover. (See opposite note.)
c. the more time, as a general rule, commissioners will give to the job, and the stronger the tendency to make the job full time. (This has implications for who will run for the office. Professional and business people are not likely to run if the job interferes too much with the professional or business career.)	c. the less time commissioners will generally give to the job and the less likely commissioners will seek to make it a job full time. (A low demand on time will make the position more inviting to professional and business people.)
d. the greater the likelihood that people from broad occupational groups will run for the office.	d. the greater the likelihood that only people with occupations that permit them to serve in public off ice will run for the office.
e. the more likely people will seek the office for its remunerative aspects.	e. the more likely candidates are to be issue oriented.
f. the more likely commissioners will counteract the political power of the executive.	f. the more likely the elected executive is to dominate the politics of the board of county commissioners.

5. *Should the charter state the form of compensation; that is, annual salary only, per diem only, or a combination?*

   – Michigan county boards have wrestled with this problem. All three forms of compensation are now in use.

   – *Per diem* compensation was intended to compensate those commissioners who attended. Abuses have crept in through calling and collecting for non-meetings, or for partial attendance (i.e., being there for the roll call).

   – Annual salary compensation was used to provide a guaranteed income for those who had to make other financial sacrifices. Abuses in this form crept in as some commissioners took their salary but did not participate fully in the work.

   – The combination of the two approaches seems to be the most common approach in use today. Most combined systems also establish a maximum amount that can be drawn as salary.

We note that abuses are not necessarily widespread; usually only by one or two members of large boards have taken advantage of the rules. This has irritated those who were not abusing the system, hence the various strategies. Ideally, the person abusing the system should have to provide answers on election day. The problem, however, has been that the commissioner races have not been highly visible among all of the other election races.

6. *Can the charter stipulate whether the commission is to be part time or full time?*

   – The Charter County Act is silent on this question and does not prohibit the charter commission from including a provision.

   – Typically charters do not address this question. (Some state constitutions still limit the number of days the state legislatures may meet each year, subject to special sessions at the call of the governor.)

   – The charter could limit the number of regular meetings and make special meetings subject to the call of the executive or to a petition of a majority or some other number of the commissioners.

   – In general, such a strategy severely limits the power of the legislative body and strengthens the executive power.

- The level of compensation will generally determine how much time the commissioners will spend on the job.

  (As we have noted, a court could overturn a charter provision requiring a compensation commission, in which case the county commission would set the compensation. Thus the charter commission should not depend entirely on such a provision if the charter commission wishes to assure a part- time county board of commissioners.)

7. *Should the charter state any limitations regarding the number of board committees?*

   - Traditionally, county boards have had a rather large number of committees, some as high as 30 or 40.
   - In recent years more and more counties have been reducing the number; many now have only four to five.
   - The charter could impose a limit on the number of committees and let the county commission decide what committees to have. The charter could also restrict the number of committee assignments each member could have.
   - The general belief is that a board with a small number of committees requires committee members to maintain a broader perspective as they make their decisions. A large number of committees tends to generate actions that are narrow in their outlook. Chairpersons of such narrowly focused committees tend to develop excessive power over their areas of special interest.

     (Here again we note that formal rules do not control the situation entirely. Not infrequently, broad-based committees break down into subcommittees with specialized assignments. Power over that subject matter then begins to accrue to the chair of the subcommittee.)

8. *Should the charter stipulate meeting requirements?*

   - Traditionally, Michigan law has set four or five meeting dates. These meetings were established largely to force county boards to meet the schedule of the property tax process or to adopt the county budget.
   - Every county board meets more frequently than the statutory schedule.

- Many boards meet at least once each month. Many urban ones hold meetings at least twice a month.
- The charter commission may want to give the executive officer authority to call a special meeting. A similar authority should be granted to a majority of the board.

