

CITY CHARTER REPORT

Submitted to Councilmember
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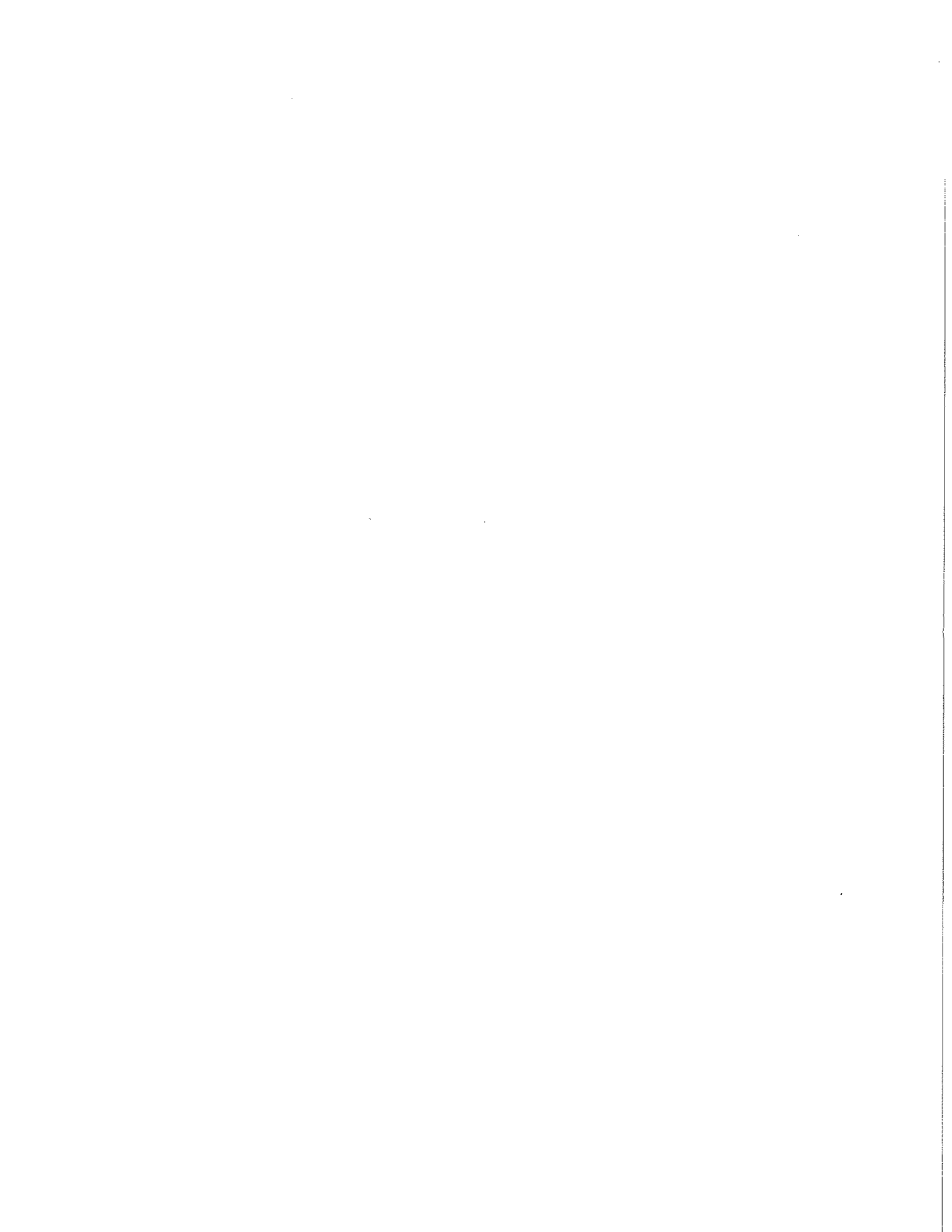


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THE CITY CHARTER

The basic source of a city's governmental authority is its charter. The city's charter serves as organic law, specifying in varying degrees of detail, depending on the city, the form, composition, and specific powers and duties of, as well as at times the procedures to be followed by, its various decision-making officials and bodies. It also normally indicates the method of selection of the different city decision-makers, the kinds of matters to which the city's authority extends, and various limits on that authority, the city's geographic boundaries, and, particularly in "home rule" cities, the methods for changing the charter itself.

In defining the powers of a particular city, the charter does not stand by itself. The authority granted and the limits imposed by the charter are supplemented by relevant state constitutional provisions as well as by state statutes applicable to all cities, to that particular city, or to cities of the population class to which it belongs. In fact, a very few cities do not even have a single document to serve as a charter, with all their authority resting on state legislative or constitutional provisions.

Originally, in colonial times, cities were incorporated and their charters granted by the colonial governors, acting in the name of the king or the colony's proprietor. The charter was regarded as a contract between the governor and the municipality and thus not subject to change without the consent of both parties. After independence,

charters were granted by state legislatures and came to be regarded as acts of ordinary legislation capable of amendment and even repeal by the legislature alone.

The usual practice of granting charters, at least to the middle of the nineteenth century, was by a special legislative act defining the form of government, scope of authority, etc., of the specific city to which the charter applied. These were the so-called "act charters." Largely in response to the movement against special legislation for cities (i.e., legislation applying to a single city rather than generally throughout the state), an increasingly large number of states enacted standing general legislation which provided for the granting of charters with specific provisions upon petition by a required number of inhabitants and compliance with various other requirements such as a referendum. These are known as "general act charters." At first only one charter was available to all would be cities applying, but later general legislation in some states made available different "optional charters" for cities of different size. A few states even permitted choice for cities of a particular size from among more than a single charter (up to five in Massachusetts and fourteen in New Jersey).

HOME RULE

Over three-quarters of our large cities presently have "home rule" charters- charters framed and adopted by a city through local action without reference to the state legislature.

After an abortive beginning in Iowa in 1851 and a later

successful adoption of home rule by the Missouri constitutional convention of 1875, slightly over half of all the states have come to allow home rule charters for their cities. The authority for framing a home-rule charter is specified in self executing constitutional provisions, in simple legislation, or in enabling legislation passed in pursuance of state constitutional authority. Either type of authority specifies what are the limits of discretion that cities have with respect to provisions they can adopt. The procedure for adopting a charter normally involves the election of a charter commission at the call of the city council or in response to initiative petitions (signed by a requisite percentage of the electorate) to draw up a proposal charter and its subsequent submission to the electorate in a referendum. In most states approval of the proposed charter by a majority of those voting is sufficient for adoption, though in a few states (e.g., California, Arizona, Oklahoma) approving action by specified administrative authorities is also required.

Charters can usually be amended the same way they were originally issued or adopted. Thus special or general act charters can be amended by further special or general legislation, while home-rule charters provide for their own self-amendment locally. The process for amendment may be the same as that for framing the home-rule charter or a change can be proposed by initiative petition or the city's legislative and then ratified by the electorate. In a few cases, when changes of a minor nature are involved, home-rule charters can be

amended by the city's normal legislative process. Many home-rule states now also permit amendment to all charters, however originally received, through these home-rule processes.

In summary then, the essential provisions of most charters may be divided into four main categories:

(1)- The powers of the city, including corporate, proprietary and governmental powers;

(2)- Organizational provisions covering the local legislature or council; executive and administrative organization, including the mayor or city manager, heads of departments and agencies; essential principles of organization within departments; and organizational relations among all;

(3)- Certain basic procedures or safeguards for such activities as council or board meetings, granting of franchises, tax assessment and collection, licensing, eminent domain, and special assessments;

(4)- Modern administrative practices such as the merit system, budgeting, central financial management and accounting, central purchasing and adequate reporting;

(5)- Popular controls over the government, including nominations, elections, referendums etc.

FORMS OF LOCAL GOVERNMENT

COUNCIL MANAGER:

The council manager form is perhaps the fastest growing form of local government. Since its first adoptions in city government (Staunton, Virginia, in 1908) the form has been adopted by 42 percent of all U.S. cities of more than 5,000 population.

Frequently cited arguments FOR the council-manager form of government:

- separation of policy development (council) and administration (professional manager)
- potential national recruiting base aids search for the most qualified candidate for manager position
- an unsatisfactory manager can be replaced immediately
- the elected governing board is freed of administrative details
- full-time manager can tightly control budget and performance
- ultimate responsibility rests with the council
- adoption of council-manager form is generally easier than switching to elected executive form (which virtually always necessitates a popular referendum)

Arguments AGAINST the council-manager form of government:

- an appointed official should not be placed in the position of providing policy leadership
- because the manager serves at the pleasure of the council,

political (not solely professional) considerations may enter into hiring and firing decisions

- a manager recruited from outside the community may lack an understanding of local affairs.

FORMS OF LOCAL GOVERNMENT

MAYOR COUNCIL:

The mayor-council form of local government is the form which most closely parallels the American federal government, with an elected legislature and a separately elected executive. Most of the country's largest cities operate under this form.

The mayor's powers generally include the following:

- hiring and firing department heads
- preparation and administration of the budget
- veto power over acts of the legislature

The legislature has the following responsibilities:

- adoption of the budget
- passage of resolutions and legislation
- auditing the performance of the government
- adoption of general policy positions.

Frequently cited arguments FOR the mayor-council form of government:

- through the election of the chief executive, administration is responsive to voters

- separation of power creates system of checks and balances.

- elected executive can provide strong policy leadership, especially in heterogenous, politically active communities

- elected executive serves as figurehead and spokesman for government, promoting visibility of government

- policy differences between council and elected executive provides forum for airing both sides of issues

- the elected executive can act independently, because he does not depend on governing board for his authority.

Arguments AGAINST the mayor-council form of government:

- the concentration of political power in one person may lead to bossism

- elected politicians do not necessarily make good administrators; therefore, if the executive must hire professional assistance to administer government, costs are increased sharply

- political conflicts may impede governmental action (especially if executive is of one party and council is dominated by opposing party); the potential for buck passing is increased

- there is a tendency in some communities for the council's role in government to diminish.

FORMS OF LOCAL GOVERNMENT:

COMMISSION:

Use of the commission form of government in municipalities has been steadily decreasing over the last several decades; only 4 percent of the cities 5,000 and over in population operate under this form. However, the commission is the single most common form of government in use in American counties today. Although a number of larger counties have changed to other forms of government, 77 percent of all U.S. counties are still governed by the traditional board of county commissioners.

The commission form of government, characterized by an elected governing board which holds both legislative and executive powers, is the oldest form of county government in the U.S. A descendent of the old English governing board, the board is usually composed of three to five members, although the number varies from one to several hundred. The board of commissioners is the county or city governing board, and serves as the head of the government. It has responsibility for:

- adopting a budget
- passing resolutions
- enacting ordinances and regulations.

A number of other officials are also popularly elected, and serve as heads of some of the major county or city departments (although the number of these independently elected officials varies considerably, some of the most common are the sheriff, treasurer and clerk.

Frequently cited arguments FOR the commission form of government:

- tradition: the oldest form of county government, it has been in continuous use for more than 300 years
- closeness to the people: popular election of most government officials allows for maximum citizen control of government
- diffusion of power: large number of elected officials creates checks and balances, preventing accumulation of power by one official
- unification of policy formulation and administration eliminates potential politically motivated council executive conflicts
- separation of powers argument is invalid: federal analogy does not hold at the local level, where scope of services and policy leadership are vastly different and many actions are mandated by "higher" levels of government.

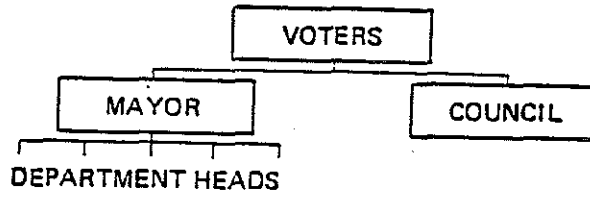
Arguments AGAINST the commission form of government:

- antiquated: its no longer a viable form of government, because the complexity of modern society requires a high degree of professionalism in government
- inefficiency: lack of a single chief executive means less coordination of programs
- long ballot: large number of elective offices makes it difficult for voters to be familiar with all candidates for all offices; incumbents frequently run unopposed term after term; and

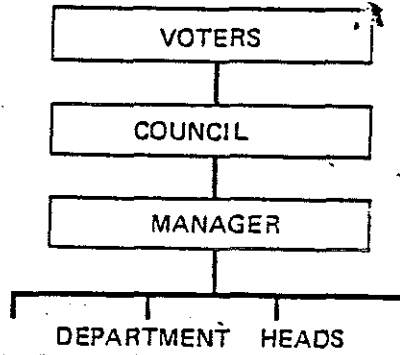
broader nominations process allows special interest groups increased influence

- diffusion of responsibility among many elective officials results in lack of accountability.

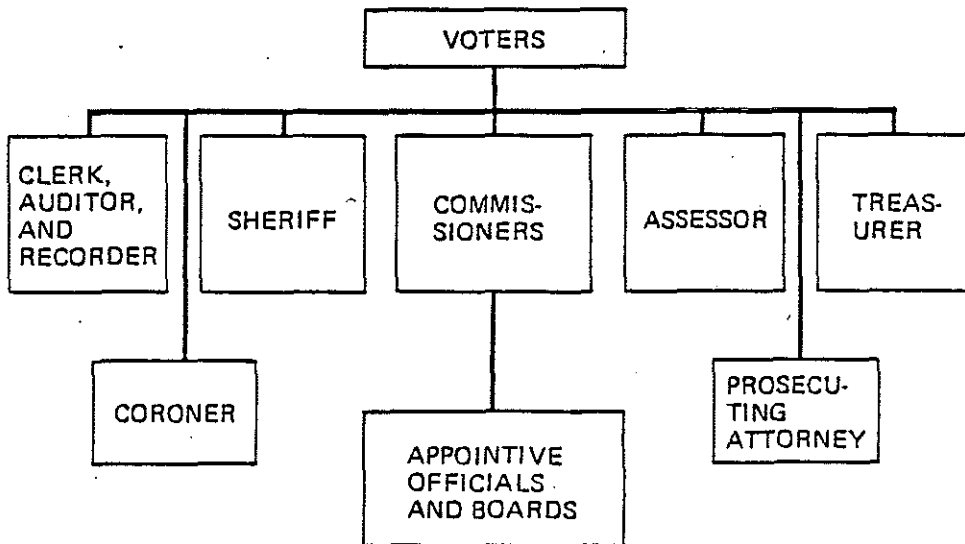
The Mayor-Council Form



The Council-Manager Form



The Commission Form



THE PATTERN OF VARIATION IN LOCAL GOVERNMENT STRUCTURE

The study of local government has long been a prominent concern of American political scientists. On the basis of their published materials, a number of patterns emerge. John H. Kessel, in a study published back in 1962, classified 2970 communities according to size. He then tabulated the frequency in which each form of government organization (mayor-council, commission, council manager) was found in each of his classifications. A very large majority, approximately 67 percent of the governments in the smallest cities with populations between 5,000 and 10,000, had mayor-council governments, approximately 28 percent had the council-manager form, and approximately 5 percent had the commission form. Among the cities in the next class, those with a population between 10,000 and 25,000, the mayor-council form was again the most frequent (approx. 50 percent), the council-manager form followed (approx. 40 percent), and the commission form the least frequent (approx. 10 percent). Among the four middle classifications of cities ranging in size from 25,000 to 500,000, the council-manager form superseded the mayor-council form as the predominant one with the commission form placing a distant third. Among cities with population between 500,000 and 1 million, the mayor-council displayed a striking predominance (approx. 73 percent), followed by the council-manager form (approx. 27 percent). No commission governments were found to exist in this classification. Among the largest cities with populations of over 1 million, the only form of government found to exist was the mayor-

council type.

The pattern was as follows: mayor-council government was most popular in both small cities and very large cities, while the council-manager form seems to be more popular among the middle sized cities. The commission form is a poor third in the small and middle sized city classes and does not exist at all among the very large cities. The commission form seemed so unpopular (its highest frequency, approx. 17 percent, is among those cities between 250,000 and 500,000) that it may, in fact, be written off as an insignificant variation in urban government.

The study seemed to reveal a high degree of positive association between the council-manager form of government and nonpartisan electoral systems and a negative association between mayor-council forms and nonpartisan systems. Further studies revealed that 84 percent of 1756 council-manager cities elect on a theoretically nonpartisan basis. Conversely, only 44 percent of mayor-council cities elect on a nonpartisan basis. Political scientists generally indicate that the council-manager form of government is favored by the native born, the better educated, and the affluent middle class. As the argument goes, these are the people who, in search of efficient administration, seek to professionalize and, consequently, depoliticize urban government. To the extent that this is true, we can expect those communities in which the so-called middle class predominates to be partial toward council-manager government. Thus, whatever the

population size, wherever the native born middle classes predominate, wherever they have effective control of the political system, the probability of the council-manager form existing will be high. It has further been suggested that the probability of finding the council-manager form is high in certain specialized communities, public administration centers, entertainment and recreation centers, and financial and real estate centers or a combination of these.

Conversely then, we expect, according to the studies, the probability of finding the mayor-council form in those specialized communities such as manufacturing and the transportation centers, in which the middle class is underrepresented and the working class and identified ethnic groups are likely to be overrepresented.

Restating then, the pattern from the admittedly sparse evidence gathered in the mentioned study, the ^{MAYOR-COUNCIL} (council-manager) form seems to predominate among the largest and smallest cities. Nonpartisan elections appear to be associated with the council-manager form while partisan elections seem to be associated with the mayor-council form. The council-manager form is in turn associated with those polities dominated by the native-born, better educated, largely middle class, such as those more likely to exist in certain specialized communities. Finally, neither population size nor characteristic political dominance and " associated functional community specialization " are perfect predictors of government form and electoral process.

Nevertheless, it seems reasonable to maintain that the power

distribution of any community will take its form as a function of the matrix of certain demographic, economic and social factors which are characteristic of the community.

CM-COUNCIL MANAGER MC-MAYOR COUNCIL CO-COMMISSION

<u>CITY</u>	<u>POP.</u>	<u>FORM OF GOVT.</u>
Dallas, TX	904,078	CM
San Diego, CA	875,538	CM
Phoenix, AZ	789,704	CM
San Antonio, TX	785,880	CM
Indianapolis, IN	700,807	MC
San Francisco, CA	678,974	MC
Milwaukee, WI	636,212	MC — 414)278-2200 will find
San Jose, CA	629,442	CM
Cleveland, OH	573,822	MC
New Orleans, LA	557,515	MC
Seattle, WA	493,846	MC -206)625-4000, see city name
Denver, CO	492,365	MC
St. Louis, MO	453,085	MC
Kansas City, MO	448,159	CM
El Paso, TX	425,259	MC
Atlanta, GA	425,022	MC
Oklahoma City, OK	403,213	CM
Cincinnati, OH	385,457	CM
Fort Worth, TX	385,164	CM
Minneapolis, MN	370,951	MC
Portland, OR	366,383	CO
Long Beach, CA	361,334	CM
Tulsa, OK	360,919	CO

CM-COUNCIL MANAGER MC-MAYOR COUNCIL CO-COMMISSION

Toledo, OH	354,635	CM
Miami, Fla	346,865	CM
Austin, TX	345,496	CM
Oakland, CA	339,337	CM
Albuquerque, NM	331,767	MC
Tucson, AZ	330,537	CM

Length of Terms of Elected Officials in Large Cities, By Form of Govt.

<u>MAYOR-COUNCIL</u>		<u>COUNCIL-MANAGER</u>		<u>COMMISSION</u>
<u>4-YEAR TERMS</u>	<u>2-YEAR TERMS</u>	<u>4-YEAR TERMS</u>	<u>2-YEAR TERMS</u>	<u>4-YEAR TERMS</u>
Akron	Buffalo(4)	Kansas City	Austin	Portland
Atlanta	Cleveland	Miami(2)	Dallas	St. Paul(4)
Baltimore	El Paso	Norfolk(2)	Fort Worth	Tulsa(4)
Boston	Houston	Oakland	Long Beach(3)	
Chicago	Louisville(4)	Oklahoma City	Phoenix	
Denver	Minneapolis	San Diego	Sacramento(4)	
Detroit		San Jose	San Antonio	
Indianapolis		Tucson	Toledo	
Los Angeles		Wichita(1)		
Milwaukee				
Nashville				
New Orleans				
New York				
Newark				
Omaha				
Philadelphia				
St. Louis				
San Francisco				
Seattle				
Tampa				

- Notes: (1) Mayor has one-year term
(2) Mayor has two-year term
(3) Long Beach has three-year terms
(4) Mayor has four-year term

CITY OF SAN JOSE

POPULATION: 629,442

FORM OF GOVT.: "COUNCIL MANAGER"

TOTAL EQUIVALENT FULL TIME EMPLOYMENT: 4,028

EMPLOYEES PER 10,000 POP.: 64.0

THE MAYOR

SECTION 501. POLITICAL POSITION.

"It is the intent of this Article that the Mayor shall be the political leader within the community by providing guidance and leadership to the Council, by expressing and explaining to the community the City's policies and programs and by assisting the Council in the informed, vigorous and effective exercise of its powers. Political leadership shall be concerned with the general development of the community and the general level of City services and activity programs."

SECTION 502. POWERS AND DUTIES.

(a) "The Mayor shall have the power to make recommendations to the Council on matters of policy and program which require Council decision; provided, that if he recommends any increases in the City budget, he shall recommend the method of financing such expenditures, and provided further, that if he proposes curtailment of service, such recommendations and his reasons therefor shall be specific. He may also on his own account, inform the community on matters of policy or program which he believes the welfare of the community makes necessary."

(b) "The Mayor shall preside at meetings of the Council and shall have a vote as a member of the Council. He shall have no veto powers;"

(d) "The Mayor shall exercise such other powers and perform such other duties as may be prescribed by the Council, provided the same are not inconsistent with this Charter."