9. *Should the charter state anything about rules, organization, and officers of the board?*

- Most counties now adopt a set of board rules on an annual basis. General law presently instructs boards to do so. This provision would likely pertain to the charter county, but a statement in the charter to give the board authority to adopt its own rules and bylaws every <u>two</u> years would be helpful.
- County boards now elect their chairpersons and organize themselves at their first meeting in January. Some boards have indicated a preference for doing this every two years but the attorney general ruled that the board chair must be formally elected every year. Here again, it would seem prudent for the charter to instruct the board to elect its officers and organize itself with respect to committee assignments every <u>two</u> years.
- County boards must, by law, elect one of their members as chair and another as vice-chair. Some boards have selected a vice-chair pro tempore. It seems likely that the Wayne board would continue with whatever practice it now follows. Moreover, little damage is done if the board should create another office or two. The charter commission may want to state that the board shall elect its officers at its first meeting in January following a general election.

10. *What should the charter state regarding the filling of vacancies?*

- This matter is covered by general law. Vacancies are to be filled by county board appointment. If the appointment takes place in an odd-numbered year, the appointee serves until a person is elected in a special election. If the appointment occurs in an even-numbered year the appointee may complete the term. In any year the vacancy must be filled by election if the board fails to make the appointment within 30 days after a seat becomes vacant.
- County boards sometimes become deadlocked over filling a vacancy. The foregoing remedy applies adequate pressure for most county boards to resolve their differences within the allotted time.

- Special elections are expensive, especially if the districts are large. Moreover, special elections tend not to have wide participation with the result that the person elected may not have been the person who would have been chosen in a general election.
- Use of the appointment process to fill a vacancy advantages the appointee in a subsequent election. Some may believe this gives any existing board majority an unfair advantage.
- Again no single remedy answers all the objections. Some seek to lessen the presumed advantage of the appointee by making him or her ineligible in the election. This raises another objection, however, for those who believe that citizens should be free to choose whomever they please.
- The charter commission may thus conclude that the most satisfying remedy is that provided in the general law. We note, though, that the charter should instruct the clerk to call a special election if the office is not filled within the 30-day period.

11. *What should the charter state regarding staff for the board of commissioners?*

- State legislatures across the nation have been enlarging their staffs. The argument is that if they are to evaluate effectively the actions of the executive and administrators, they need staff. In the absence of staff, the argument goes, lobbyists tend to be the greatest providers of information.
- County boards in Michigan gradually have been creating and enlarging their staffs. In non-charter counties, some of the board employees act in an administrative capacity—as county "managers" or county controllers. This mode, of course, is not appropriate for a charter county.
- In the two counties that have elected executives, the county board have insisted on having their own staffs. Undoubtedly the Wayne board will make the same demands, especially if the voters choose the elected-executive form.
- The Michigan legislature offers two models for managing legislative staffs. In the House of Representatives, the staff is under the general supervision of the speaker—staff is assigned to committees and agencies of the house, not to individual representatives. In the Senate, some staff members are assigned as aides to individual senators, and others to committees and agencies of the Senate.

The management and organizational approach for legislative staffs have an effect on the nature of the work of such staffs as well as on the qualifications of the people appointed.

- Staffs to virtually any elected official become involved in the official's re-election. This of course, gives an incumbent a considerable advantage over challengers. The practice is unavoidable because good staff work on non-election matters is indirectly related to re-election possibilities. But a prohibition in the charter forbidding direct staff work on elections may curb some of the more flagrant abuses and practices.

  (The charter commission may wish to provide similar prohibitions for the staff of all elected officers. It is presumed that civil service rules cover this matter regarding employees in civil servant positions.)

- Staffs for the commissioners will almost certainly improve the extent and quality of constituent services.

12. *Should the charter structure the legislature differently for the elected- and appointed-executive models?*

    - The charter provisions for the county board must he identical in both charters. The charters may differ only in respect to the executive officer.

    - As a general rule, we would expect to find a small legislative body with the appointed-administrator model and a larger body with the executive approach.

    - The appointed-administrator model described in the charter county act is somewhat like the professional manager model, but the stipulation of a four-year appointed term and removal only for reasons, and then only by a two-thirds vote, gives the appointed administrator a substantial degree of independence. The office, thus, is not identical with the typical city manager model.

    - In both forms we are likely to find the executive officer, whether appointed or elected, looking to what he or she considers the broad county interests. The commissioners will have to represent the more parochial interests.

13. *What should the charter state regarding conflicts of interest in contracts?*

- The general law states that a commissioner shall not be directly or indirectly interested in any contract or other business with the county while the person is in office or for one year thereafter unless the board approves the contract by a three-fourths vote and the record clearly indicates the commissioner's interest. This does not apply to county appointments or employment (MCLA 46.30).
- Another statute generally prohibits contracts with commissioners if they are considered employees (persons who work for the county for 25 hours or more per week). If the commissioner is not considered an employee, a contract may be allowed if the person's interest is disclosed and the board approves by a two-thirds vote (MCLA 15.321).
- The general problem with commissioner's interest in contracts is that a total prohibition may impose too high a cost on a person who owns or has stock in a company that does business with the county.
- In view of the ambiguities in the statutes, the charter commission may wish to state its own preferences in the charter. Public disclosure of the interest and a superordinate majority seem to be appropriate safeguards, especially on sealed-bid purchases.

14. *What should the charter state regarding commissioners' holding other public offices?*

- Being a commissioner and accepting other board appointments (for pay) has been a problem in general law counties, especially because of the quasi-administrative nature of county commissioners.
- Present law forbids a commissioner's holding simultaneously another position under the jurisdiction of the county board. Dual service as a county commissioner and road commissioner is also forbidden. A county commissioner may, however, hold another position under the jurisdiction of the board if the position does not pay a salary. And the act specifically excludes *per diem* as salary. This may be a subterfuge that the charter commission does not wish to continue.
- A recent ruling by the state attorney general notes three criteria established in common law regarding the incompatibility of two, public offices.[4] An incompatible relationship can exist because
  - one office is subordinate to the other.
  - one office is under the supervision of the other.
  - the offices have functions that are inherently inconsistent and repugnant to each other.

[4] *O.A.G.* 5626, 1980.

- A general statute has amended the third criterion by indicating that two offices are not incompatible on the basis of a potential conflict (e.g., a contract between two boards having a common member). The offices become incompatible only if the potentiality is realized.
- Some general statutes state explicitly that county commissioners may also be members of certain boards.
- Simultaneous holding of offices, even though both are under the county commission's jurisdiction, tends to destroy a commissioner's ability to function in the intended legislative capacity.
- The charter commission may want to state some general governing principles about county commissioners holding other public offices at the same time. The common law rule of incompatibility—if you accept an office that is incompatible to the first one being held, you automatically relinquish the first—will cause most to be cautious.

  This common law rule is still in effect regarding subordinate or supervising relationship criteria. Because general statutes permit county commissioners to hold positions on a number of satellite county agencies, the charter commission may have to list the offices specifically forbidden or rule out second positions altogether.

15. *What should the charter state regarding a commissioner's accepting appointments to other county offices?*

- The charter county act (Sec. 4(4)) prohibits a member or former member of the board of commissioners from serving as chief administrative officer of the county for at least two years after termination of county board membership.
- Various critics have objected to a legislator's accepting a position in the government following the end of a term or after a resignation. The concern is that the possibility for such employment could compromise a legislator's decision, that it opens the possibility for being brought off.
- Others suggest that rules forbidding the practice places too high a cost on a person who may have interrupted a private career or business for public service. They even suggest that the county may be forced to ignore the most qualified people if such a rule is adopted.

- Reform groups generally recommend that elected officials be prohibited from holding another office or from doing business with the government to which they were elected for a period of at least one year following departure from office. The prohibition against doing business may impose too high a cost and could be remedied with disclosure and extraordinary vote requirements. The rule prohibiting office holding within a year following departure may also impose a high cost but it may be essential to maintaining public trust in our institutions.
- The practice of moving from the county board to administrative positions has not been uncommon. There are no general statutes regulating this practice in counties at the present time. Thus the provisions in the charter, or lack of them, are likely to be controlling.