"Nothing in this section shall be construed in any way as an infringement or limitation on the powers and duties of the City Manager as Chief Administrative Officer and head of the administrative branch of the City government as prescribed in other sections of this Charter. Except as otherwise herein provided, the Mayor shall possess only such authority over the City Manager and the administrative branch as he possesses as one member of the Council."

Article IV

THE COUNCIL

SECTION 400. POWERS VESTED IN COUNCIL.

"All powers of the City and the determination of all matters of policy

shall be vested in the Council subject to the provisions of this Charter and the Constitution of the State of California"

SECTION 401.

"The Council shall consist of 11 members, one of whom shall be the Mayor, each of whom shall have the right to vote on all matters coming before the Council... each member of the Council shall be elected at general municipal elections by one of (10) Districts designated by number within the City..."

SECTION 410. FILLING OF VACANCIES.

"A vacancy in any elective office, from whatever cause arising, shall be filled by the Council, by majority of its remaining members,..."

"If the Council should fail to fill a vacancy by appointment within (60) days after occurrence of such vacancy, it shall forthwith cause an election to fill the vacancy for the unexpired term."

SECTION 411. INTERFERENCE WITH ADMINISTRATIVE MATTERS.

"Neither the Council nor any of its members nor the Mayor shall interfere with the execution by the City Manager of his powers and duties, nor dictate the appointment or removal of any City officers or employees whom the City Manager is empowered to appoint, but the Council may express its views and freely discuss with the City Manager anything pertaining to appointments and removals."

"Except for the purpose of inquiries and investigations under Section 416, the Council, its members and the Mayor shall deal with City officers and employees who are subject to the direction and supervision of the City Manager... solely through the City Manager and neither the Council nor its members nor the Mayor shall give orders to any subordinate officer or employee, either publicly or privately."

SECTION 416. INVESTIGATIONS.

"The Council may make investigations into the affair of the City and the conduct of any City Department, office, or agency, it may subpoena witnesses, administer oaths, take testimony, require production of evidence. Disobedience of subpoena or refusal to testify upon other than constitutional grounds shall be punishable by contempt proceedings."

ARTICLE VII. CITY MANAGER.

SECTION 701. POWERS AND DUTIES.

"The City Manager shall be the chief administrative officer of the City. He shall be responsible to the Council for the administration of City affairs..."

(a) "...he shall appoint all City officers and employees of the City; and, when he deems it necessary for the good of the service, he may,

subject to limitations, suspend without pay, demote, discharge, remove or discipline any City officer or employee who under this Charter is appointed by the City Manager;"

(b) "...except as otherwise provided.., he shall direct and supervise the administration of all departments, offices and agencies of the City;"

(c) "He shall have the right to attend all meetings of the Council, other than closed executive sessions where he is the subject of discussion, and to take part in its discussion, but not to vote..."

(d) "He shall be responsible for the faithful execution of all laws, provisions of this Charter, and acts of the Council which are subject to enforcement by him or by officers who are under his discretion and supervision;"

(e) "He shall prepare and submit the annual budget to the Council;"

(f) "He shall submit to the Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;"

(g) "He shall make such other reports as the Council from time to time may request concerning the operations of City departments, offices and agencies subject to his discretion and supervision...and make recommendations to the Council concerning the affairs of the City as he deems desirable."

(h) "He shall exercise such other powers, and shall perform such other duties, as are specified in this Charter or may be authorized or required by the Council."

SECTION 702.

"The Council may remove the City Manager from office at any time."

SECTION 1204.

"At least thirty (30) days prior to the beginning of each fiscal year...the City Manager shall submit to the Council each of the following:"

(a) "A budget for the ensuing fiscal year;"

(b) "An accompanying message."

SECTION 1206.

"Upon receipt of the proposed budget from the City Manager...the Council may make such revisions and changes as it may seem advisable; but it shall not adopt that budget, until after it shall have held a public hearing...upon conclusion of such public hearing, the Council may adopt the proposed budget with such amendment, if any, as it may seem desirable."

SECTION 1207.

"After adoption of the budget and on or prior the beginning of the budget year, the Council, by ordinance, shall appropriate monies for the operation of each of the offices,..."

CITY OF DALLAS

POPULATION: 904,078

FORM OF GOVT.: "COUNCIL MANAGER"

TOTAL EQUIVALENT FULL TIME EMPLOYMENT: 13,350

EMPLOYEES PER 10,000 POP.: 147.7

THE MAYOR

SECTION 2. MAYOR'S ELECTION AND DUTIES.

"The person elected as member of council, Place No.11, shall be the presiding officer and the Mayor of the City of Dallas. He shall have a vote on all matters coming before the council., but no power to veto. He shall be the official head of the city government."

CHAPTER III. CITY COUNCIL.

"...all powers conferred on the city shall be exercised by a city council to be composed of 11 members...Three members of the council shall be elected by the qualified voters of the entire city, and eight by the qualified voters residing in a particular district...and they shall be elected for a term of two years."

SECTION 5. VACANCIES IN THE CITY COUNCIL.

(a) "If more than four vacancies occur on the city council...the vacancy or vacancies shall be filled at a special election for that purpose."

(b) "If vacancies do not exceed four...the vacancy shall be filled by a majority vote of the remaining members of the council."

(c) "A person elected to fill a vacancy on the city council shall serve until the next general election."

SECTION 15. NO INTERFERENCE...

"Neither the council nor any of its committees or members shall dictate or attempt to dictate the appointment of any person to, or his removal from, office or employment by the city manager or any of his subordinates, or in any manner interfere in the appointment of officers and employees in the department of administrative services vested in the manager by this Charter. Except for the purpose of inquiry, the council and its members shall deal with that part of the administrative service for which the city manager is responsible solely through such manager and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager in said departments, either publicly or privately.

SECTION. 18. INVESTIGATIONS.

"The council, the city manager or any person or committee authorized by either or both of them shall have power to inquire into the conduct of any department or office of the city; to make investigations as to city affairs, and for that purpose may subpoena witnesses ...compel the production of books, papers and other evidence material to the

inquiry. The council shall provide by ordinance penalties for contempt in refusing to obey any such subpoena..."

CHAPTER VI. CITY MANAGER

SECTION 1.

"The council shall appoint a city manager, who shall be the administrative and executive officer of the city. The manager shall not be appointed for a definite fixed time, but shall be removable at the will of the council upon two-thirds vote...He shall be given at least 60 days notice prior to his removal...The city manager shall receive compensation as may be fixed by the council."

SECTION 2. POWERS AND DUTIES

(1) "To be responsible to the council for the proper administration of all the city affairs...shall appoint and employ all directors of departments...All directors of departments shall be responsible to the city manager and may be removed by him at any time. In case of removal after six months service, if the director removed do so demands, a written statement shall be made by the city manager of the reason of his removal...and the director may demand a public hearing by the council before the order of removal is made final."

(3) "...appoint and remove all heads of departments and all subordinate officers and employees of the city..."

(6) "...attend all meetings of the council, with the right to take part in the discussion, but having no vote. He shall be entitled to notice of all special meetings"

(7) "To recommend to the council for adoption such measures as he may deem necessary or expedient."

(8) "To keep the council fully advised as to the financial condition of the city."

(9) "To act as budget commissioner and prepare and submit to the council an annual budget after receiving estimates from departments of the city, and submit recommended capital programs."

(10) "To see to it that the city lives within its budget"

(15) "To perform such other duties as may be prescribed by this Charter, or by ordinance or resolution of the council."

CHAPTER XI THE BUDGET AND FINANCIAL PROCEDURE.

SECTION 1.

"The fiscal year of the city shall begin on the first day of October of each year and shall end with the 30th day of September. On the 15th day of August of each year the city manager shall submit to the council a budget estimate of the revenue of the city and the expense of conducting the affairs for the ensuing fiscal year...It shall be in accordance with uniform accounting procedures with comparisons to the last two fiscal years..."

SECTION 3. ANNUAL APPROPRIATIONS.

"Upon receipt of the city manager's estimate, the council shall call

a public hearing upon the submitted budget to be held before the entire council sitting as a committee of the whole. Following the public hearings, the council shall pass on first reading the appropriation ordinance and shall cause it to be published in the official newspaper of the city with a separate schedule setting forth the items in the manager's estimate which were omitted or changed by the council, if any. The council shall not pass the appropriation ordinance upon final reading at least 10 days after the publication...the funds appropriated therein become available on October 1, the beginning of the next fiscal year. Following the final passage of the appropriation ordinance, the city council shall, by ordinance, levy the taxes for the current year."

SAN JOSE-DALLAS (DIFFERENCES)

- In Dallas, council has 11 members, but three of those members, one of which is the mayor, are elected by the city at large.
- The council in Dallas will fill vacancies in any elective office only if the vacancies do not exceed four. If more than four vacancies occur, the vacancies shall be filled at a special election for that purpose.
- In Dallas, the council, the city manager or any person or committees authorized by either or both of them shall have the power to inquire into the conduct of city departments.
- Dallas begins its fiscal year on October 1st. City manager submits budget to the council on August 15th. Council has over a month to review the budget.
- Considering the size of San Jose's budget, it may be wise to give the council more time to review the document.

CITY OF TUCSON

POPULATION: 330,537

FORM OF GOVT.: "COUNCIL MANAGER"

TOTAL EQUIVALENT FULL TIME EMPLOYMENT: 3,695

EMPLOYEES PER 10,000 POP.: 111.8

CHAPTER VI. THE MAYOR

SECTION 1. EXECUTIVE DUTIES.

"The Mayor shall be the chief executive officer of the city and ex officio chairman of the council, and shall see that the ordinances therof are enforced."

SECTION 2.

"The Mayor, when present, shall preside at all meetings of the council."

SECTION 3.

"The Mayor shall anually, and from time to time, give the council information relative to the affairs of the city, and recommend for its consideration such matters as he may deem expedient."

SECTION 5. EMERGENCY POWERS.

"The Mayor shall take command of the police and govern the city by proclamation during times of great danger."

CHAPTER V.

"The elective offices of the city shall be:

- (1) A mayor; and
- (2) Six councilmen."

CHAPTER VII. POWERS OF MAYOR AND COUNCIL.

SECTION 1.

(1)"...to compel the attendance before them to witnesses and the production of papers in any matter under investigation; to judge the qualification and election of their own members; an to punish any member or other city officer by a fine of not exceeding fifty dollars, for disorderly and contemptuous behavior in their presence."

(2)"To make and pass all ordinances, resolutions..."

SECTION 2. VACANCY IN OFFICE OF MAYOR.

"In case of a vacancy in the office of mayor, the council shall, within thirty days after such vacancy occurs, select, from the qualified electors of the city, a mayor who shall serve as the duly qualified mayor of the city."

SECTION. FILLING SELECTION OF COUNCIL WHEN MEMBER SELECTED AS MAYOR.

"If said council should select one of its own members as mayor, the

office of the councilman so selected mayor shall be filled by the council selecting a councilman from the ward from which said councilman appointed mayor had been elected."

SECTION 4.

"In filling any vacancy in the office of councilman, the elector chosen to fill such vacancy shall be selected by the council from the electors of the ward from which the councilman whose office has been vacated was elected."

CHAPTER IX. LEGISLATION.

SECTION 1.

"Mayor and council to exercise legislative power. The legislative power of the city to be vested in the mayor and council."

CHAPTER X. CITY MANAGER.

SECTION 1.

"Manager is subject to the control of the mayor and the council, the manager shall have the general supervision and direction of the administrative operation of the city government; he shall supervise and direct the official conduct of all appointive city officers. He shall supervise the performance of all contracts made by any person for work done for the city; he shall appoint, and discharge, from time to time, as occasion requires, all officers, deputies and employees of the city...he shall make a written report to the mayor and the council, at their first meeting in each month, of the state of the condition and business affairs of the city...It shall be his duty, as well as that of the mayor, to see that all of the ordinances of the city are enforced."

CHAPTER XIII. FINANCE AND TAXATION.

SECTION 1.

"The fiscal year of the city shall commence upon the first day of July of each year.

SECTION 3.

"On or before the first Monday in May of each year, or on such date as shall be fixed by the mayor and council, the manager shall prepare a careful estimate in writing of the amounts of money, specifying in detail the objects thereof, required for the business and conduct of the affairs of the city during the next ensuing fiscal year."

SECTION 4.

"On or before the first Monday in June of each year... the manager shall submit to the mayor and council the estimates of each department and his own personal report and recommendation and estimate as to the probable expenditures of the city for the next year...also an estimate of the amount of income expected from all sources in each

department, and the probable amount required to be raised by taxation to cover such expenditures, interest and sinking fund."

SECTION 6. ADOPTION OF BUDGET.

"The mayor and council shall meet one week previous to the day on which tax levies are made, and at the same time and place designated in such notice, when and where any taxpayer who may appear shall be heard in favor of or against any proposed tax levy. When such hearings shall be concluded, the mayor and council shall adopt the budget as finally determined."

SAN JOSE-TUCSON (DIFFERENCES)

- Tucson has a seven member council.
- Tucson Charter provides for special emergency powers to be granted to the mayor in situations of "great danger." (Such provision more common in Mayor-Council forms of local government)
- In Tucson it is the duty of the city manager as well as that of the mayor to see that all of the ordinances of the city are enforced.
- In the area of fiscal administration, the city of Tucson abolished by repeal the office of auditor and his functions are now performed by the director of finance. (possible area for consideration in San Jose)
- Tucson Charter always distinguishes between mayor and council- as if mayor was separate from the city's legislative body.

CITY OF AUSTIN

POPULATION: 345,496

FORM OF GOVT.: "COUNCIL MANAGER"

TOTAL EQUIVALENT FULL TIME EMPLOYMENT: 7,221

EMPLOYEES PER 10,000 POP.: 209.0

ARTICLE II. SECTION 7. THE MAYOR.

"The Mayor shall preside at all meetings of the Council and shall be recognized as head of the city government for all ceremonial purposes, for the purpose of receiving service of civil process, and for military purposes, but he shall have no regular administrative duties. The Mayor, as a member of the Council, shall be entitled to vote upon all matters considered by the Council, but shall have no veto power."

ARTICLE II. SECTION 1. THE COUNCIL.

"The Council shall be composed of seven Councilman...the Councilman shall be elected from the city at large."

SECTION. 3. VACANCIES.

"Where a vacancy occurs in any place on the Council, the vacant place shall be filled by a special election, where necessary, by a run-off election..."

SECTION. 4.

"All powers and authority which are expressly or impliedly conferred on or possessed by the city shall be vested in and exercised by the Council..."

SECTION. 5. INVESTIGATIVE BODY.

"The Council shall have the express power to inquire into any official conduct of any department, agency, office, officer or employee of the City, and for all that purpose shall have the power to administer oath, subpoena witnesses, compel the production of books, papers and other evidence material to the inquiry..."

SECTION. 6. INTERFERENCE CLAUSE.

"Neither the Council nor any of its members shall instruct or request the City Manager or any of his subordinates to appoint or remove from office or employment any person except with respect to those offices which are to be filled by appointment by the Council under the provision of the Charter. Except for the purpose of inquiry and investigations, the Council and its members shall deal with the administrative service of the City solely through the City Manager and shall not give orders to any of the Manager's subordinates publicly or privately."

ARTICLE V. SECTION. 1. THE CITY MANAGER.

"The Council shall appoint a City Manager who shall be the chief administrative and executive officer of the City...The City Manager shall not be appointed for a definite term, but may be removed at the will and pleasure of the Council by a majority vote of the entire membership of the Council."

SECTION. 2. POWERS AND DUTIES.

(1) "Appoint and remove any officer or employee of the City except those officers appointed by the Council..."

(2) "Prepare the budget annually, submit it to the Council, and be responsible for its administration after adoption."

(3) "Prepare and submit to the Council at the end of the fiscal year a complete report on the finances and administrative activities of the City for the preceding year."

(4) "Keep the Council advised of the financial condition and future needs of the City..."

(5) "Appoint, by letter filed with the City Clerk, a qualified administrative officer of the City to perform his duties during absence or disability."

SECTION. 3. FISCAL YEAR.

"...the fiscal year of the City shall begin on the first day of October and end on the last day of September of each calendar year..."

SECTION. 6. BUDGET PREPARATION.

"At least thirty days prior to the beginning of each budget year, the City Manager shall submit to the Council a proposed budget...the Council shall order a public hearing on the budget and shall cause to be published, at least ten days prior to the date of such hearing, the time and place thereof...The budget shall be finally adopted not later than the 27th day of the last month of the fiscal year."

SAN JOSE-AUSTIN (DIFFERENCES)

- Austin has a seven member council, all of which are elected at large.
- Vacancies on the council in Austin are to be filled by special elections.
- Austin's fiscal year begins on the first day of October.
- No reference is made in the Austin Charter for the submission of a capital improvement program.

CITY OF OAKLAND

POPULATION: 339,337

FORM OF GOVT.: "COUNCIL MANAGER"

TOTAL EQUIVALENT FULL TIME EMPLOYMENT: 3,458

EMPLOYEES PER 10,000 POP.: 101.9

ARTICLE II.

SECTION. 218. THE MAYOR

"The Mayor shall be the chief elective officer of the City, responsible for providing leadership... He shall recommend to the Council such legislation as he deems necessary... He shall preside over Council meetings, shall be the ceremonial head of the City, and shall represent the City in inter-governmental relations as directed by the Council. The Mayor shall have no administrative authority... he shall provide community leadership, while administrative responsibilities are assigned to the City Manager."

SECTION. 200. COMPOSITION OF COUNCIL.

"The Council shall consist of eight Councilman and the Mayor."

SECTION. 207. POWERS OF THE COUNCIL.

"The Council shall be the governing body of the City subject to the provision in the Charter."

SECTION. 203.

"Seven Councilmembers shall be nominated from districts and one shall be nominated at large."

SECTION. 205. VACANCIES.

"Any vacancy occurring in the office of Councilman or Mayor shall be filled by appointment by the majority vote of the remaining members of the Council."

SECTION. 2221. NON-INTERFERENCE.

"Except for the purpose of inquiry, the Council and its members shall deal with the administrative service for which the City Manager and other appointed or elected officers are responsible, solely through the City Manager... neither the Council nor any member shall give orders to any subordinate of the City under the jurisdiction of the City Manager either publicly or privately... Violation of the provisions of this section by a member of the Council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member."

ARTICLE IV. THE CITY MANAGER.
SECTION 400. APPOINTMENT.

"The Council shall appoint a City Manager who shall be the chief executive officer."

SECTION. 401.

"He shall be appointed for an indefinite term and shall be removed by the affirmative vote of at least five members of the Council."

SECTION. 403.

"The City Manager shall be responsible to the Council for the proper and efficient administration of all affairs of the City under his jurisdiction...shall have the power to appoint, assign, re-assign, discipline and remove all directors or heads of departments..."

SECTION. 404. DUTIES.

(a) "To execute and enforce all laws and ordinances and policies of the Council and to administer the affairs of the City."

(b) "To attend all meetings of the Council, and its committees, unless excused."

(c) "To recommend to the Council such measures and ordinances as he may deem necessary or expedient concerning the affairs of the City."

(e) "To control and administer the financial affairs of the City..."

(f) "To prepare and submit an annual budget to the Council."

(g) "To prepare or cause to be prepared the plans, specifications, and contracts for work which the Council may order."

(h) "To supervise the purchasing of materials and supplies and to make recommendations to the Council in connection with the awarding of public contracts and to see that all City contracts under his direction or that of the Council are faithfully performed."

(i) "To prepare and submit to the Council such reports as it may require."

(k) "To prescribe such general rules and regulations as he may deem necessary to the general conduct of the administrative departments under his jurisdiction."

(l) "When directed to the Council, to represent the City in its intergovernmental relations and to negotiate contracts for joint governmental actions, subject to Council approval."

ARTICLE VII. FISCAL ADMINISTRATION.
SECTION. 700. FISCAL YEAR.

"The fiscal year for the City begins on the first day of July of each

year."

SECTION. 701. BUDGET.

"Each department, office and agency of the City shall provide in the form and at the time directed by the City Manager all information required by him to develop a budget conforming to modern budget practices and procedures as well as specific information which may be prescribed by the Council. Not later than May 31 of each year, the City Maanager shall prepare and present to the Council, in such form and manner as it may prescribe, budget recommendations for the next succeeding fiscal year. Following public budget hearing, the Council shall adopt by resolution a budget of proposed expenditures and appropriations necessary therefor for the ensuing year, failing which the appropriations for current operations of the last fiscal year shall, be deemed effective until the new budget and appropriation measures are adopted."

SAN JOSE-OAKLAND (DIFFERENCES)

- Oakland has a seven member council. All councilmembers are nominated by district, except the mayor.

- Oakland's Charter also has a non-interference clause, but adds that a violation of such clause by a member of the council shall be a misdemeanor, conviction of which shall immediately forfeit the office of the convicted member.

CITY OF ALBUQUERQUE

POPULATION: 331,767

FORM OF GOVT: "MAYOR COUNCIL"

TOTAL EQUIVALENT FULL TIME EMPLOYMENT: 4,053

EMPLOYEES PER 10,000 POP.: 122.2

ARTICLE V. MAYOR.

SECTION 3. POWERS.

"The Mayor shall be the chief executive officer of the City and the official head of the City for all ceremonial purposes. The Mayor shall devote full time and attention to the performance of the duties of office and shall hold no other paid public or private employment. The Mayor, with the advice and consent of the Council, shall appoint members of the public boards, commissions and committees."

SECTION. 4.

(a) "The Mayor shall formulate the annual budget. The Mayor shall propose the budget to the Council by April 1 of each year. The Council shall approve it as proposed or amend and approve it within sixty days after it is proposed by the Mayor. During the sixty days of deliberation by the Council, the Council shall hold at least three public hearings on the proposed budget. The Mayor, or the Mayor's representative, shall be present at the hearings on the proposed budget to answer questions about the budget. If the Council fails to approve a budget within sixty days after it is proposed to the Council, by the Mayor, the budget as proposed by the Mayor is deemed approved by the Council."