16. *What should the charter state about board member voting?*

- Present statutory requirements for record roll call voting are ambiguous.
  - Record roll calls are required in all ordinances, resolutions, and appointments (except for the chair which may be by secret ballot).
  - On other questions, one law seems to indicate any member may insist on a record roll call vote. Another law, probably the controlling one, states the requirement as being one-fifth of those present.
  - The attorney general has ruled that the Open Meetings Act prohibits voting procedures at public meetings that keep the public from knowing how commissioners have voted.
- Many votes in a legislative body are routine and of little interest to anyone. The requirement for record roll call votes can be cumbersome and can extend meetings unnecessarily.
- An agreeable remedy for most bodies seems to be a requirement for record roll calls on all final actions and for a procedure for a minority number to insist on a record roll call for other questions.
- Votes on committees may be of more interest to commission watchers than full board actions. Committee votes may also be more revealing of a commissioner's stand on an issue. The Open Meetings Act does not apply to committee meetings where the committee has only the power to advise or recommend, unless the committee consists of the entire membership (OAG #21, 1977) or a quorum of the board (OAG #5788, 1980).

17. *What powers should the county charter grant to the county commission?*

- Many powers, of course, are now granted to the county commission by general laws. It would be virtually impossible to list them all in the charter. And there would be the added problem of adding powers that general law would subsequently assign to county boards.
- Among the general powers to be considered are:
  - the authority to enact ordinances. For some actions the charter commission may want to prescribe an ordinance as the only permissible legislative action. The commission could be allowed to handle other matters by ordinance or resolution as it chooses. The foregoing should include a procedure for adopting ordinances (e.g., introduction, public notice, public hearing, etc.)
  - the authority to judge the qualifications of its own members and to remove members for specified reasons after following appropriate procedures.
  - the authority to adopt administrative rules or, alternatively, to give the commission veto power over rules proposed by the administrative departments within a specified time.
  - the authority to conduct investigations of county matters with the power to subpoena witnesses, administer oaths, take testimony, and require the production of evidence.
- An important point of balancing the legislative and executive power rests in the county commission's authority to approve contracts for intergovernmental services, reorganization plans, compensation schedules established by the county civil service, collective bargaining, establishing or joining authorities or districts, transferring services, initiating of new services, and similar matters having long term implications and cost ramifications.

  At one extreme the charter could provide for commission approval of all such executive or administrative actions. At the other extreme, the charter may require board approval for virtually none of them. An in-between approach would be through a legislative veto within a specified period by an extraordinary majority. This more moderate approach would help in assuring that the commission would at least be informed of the executive administrative actions. In addition, it would facilitate some control over the elected county officers not under the jurisdiction of the elected executive or chief administrator.

- Role of county board in making appointments. Many of the positions in general law counties are now appointed by the board of county commissioners for example, corporation counsel, auditor, and citizen members of the various boards and commissions of county government.

  In Wayne County, of course, there is the possibility that the board will also be appointing the chief administrative officer. This position and others gives rise to the question of residency requirements and perhaps other qualifications, such as political balance or geographic subdivisions within the county.

- Under the charter county act the county executive or administrator is to "appoint, supervise and at pleasure remove heads of departments and all boards and commissions." [Sec. 11a(8)(e)] Thus, the appointing authority will shift from the legislative branch to the executive branch. If the charter commission wishes to maintain a legislative role in appointments as part of a system of checks and balances, it might be possible under the terms of the charter county act to have some or all executive-administrator appointments subject to confirmation by the board of commissioners.

- A general statement of county commission authority may also be needed. It might read something like the following:

  - *The board of county commissioners has the authority* to *exercise such powers as granted by the laws of this state and by this charter and such other powers not forbidden by the laws of this state* or *by this charter.*

A Closing Comment

As we noted early in this paper, the charter commission perhaps has more latitude in writing provisions regarding the legislative body of the county than it does for the executive branch. Much of the political character of the charter county government will be framed by these provisions. We have tried to raise the questions that are pertinent to the building of this framework. Undoubtedly there are questions that have not occurred to us. We will be pleased to respond to any others that the charter commission may pose.