ARTICLE VIII. CHIEF ADMINISTRATIVE OFFICER.

SECTION. 1.

(a) "For the purpose of providing professional assistance in the administration of the City, the Mayor shall hire, subject to the advice and consent of the Council, a Chief Administrative Officer."

(b) "The Chief Administrative Officer shall be employed for an indefinite term, and shall hold office until a vacancy is created by death, resignation or removal from office by the Mayor."

SECTION. 2. QUALIFICATIONS.

"The Chief Administrative Officer shall be chosen solely on the basis of professional administrative qualifications. The choice shall not be limited by reason of former residence, but preference shall be given to New Mexico residents."

SECTION. 3. DUTIES.

"The Chief Administrative Officer shall:

(a) "Exerize administrative control and supervision over the Merit System."

(b) "Subject to the authority of the Mayor, supervise the operations of all departments."

(c) "Whenever possible, attend all Council meetings."

(d) "Perform such other duties not inconsistent with the provisions of this Charter as the Mayor may prescribe."

ARTICLE XI. ORDINANCES.

SECTION. 3. MAYOR'S APPROVAL OR DISAPPROVAL. OVERRIDE VETO.

"The Mayor shall have presented for approval every proposed ordinance, resolution, or act creating rights or duties, and if the Mayor approves, shall, within ten days from presentation, sign it and deposit it with the City Clerk and if the Mayor disapproves, the Mayor shall likewise within 10 days return it to the Council with objections and the proposal shall not be effective unless two-thirds of the Council members present and voting approve the proposal. If the Mayor shall fail to approve or disapprove any such ordinance, resolution or act within ten days after presentation it shall nevertheless be in full force and effect as if the Mayor had approved the same."

SECTION. 4. MONEY APPROPRIATIONS.

"The Mayor shall have presented for approval every proposed ordinance, resolution or act appropriating money. The Mayor may approve or disapprove any part or parts, item or items of any proposed act appropriating money and such parts or items approved shall become effective, and such as are disapproved shall be void unless passed over the Mayor's veto as herein provided."

SECTION. 5. TIME LIMITS.

"All veto authority of the Mayor shall be exerised within ten days after presentation of the matter to the Mayor by the Council."

ARTICLE IV. COUNCIL.

SECTION. 1.

"...all legislative powers of the City shall be vested in the Council."

SECTION. 2. COUNCIL DISTRICTS.

"The total area of the City shall be divided into nine Council Districts, numbered one to nine inclusive, and each district shall elect one District Councillor. Any member of the Council representing one of the districts shall be elected by the registered qualified electors of that district only."

SECTION. 5. COUNCIL ORGANIZATION.

"The Council shall elect a president from its number and shall determine its order and procedure."

SECTION. 8. COUNCIL POWERS.

"The Council shall pass all ordinances, resolutions and other acts conducive to the welfare of the people of the City and to the proper carrying out of the provisions of this Charter."

SECTION. 9. VACANCIES IN OFFICE.

(b) "If a vacancy occurs in the office of Councillor, and there will elapse more than one year before the next regular election, the Council shall call a special election for the remaining unexpired term of the Councillor's vacated office."

(c) "If a vacancy occurs in the office of Councillor and there will elapse less than one year before the next general election, the Mayor shall appoint, with the advice and consent of the Council, a registered qualified elector of the District to fill the vacancy..."

SAN JOSE-ALBUQUERQUE (DIFFERENCES)

- Albuquerque has a mayor-council form of government.
- Mayor is the chief executive officer.
- Mayor appoints members of the public boards, commissions and committees with advice and consent of the council.
- Mayor formulates annual budget with the council having 60 days to approve the proposed budget. If council fails to approve the budget within 60 days, the budget as proposed by the mayor is deemed approved by the council.
- Albuquerque has a chief administrative officer having powers and duties similiar in nature to that of the city manager in the council-manager form of government, but with the very important difference that he is appointed by the mayor.
- Mayor presents for approval every proposed ordinance, resolution or act creating rights and duties.
- Mayor has a line-item veto. Council can override veto.
- If a vacancy on council occurs less than one year before the next general election, the mayor shall appoint, with advice and consent of the council, a qualified elector from the appropriate district.
- All powers and duties of the city manager in the council-manager form of government are incorporated in the executive office of the mayor in the mayor-council form.

CITY OF NEW ORLEANS

POPULATION: 557,515

FORM OF GOVT: "MAYOR COUNCIL"

TOTAL EQUIVALENT FULL TIME EMPLOYMENT: 9,549

EMPLOYEES PER 10,000 POP.: 171.3

SECTION. 4-206. POWERS AND DUTIES.

"The Mayor shall be the chief executive officer of the City. He shall have the power and shall be required to:

- (a) "Exercise general oversight of the activities of boards and coordinate them with other activities of the City."
- (b) "Exercise directly or through th Chief Administrative Officer supervision for all other executive and administrative work of the City and provide for the coordination of administrative activities."
- (c) "See that the provisions of this Charter, the ordinances of the City, and all laws are enforced."
- (d) "Appoint the Chief Administrative Officer and the City Attorney."
- (e) "Appoint, with approval of a majority of members of the Council, members of all boards..."
- (f) "Remove at his pleasure all officers appointed by him without Council confirmation."
- (g) "Submit annually to the Council for its consideration and approval an operating budget, a capital program, and a capital budget."
- (h) "Recommend to the Council a pay plan for all officers and employees in the unclassified service."
- (j) "See that the terms and conditions of all contracts are faithfully executed."

(2) "Powers with respect to Council. The Mayor may:

- (a) "Present to the Council messages or information which in his opinion are necessary or expedient."
- (b) "Attend Council meetings and have a voice in the proceedings."
- (c) "Call special sessions of the Council."
- (d) "Veto ordinances."

(3) "OTHER POWERS. THE MAYOR SHALL:"

- (b) "Have a voice, but no vote in the proceedings of all boards created by this Charter of which he is not made an ex officio member."

SECTION. 4-208. THE CHIEF ADMINISTRATIVE OFFICER.

(1) "The position of Chief Administrative Officer shall be in the Office of the Mayor, but the employees of the Administrative Office shall be in the classified service. The Chief Administrative Officer shall be the Mayor's principal assistant and the budget officer of the City."

SECTION. 4-302. DUTIES OF THE CHIEF ADMINISTRATIVE OFFICER.

(1) "Supervise the heads of all departments, except the Department of

Law and City Civil Service. The Mayor may from time to time by written notice relieve the Chief Administrative Officer of the responsibility of supervising the heads of one or more departments...should the Mayor remove a department head from the supervisory authority of the Chief Administrative Officer, he shall immediately assume full responsibility for the supervision of such department head."

(2) "Appoint or remove, with the approval of the Mayor, the heads of all departments."

(3) "Give general oversight to the Department of Law and City Civil Service and The City Planning Commission..."

(4) "Inform himself and keep the Mayor advised concerning the activities of all offices, departments and boards..."

(5) "Prescribe accepted standards of administrative practice, to be followed by all offices, departments and boards."

(6) "Prepare the annual operating and capital budgets, and supervise the execution of the budget ordinances."

(7) "Make information available to the Mayor, the Council, and the public concerning the current status of the financial affairs of the City..."

(8) "Attend meetings of any board or committee of which the Mayor is a member when requested by the Mayor.."

(9) "Attend meetings of the Council at its request and make available such information as it may require."

(10) "Performed all other duties required of him by this Charter, or assigned to him in writing by the Mayor."

SECTION. 3-101. LEGISLATIVE POWERS.

(1) "All legislative powers of the City shall be vested in the Council..."

(2) "The Council shall have the right to levy any and all classes of taxes excises, licenses..."

SECTION. 3-105.

(2) "A vacancy in the office of any councilman shall be filled as follows."

(a) "If the unexpired term is less than one year, the remaining members of the Council shall elect a citizen with requisite qualification to fill the vacancy for the unexpired term...should the Council fail to fill any vacancy within thirty days after its occurrence, the Mayor shall appoint a citizen with requisite qualifications..."

(b) "If the unexpired term is for one year or more, the vacancy shall be filled by special election..."

SECTION. 3-115. CONSIDERATION AND ADOPTION OF THE ANNUAL OPERATING BUDGET.

(1) "The Council, upon receipt of the operating budget, shall immediately publish a notice in the official journal..."

(2) "The Council, upon conclusion of the public hearing, but not later than the first day of December, shall adopt the operating budget ordinance in the form submitted by the Mayor. Upon concurrence of two-thirds of its members, it may add new items of appropriation or subdivide items of appropriation..."

SECTION. 3-117. CAPITAL BUDGET.

(b) "The Council may not ammend the capital program as submitted to it, until it has requested and received through the Mayor the recommendations of the City Planning Commission with respect to the proposed ammendment."

SAN JOSE-NEW ORLEANS (DIFFERENCES)

- Mayor is chief executive officer of the city, required to exercise general oversight of the activities of boards.
- Mayor provides for the coordination of administrative activities.
- Mayor appoints chief administrative officer.
- Mayor appoints, with approval of a majority of members of the council, members of all boards.
- Mayor can remove at his pleasure all officers appointed by him without council confirmation.
- Mayor may veto ordinances.

CONCLUSION

While a city's formal structure of government influences the process of decision making, there are a number of reasons why it is not determinative of the nature and content of these decisions. Some of these reasons are:

(1) The specification of legal powers and obligations itself leaves large areas of discretion between the limits of what particular officials or agencies are required to do and what they are forbidden to do. Most political decision-making in cities consists of the attempt to influence the relevant decision makers to exercise their discretionary authority in one particular way rather than in some other.

(2) Legal powers conferred by the government structure on officials are shared powers. Thus the members of a city council or a commission or an independent board hold the legal power to make binding decisions collectively. In mayor-council cities, the mayor and the council also share certain powers which they can exercise only if they act jointly. In such situation, each of the official has a share of the authority but not a single one of them has it all. Each can influence the other only by means other than the assertion of the authority granted to them by the formal structure.

(3) A third reason that an official's formal authority is not always determinative of his influence is that the authority may not be

involved. Hence, officials with superior legal powers may not be controlling the actions of subordinates, because they are unaware that those subordinates are acting against their, the superior officials', preferences. Or, even if they are aware of their subordinates' noncomplaint activities, superiors may decide that invoking their legal powers would be too costly to make it worthwhile. Superior officials may not consider the gain of securing compliance sufficient to justify taking the time and energy away from more important matters or they may feel that forcefully overruling or replacing subordinates would unduly disrupt their organizations or harm morale.

Similarly, officials or governmental agencies who are legally independent of top officials may choose not to assert their formal independence, because they wish to be cooperative or to avoid sanctions. Chicago, for instance, has many boards in its city government and also a number of important special districts which legally are independent of the mayor. Nevertheless, throughout the 1960's and the early 1970's few of their officials insisted on exercising their independent authority in accordance with their own policy preferences when those policy preferences were known to conflict with strong preferences held by Chicago's Mayor Daley.

In sum, the distribution of authority and legal powers as reflected in a city governments's formal structure is not equivalent to the distribution of actual influence. The structure of formal authority sets the general framework within which other types of

influence on a city's political decision-making may operate. That framework is itself, of course, subject to change through the legal procedures that govern charter amendment and through changes in state legislation or relevant state constitutional provisions. But at any particular point in time, the structural framework defines the key decision-making points in a city government. It identifies the individual officials or bodies of officials who hold the legal power to control those points. It delineates how those officials come to hold their positions and how they can be removed. And the only way individuals and groups who themselves lack legal decision-making power can influence the decision-making process is by influencing those who do have such legal powers.

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PART I

Introduction

THE AMERICAN CITY IN THE TWENTIETH CENTURY

THIS HAS BEEN a century of astounding changes, and a multitude of signs and voices tells us that even greater things are yet to come. Science, technology, industry and agriculture simply will not stand still.

Social, economic and political changes still lag behind but they have been speeded up tremendously in recent decades. This has become an age of international-mindedness and of striving for a new international order through institutions to maintain peace and promote human welfare. It is also an age of large national states and big governments. At their centers these modern giant states have developed tremendous energy and programs of intense activity. There are many who bemoan the centralization of functions that has taken place and the increased scale of central government activities.

Is there any place left in this modern scheme of things for local governments? Have American cities any important functions left in the face of the national and state centralization that has already taken place and the internationalization of public functions that is coming so rapidly? Why bother at all with cities and their governments in an age when a single bomb can wipe out a large-sized city?

To get the answers to these questions requires nothing more than that we keep our heads cool and our minds receptive to the facts of life about us. It may be that the human race will go berserk one of these days and in effect destroy most of itself and of modern civilization, but this has not happened yet and there is good reason to believe it will never happen. In the meantime here are some facts:

1. Two-thirds of the people in the United States live, work and play in urban places; and the percentage of city dwellers is likely to go much higher.

2. Local governments today provide more services for the American people and raise and spend more money on public functions, in total and per capita, than they ever did before. Their usefulness is steadily increasing.

3. Local governments of all kinds are being called upon constantly to cooperate with national and state governments in the performance of functions the nation or state wishes to have performed. No sooner is a power or function centralized at the national or state level than the central

administrators find they cannot do everything from the center. In one way or another the administration of most functions must be localized.

4. It is in cities, towns and villages that the people have to learn the practice of democratic, responsible self-government. It is there we find a training ground for democratic leadership for state and nation. Many persons of recognized wisdom believe sincerely that without self-government in our communities popular government on a national scale cannot succeed. Therefore local government needs to be made and kept as effective and as democratic as knowledge and intelligence will permit, to the end that citizens will learn at home the best available principles and practices of democratic government in general.

Good local government is, then, not only an end in itself because of the better services it can achieve but also an educational process of tremendous importance to the nation and to all nations. New generations are forever coming upon the scene and the leaders of each generation need to learn over again, by precept and experience, what the previous ones had come to accept as true. And always there are dissenters who scoff at the old wisdom and a few inventors who find ways to make genuine improvements.

IMPORTANCE OF THE CHARTER

How can better local government be achieved in the United States today? There is no royal road to the desired goal. Many things must be done and done continuously and well.

Among the methods of maintaining and raising the standards of government are: education in schools and colleges; the informational services of press, radio and television; widespread participation in elections and in unremitting effort to elect better men and women to office; investigations by citizen groups, experts in public administration, bureaus of governmental research, and even by grand juries and prosecutors into the conduct of governments and their officers.

The improvement activity to which this booklet is devoted is the making of better charters. At one time even informed persons thought it sufficient, when the local government was corrupt, wasteful or ineffective, to "turn the rascals out" and install better men in office. This is and probably always will be a useful thing to do.

On the other hand investigations in many places reveal that even the best of men in office are handicapped or frustrated in their endeavors to improve the public services by ill-advised or out-of-date provisions of the charter and laws. Until such provisions are eliminated or improved little can be done. Furthermore, when better charter provisions are established even the less competent public officials can achieve a better result than

before, while the spoils-seeking official is prevented from plying his trade to the limit at public expense. Good men are reluctant to accept office in an unworkable system and are attracted to one which is well organized and effective. For these reasons the National Municipal League began in 1897 to formulate and to publish the principles of sound municipal government in the form of a *Municipal Program* which later became the *Model City Charter*.

What is a city charter? It is the basic law that defines the organization, powers, functions and essential procedures of the city government. It is comparable to the state constitution and to the constitution of the United States. The charter is, therefore, the most important single law of any city. Through change in the charter almost any desired change can be achieved in governmental organization, powers, functions and procedures. All the effects of a new charter may not be felt immediately but in the long run a charter has important effects, for better or for worse, on everything that the government does. Faulty governmental machinery is responsible for more municipal ills than most people suspect. Other things being equal, the better the charter the better the government.

HOME RULE

It is in states that authorize home rule charters that charter commissions are most common.

Every state has control over the local governments within its limits. Originally there were practically no restrictions on the state legislature's power to create, abolish, organize and reorganize the governments of local units. It was the early legislative practice to organize each city separately by passing a special or local law which became the charter of the municipality. By subsequent legislation applicable to the particular place the legislature would change the municipal organization, enlarge or decrease the city's area, change its powers and its functions and make other alterations. Each place was treated as a special case and each city accumulated a body of special legislation applicable to it alone which, taken as a whole, was the charter of that city. By the same token, every city had a charter different from that of every other.

Many legislative abuses developed in connection with this special and local legislation. Partisanship frequently prevailed over principle. A legislature dominated by one party would impose unwanted boards, officers and expenses on a city ruled by another party. Special interests obtained franchises in city streets that the city government would not have authorized. Much of this type of legislation was passed at the state capital without notice or hearing for the citizens and officials of the city concerned. The

very principle of local self-government in local affairs was flouted and violated time and time again.

Leaders in cities began to demand amendments to the state constitution to put an end to this regime of special legislation. A movement for such prohibitions began a century ago and soon New York, Indiana, Ohio and Michigan, to mention a few, had put into their constitutions various restrictions upon or prohibitions against special and local laws. This movement spread until about three-fourths of the state constitutions now contain clauses that in one way or another attempt to limit or prohibit the evil of special legislation. A strong argument for all such prohibitions was the right of local self-government.

Unfortunately, a prohibition against special state legislation on local matters is not equivalent to granting local home rule. As already stated, each city had a separate and distinctive local charter. It also had peculiar circumstances to some extent and its people and leaders had their own ideas as to how to satisfy local needs. Cities were growing, their needs were changing and their old special charters were constantly getting out of date and out of step with the times. But when the legislature had been forbidden to pass local or special laws for cities, the legislative road to change was at least partially closed. Furthermore, the legislature could not meet all local needs and wishes by blanket general laws; these simply could not be made to fit all local circumstances. How then could particular cities get their charters modernized?

In 1875 the Missouri constitutional convention adopted provisions for St. Louis and future cities of over 100,000 population that proved in practice to be a very satisfactory answer in many states. It was simply this: Permit cities, within the limits of state laws, to frame, adopt and amend their own charters. This arrangement, embedded in the state constitution, is known as "constitutional municipal home rule." Coupled with a constitutional provision that prohibits the legislature from enacting special and local laws for cities, it has the effect of transferring the power to make special or local laws from the legislature to the people of the city concerned.

The Missouri idea spread until approximately half the states had constitutional provisions permitting one or more cities (up to "all cities and villages" as in Minnesota) to frame, adopt and amend their charters. In a number of non-home rule states local charter-drafting bodies prepare special charters that must be approved by the legislature. In New Jersey charter commissions determine which of several ready-made optional charters provided by law should be submitted to the voters. Citizen participation in charter-making is, therefore, a significant feature of local democracy in a substantial majority of the states.

PART II

The Work of Charter Commissions

THE ROLE OF THE CHARTER COMMISSION

IT IS HOPED this guide will be useful to a wide variety and a large number of citizen agencies interested in the improvement of local government even though it is designed primarily for the use of charter commissions.

A charter commission, a distinctly American contribution to the art and practice of local government, is a body authorized by law, usually elected by the voters, that is set up for the sole function of drafting and submitting to the voters a new charter or revision of an existing charter. Such a body has a unique and important service to perform. Like a constitutional convention at the state or national level, it investigates the existing government and charter, studies the experience of cities elsewhere under other charters and forms of government, ascertains the best principles of municipal government to insert in a new charter, and then drafts and submits to the voters for their approval a new and presumably improved charter or amendments. Free from the necessity of engaging in actual government and party strife, it can turn its full attention to the improvement of governmental machinery. If its work is well done and forward-looking, and if the voters choose to adopt it, the commission may have a good influence for decades after its work is done.

A charter commission has an opportunity for municipal statesmanship that comes infrequently. It is important, therefore, that members be chosen who will rise to the exercise of high-minded leadership. This puts an obligation on sponsors to offer the voters or appointing authority a slate of outstanding eligibles and to press for selection of a commission that will justify the confidence of the community.

Charters, like other social arrangements, need to be revised and improved from time to time to keep them abreast of community needs and modern knowledge. The charter a commission submits will be the test of the vision, courage and statesmanship of the commission's members.

To summarize, the function of a charter commission is to prepare and present to the voters the best and most forward-looking basic law it can. In particular, this requires the commission

1. To take an overview of the entire city government such as few if any officials or ordinary citizens can;
2. To probe deeply into the procedures and the interrelations of the different parts of the government so as to discover weaknesses and defects;

3. To look outside the city to discover the best practices that might be applied and adapted;
4. To learn from all its studies how a better government can be arranged;
5. Having decided upon the major elements, to set them down in clear, logical and consistent form as a proposed charter;
6. To conduct its affairs in such a manner as to win the respect of the citizens and to educate and stimulate citizen groups and leaders to get the charter adopted.

In general, the best rule for charter commissions is to take high ground and to "make no little plans." Appropriate timing of action and due proportion between means and ends must always be observed. A commission should not be easily satisfied or permit itself to be lightly brushed aside. Where the voters have elected a commission to revise the charter there usually is a considerable dissatisfaction with the government. Few communities have reached the point where substantial improvements can no longer be made; and charter revision is one of the most important ways of making progress.

CHARTER EXPERTS—HOW TO GET AND USE THEM

Those elected or appointed to a charter commission are unlikely to be experts on charter drafting. Their function is to be representative, forward-looking and zealous protagonists of the general welfare. They need the wisdom, sound practical judgment and enthusiasm of amateurs. By studying city problems they may come to know how to distinguish sound advice from quackery and nostrums—but expertness must as a rule come from quite different sources.

Who is an expert on city charter making? Where can such an expert be found? City government, including politics, elections and administration, is a complicated, ever-changing field of study. Only a few men master its broad, general principles and their interrelations. Furthermore, one who has this knowledge is not necessarily one who can also draft a good charter. And even if a man had competence in both these matters he might not know all the constitutional and legal points that must be considered in drafting a charter for a city in any particular state. In short, several kinds of competence are required by one who is to be a well rounded expert consultant and draftsman for a charter commission.

Many commission members think first in terms of the legal profession when it comes to finding the charter expert. This is all right as far as it goes. Lawyers with a certain training and experience have a contribution to make, but a commission needs to exercise great caution in making its selection. The study of the law is by no means a study of city government, politics, administration and taxation. It ordinarily deals instead with

the law of private property, contracts, sales, torts, marriage and divorce, wills, criminal law, evidence and court procedure, to name some of the principal legal studies. Many law schools do not offer regularly even a course on the law of municipal corporations. Furthermore, the approach in the study of law is almost entirely from the viewpoint of what is legal, not "how does it work" or "what are its results." To know the legal procedures by which a city may take property by eminent domain, for example, is highly important, but it is also necessary to know about the best organization and administrative practices in this field and the relative costs and efficiency of different methods.

It is not too much to say, therefore, that most lawyers do not qualify as experts on city government or on the drafting of city charters—and most of them will say so themselves. There are many exceptions, of course, and some of these occur because the lawyers in question have been active in public affairs and have made studies and had experience over and above what the average lawyer has. A certain amount of public experience and practice, as a municipal law officer or city attorney, for example, will be helpful. The city attorney must know the existing city charter and ordinances and the pertinent state laws. This knowledge may qualify him as an expert and even an indispensable aide to the man who drafts a new city charter, because the attorney will be able to point out legal difficulties that the draftsman may not have encountered unless he has done a good deal of charter drafting in the same state. In short, a lawyer with this type of experience may be of inestimable value when it comes to checking the charter draft for legal difficulties. Even so, a charter commission must pick its lawyer with care. His knowledge must be greater than an acquaintance with the local charter. One charter, drafted by a lawyer of municipal experience in a small city, had five provisions that clearly violated the state constitution. Anyone working for a charter commission should be open-minded as to the possibility of improving the charter. The city attorney may prefer an old charter that has already been interpreted by the courts, no matter how inadequate it is in other ways, to one that may achieve more public good but has not yet been tested in the courts.

Generally speaking, the best charter draftsmen are men who have made a special study of municipal government against a background of the study of politics, government and public administration generally. Such men are to be found but there are never enough of them and their competence is not always recognized. In many cases they are teachers of political science and public administration in colleges and universities who have had experience with charter problems. In some cases they are governmental researchers. Some are engaged in various branches of public administration, some in consultant work, and so on. It is not claimed that every man who has made a broad and deep study of city government and administra-

tion is well qualified to be a charter draftsman. It is within this range of competence, however, that most of the best men will be found. Some of these have drafted many charters and a few home rule states are blessed with one or more high grade craftsmen whose services to charter commissions have contributed substantially to the improvement of local government.

Good charter consultants and draftsmen are artists as well as technicians and students of government. This means that while all will agree on fundamentals no two will have precisely the same work habits and ways of presentation and expression. Having selected its consultant on the basis of his established knowledge and competence, a charter commission is wise, without abdicating its leadership responsibilities, to rely heavily on his experience and guidance. Its decisions and report, however, must be unquestionably its own, representing its conviction as to what is best for the community.

If the consultant is to do a satisfactory job the commission must have no secrets from him. He is entitled to know about any preconceived ideas or objectives entertained by the commission or its members, as well as any special problems of politics or public opinion that might affect the work of the commission. An outside consultant is not, presumably, an expert on local politics; but if he is properly briefed he can help evaluate objectively the real importance of local political factors so that the commission can select the best methods of dealing with them. One of the functions of a consultant is to help a commission overcome mental hazards by showing how other communities have dealt successfully with similar difficulties.

In short, a municipal government expert can perform a number of useful services for a charter commission. These include:

1. Gathering, selecting and summarizing of pertinent information locally and from other places;
2. Presentation of a comprehensive view of the city government as a whole and of comparable governments elsewhere which will provide a wholesome corrective of the local and particularized knowledge that commission members may have;
3. Preparation of materials for discussion at meetings and participation in the discussion;
4. Drafting, first, sections of the proposed charter and, finally, the complete integrated document.

The consultant is to act, in other words, as the servant and mentor of the commission. His job is to present information and ideas so that the commission may make its decisions advisedly. It cannot be too strongly emphasized that the earlier the commission gets its consultant the more it will get for its money and the better use it will make of its own time. A

good consultant can also help the commission with its public relations by guarding against untimely public commitment on issues on which it might change its mind in the light of further study.

Suppose a charter commission cannot find enough money to engage a general consultant? What then? All is not lost but, unless the commission has the good fortune to have one or more members who qualify as professional consultants, it will be necessary to make up for the lack by dint of ingenuity and industry. Some professional guidance and help is a must. In the first place, someone should be found who, whether for love or for expenses or nominal compensation, will sit down with the commission at one of its earliest meetings and help it think through its program and the procedure for obtaining the necessary information for sound decisions on major issues. Such a person might be obtained from a university or other educational or research institution. He might be a former charter commissioner of a neighboring city who has gone through the mill with a good consultant and can pass on some of the lessons he has learned. It should also be possible to arrange with one or more qualified persons to submit questions to them from time to time or get them to check tentative proposals or drafts.

Finally, no matter who its chief draftsman may be, whether the city attorney or a lawyer member, the commission should have an expert outside "audit" of its final draft before presenting it to the public. With such assistance, hard working charter commissions have come up with excellent results. However, doing without a general consultant should be out of the question for a commission in a large city and it is at best a penny-wise and pound-foolish method of dealing with the important business of writing the basic law for even a small community.

ORGANIZING THE CHARTER COMMISSION

A charter commission is an official agency. Consequently, the first rule is to follow the law of the state in every matter covered by law. The law may provide that the mayor or some other official shall call the first meeting. If there is no provision of this kind some members should get together and issue the call themselves or ask some official to do it. To the person issuing the call the only advice needed is to be fair and considerate. Choose a public place and a time convenient for the members and give adequate notice to all.

At the first meeting there is no need to hurry things. There should be no effort to "railroad" anything then or ever. How much can be accomplished at the first meeting will depend to a degree on how well the members know one another and what if any unofficial consultation there has been among them. Everything possible should be done to avoid factionalism and to launch the commission with a sense of unity in the determination to

work together for the best possible charter. Unless all members are already well acquainted, it is usually best that only temporary officers be chosen at the first meeting—a chairman *pro tem* and a secretary *pro tem*. Then hear from those who proposed that a charter commission be elected and find out what they had in mind—if there is any doubt on this score.

Receive sympathetically and openly any petitions or suggestions from any citizen or group. Take steps to get the names of possible consultants or expert advisers and draftsmen. Get your calendar firmly in mind and start planning accordingly. If time is limited some procedures will need to be foreshortened. In any event, be sure to schedule the work so as to avoid the last minute rush to meet a deadline that leads to hasty, unwise decisions and sometimes to serious errors. Make a list of the commission members, with addresses and telephone numbers, and get their views as to the best time and place for meetings. Agree if possible on a time and place for the next meeting.

First Meeting. One definite action is necessary at this first meeting. Appoint or elect a committee of three or five members to report on organization, rules and next steps. This will be a temporary steering committee. Its task should be to prepare the following:

1. A simple plan of organization and set of rules;
2. Nominations for the offices set forth in the plan of organization—at least a chairman, vice chairman and secretary. A treasurer may also be needed, but this office may be combined with that of secretary. (It would not be immodest for this committee to nominate some of its own members);
3. A tentative but flexible schedule of meetings with a view to getting the work done within any legal time limit;
4. A tentative estimate of the commission's financial needs (see below);
5. Suggestions for the employment of a consultant;
6. A program for the next meeting, which might include one or two speakers who know the municipal home rule law of the state and the powers and duties of charter commissions.

Second Meeting. At the next meeting there will be much work to do, including any of the following not disposed of at the preceding meeting:

1. Complete any steps required by law, such as taking the oath of office, in order to qualify all members for their offices and duties;
2. Adopt a plan of organization;
3. Receive nominations for officers from the committee on organization and rules. Give an opportunity for other nominations. Elect officers, using written ballots if there is a contest. Install these officers at once;
4. Receive next from the committee on organization and rules its proposed

rules of procedure. Discuss them, amend them if necessary and adopt them. Keep them simple and not hard to amend. Provide in them for such matters as regular public meetings, the method of calling special meetings, quorum and vote required for decisions, duties of officers. Adopt a standard book of parliamentary law to cover matters that do not have to be tailored to the specific needs of the charter commission;

5. Hear from anyone who has been invited to discuss the legal powers and duties of the commission;
6. Discuss next the problem of time limits, if any, within which the commission's work must be completed. If the commission may determine the time of submission, careful study must be given to a number of matters, including the dates of coming elections and other public events, the tenure of the existing elected officials and the timing of the inauguration of the proposed charter. There is, for example, no open and shut case for or against a special as against a general election. As indicated below, this is partly a public relations problem and should not be settled in haste. It would be well to wait for a final decision until it is possible to discuss the matter with the consultant;
7. Consider also the commission's financial needs and how they can be met. Take any action that may be necessary to assure initial financing. The commission should not try to determine its total needs until it has conferred with its consultant;
8. Next take up the question of the employment of a consultant or consultants to advise the commission, to provide it with information and to do drafting for it.

This list may be more than the commission can cover in a single meeting. Some things may have to go over for another session. For instance, a consultant cannot be employed until the wherewithal to pay him is in sight and until a proper search for one has been made. Merely getting the money may take much time and effort, but it should not be necessary to wait for money in the bank to have a preliminary conference with one or more possible consultants.

At the first or second meeting each member should be given a loose-leaf binder to receive material as it is prepared for his scrutiny. As pages are re-written they can be replaced. Commission members then become accustomed to bringing their binders to meetings and referring to notes on questions upon which they desire further information. This simple expedient saves time and helps in keeping the discussion factual and to the point.

COMMISSION AT WORK

The commission will probably hold many meetings. Each meeting should be planned not in any rigid sense but with the idea of having

something worth while to do every time. There will be talks by persons on invitation, reports on special topics, debates on important issues of policy, discussions of the drafts prepared on particular subjects, public hearings on major issues. (See section on Public Relations below.)

To plan the meetings and give some direction to them there might be an executive committee of the three principal officers and not more than two others.

Evening meetings will allow most time for discussion. Meetings at lunch time are probably the least desirable. Mid-afternoon or late afternoon meetings are sometimes satisfactory.

Don't rush things to a decision. Hear everyone who has a contribution to make and give a little time for thought. Group discussion and group decisions are sometimes slow but they pay good dividends.

In the early meetings it should be a firm policy that all decisions are tentative only. This rule will facilitate the work of the commission. People who are new to the problem are hesitant to take final action. The answers become easier as members become familiar with the entire program.

It is possible and desirable to be both businesslike and informal at the same time. The presiding officer should see that members stick to the business in hand and that they do not waste the time of the group, yet he must retain an atmosphere of friendly informality.

A full and regular attendance of members is desirable. Tactful approaches to absentees, giving them something to do and showing them that their aid is needed and appreciated, will sometimes improve attendance.

FINANCING THE COMMISSION

Every charter commission must have some money for its necessary expenses. The amount will run into thousands of dollars in a large city where a complete job of charter revision is undertaken. In a smaller place the commission will need less.

Wherever the law makes specific provision, the commission should estimate a modest but sufficient budget and take the necessary legal steps for getting the money.

Where the law makes no definite provision, the commission, as a public or official body, should make a request to the local authorities for the needed funds. At this point a finance committee may be of considerable importance.

Where public funds simply cannot be obtained, local circumstances may justify a dignified appeal to the citizens for contributions.

Some services may be obtained in kind—from city hall, from a local governmental research bureau, or from other private sources. These may include duplication of memoranda and drafts, secretarial work and, sometimes, technical assistance.

The commission should pay no salaries or honoraria to its members.

Necessary expenses only should be covered. These will include honoraria for consultants, compensation for secretarial services, and whatever is needed for postage, stationery, printing and publication. Although visits to other cities by commission members may occasionally be desirable, junkets at public expense are inadvisable. It may be worth while to bring in persons from other places to testify.

Accounts should be kept of all receipts and expenditures and an auditor or auditing committee should examine the books at the close of business.

Most commissions are fairly small and can meet around a large table and carry on their work like a committee. All the major issues need to be threshed out before the commission as a whole, and no member should be given reason to think that committee reports or the suggestions of a consultant are being jammed through without adequate consideration by the whole group.

The grant of powers to the city government, the general form of the government, the controls to be exercised by the voters—these are examples of broad issues that must be decided by the commission as a whole. Details of draftsmanship are rather far toward the other end of the scale. The commission as a whole simply cannot do the drafting.

When everything possible has been conceded to the need for united group action it still remains true that the commission as a whole cannot make all the required preliminary investigations of the subjects to be considered. This is one of the reasons why it is important, if at all possible, to engage a consultant early. A good consultant will have at his finger tips information that members of the commission might find it hard to uncover in weeks of digging. In matters on which commission members should do some homework the consultant can save them time by providing good leads. Financial powers, organization and procedures, planning and zoning and civil service provisions are examples of secondary but important matters that may call for special study by designated members to supplement information supplied by the consultant.

Unless the commission is a very large one, more like a constitutional convention than a typical charter drafting body, continuing subject matter committees should be avoided. In the drafting of one city charter months were wasted by subcommittees working independently of one another. The commission and the consultant found the task of putting together the work of the separate committees so difficult that it was simpler to start all over again.

One danger in assigning different parts of the charter to continuing subcommittees is that influential members of particular committees may have axes to grind. If such members win the support of their subcommittees, it becomes difficult for the commission as a whole to reassert itself and to produce a coherent document that represents the best thought of a majority of its members.

Except in the largest charter commissions, any necessity for division of labor can be met by occasional designation of from one to three members to investigate particular subjects and report findings to the whole commission, subject to immediate discharge with appropriate thanks. Time that members would otherwise spend on standing committees can be used to better advantage in getting the background needed for participation in all major decisions and for understanding the charter as a whole—for getting a view of the forest as well as a few of the trees.

PUBLIC RELATIONS

The best charter is of little value if the voters do not approve it.¹ The effort to win public understanding and acceptance should begin the day the charter commission is selected and continue without a break. The importance of building understanding and good will is indicated by the informed comment that writing the charter is about 50 per cent of the job and the other 50 per cent is sound public relations. Many well written charters have been lost at the polls for lack of a good public relations program.

The heart of a good public relations program for a charter commission is intelligent citizen participation, which may be achieved in many ways. One of the most important is through open public hearings. One advantage of such hearings is that they bring to commission members ideas, suggestions and attitudes which they might not receive otherwise. But the public hearing is a two-way process which not only educates members of the commission, but also, directly and indirectly through the press and radio, informs leading citizens that a charter commission is active, that its members are sincere and hard-working, that it is considering complex and debatable issues on which the thought of various groups in the community is desired, and that charter writing is a serious task involving the use of good judgment. Any charge of "railroading" or undemocratic tactics can be answered at such public meetings by the facts.²

¹ It is sometimes better for a charter commission to lose with a good charter than win with a poor excuse for one. Many a city with a good charter today did not win it on the first attempt. Sometimes an initial defeat is a necessary part of the education through which a community must go. A charter commission is under a special obligation to take the long view. While it should be out to win it should not sacrifice the greater ultimate good for a lesser immediate advantage.

² This does not mean that all the discussions of the commission must be conducted under kilig lights in the presence of an audience, seen or unseen. If the commission makes no point of public attendance at its working meetings, they are most likely to go on without the benefit, or handicap, of a gallery. The procedure followed successfully by the 1936 New York City Charter Commission, which did most of its actual work in closed sessions, has much to recommend it. The steps in the New York procedure have been outlined as follows by former City Comptroller Joseph D. McGoldrick, who was a member of the commission:

- A. After organizing, we held a series of public hearings to permit the public, individually or organized, to submit their ideas, orally or in writing.
- B. Then the commission invited a variety of expert or experienced persons to sit down with it in private and tell what they thought.
- C. We made our tentative determinations.

(Continued on page 15)

The head of the charter commission should invite all citizen groups—including labor, commerce, industry, professions, churches, veterans, women's organizations, lunch clubs—to submit their suggestions and to send representatives to public hearings. Such invitations should go by letter and also be issued generally through the press and radio.

Among the most important of the groups to be consulted by the charter commission are the city officials and employees. These individuals can provide a wealth of assistance by supplying essential information and advice on the operation of the city and the possible effect of various charter proposals. By turning to the public officials for assistance whenever possible the commission may disarm antagonism and gain support of this influential group for the proposed charter. Of course, advice given by public officers, as that offered by other individuals, must be subjected to careful evaluation by the commission.

The commission should not be discouraged if only a handful of people come to public meetings. This has been the experience in cities small and large where charter commissions have been successful. Most of those who do come are representatives of groups and their attitude toward the final draft of the charter will carry great weight with the "man in the street" who cannot or will not attend personally.

As the commission progresses with its work it should keep the public informed. The newspapers, radio and television are always important, as are local magazines, club publications and house organs. Commission members should appear before audiences from time to time, either singly or in panels, to explain what the commission is doing. By these same means the commission can keep itself informed as to what the public is thinking and saying about the commission's work.

Public opinion polls on certain issues may have some strictly limited value but they should be used, if at all, with the greatest care. Before any poll is attempted the commission should be sure that the polling organization and the sampling techniques used are entirely reliable. No questions should be put to the people unless there has been adequate preliminary educational work. It would be a denial of the major purpose of the commission to make decisions as it goes along on the basis of uninformed public opinion. Indeed, the commission would be violating its mandate and abdicating its responsibilities for leadership if it were to base important decisions primarily on opinion polls no matter how good the preparation.

Results of preliminary polls on issues standing by themselves do not necessarily indicate how the people will react on them when they consider

D. We reviewed and adopted drafts of the various sections of the charter.

E. We adopted a tentative charter, gave it to the public and held a series of public hearings on it.

F. We met again, reviewed the major points discussed at these hearings and adopted a final charter.

I have always believed in open covenants but not that they can be openly arrived at. A commission cannot deliberate in the presence of a gallery. The spirit of compromise is stifled.

them as elements of the whole charter after it has been presented and thoroughly discussed in the campaign. If it made sense to draft a charter on the basis of public opinion polls, there would be no need for a charter commission. All that would be necessary would be an expert in framing the pertinent questions and an expert in translating the answers into a charter draft. The people elect a charter commission to advise them on the best way to improve the charter after the kind of study that the people could not make themselves.

In general, decisions reached by the commission prior to the presentation of the final draft should be tentative. A member may change his stand on "tentative" decisions without the necessity of face-saving explanations. When final decisions are made too early, members may feel obligated to continue their support for particular items which, in light of additional information, they no longer favor.

A good practice which has been increasing in recent years is to publish a tentative charter draft and invite public scrutiny and criticism. Reactions to the tentative draft obtained at public hearings and in other ways serve several purposes. They afford an opportunity for genuine popular participation; they enable the commission to make adjustments which may strengthen the charter and improve its chances of success; and they provide valuable information as to public attitudes for those who will be responsible for the adoption of the charter.

Any charter commission is likely to find that certain groups and individuals are opposed to any change from the *status quo*. Elected officials often do not look with favor upon proposals which would change their offices and powers. However, movements are being led more and more by officials who from experience know of the need for improvement. Leaders of political parties and spokesmen for other influential groups with power or other interests at stake may be in opposition. It is necessary to learn the objectives and fears of such groups and their leaders in order to win them to the side of charter revision if possible, or counteract their influence if necessary. Often the cooperation of these individuals is lost because of the unwarranted assumption that they are unalterably opposed to charter change. Sometimes a group may be won over by including a positive provision in the proposed charter which is not objectionable in principle but which otherwise would have been omitted.

It is individuals and groups that make up majorities. To a large extent the individual is reached and interested as a member of a group. This explains the axiom in public relations work that there is not one public but rather many publics with varied interests. Appeals must be made, therefore, to many groups interested in efficiency, economy, better personnel, greater financial control, more effective democratic control, a more representative legislative body, improved city services and the like.

Every local political situation is unique to a certain extent. Only the local leaders can understand it and lay plans for uniting in support of a new charter enough large and small groups of citizens to make a winning combination. To this end charter commission members should encourage broad gauge organization of citizens and groups for the purpose of promoting the formulation and adoption of a sound charter. Such an organization should be continuously active throughout the commission's labors and doubly so during the final campaign. It can counteract the pressures of special interest groups and make it easier for the commission to hew to the straight line of the dominant public interest in good government.

Despite any contrary impression that the clamor of special interests may create, the evidence is overwhelming that the vast majority of citizens in any community want good government. When this is not apparent it is because the people do not know what it is or how to get it. It is the first duty of a charter commission to help them find the answers to these questions. It cannot do this by trying to appease each pressure group by yielding to its selfish demands. The commission must be sympathetic and understanding in listening to the demands and views of all but it must take high ground and appeal to each group and to the citizens at large to support sound principles of government. The dignity, independence and effectiveness of the commission will be destroyed if it gives in to the demands of special interest groups in ways harmful to the public welfare.

Direct appeal to the people for a good charter may be more effective in meeting opposition than weak compromises which result in submission of an inferior document. A poor charter may get the same opposition as a good one without arousing the enthusiasm needed to carry it. It must be remembered that all the essential features of a charter must be in harmony and stand or fall together. More than one charter has failed either to win adoption or to give satisfaction after adoption because of compromise provisions incompatible with its basic pattern. One way of overriding stiff objection on small matters is to move boldly enough to excite and enlist a ground swell of public support. Ground swells do not come in response to half-measures and cheapening compromises.

The charter commission might be well advised to have a small subcommittee to help plan its public relations. At least the chairman of such a subcommittee should think of every action by the commission in terms of its effects upon public opinion and good will and how it can best be presented to the public. He should keep in touch with local leaders and groups that will conduct the campaign for the charter, to assist them and to keep them informed as to what the commission is planning. Individual members of the commission should be careful that any statements or speeches they make are consistent with an over-all public relations strategy understood by the whole commission. It is particularly important that they avoid any appearance of committing themselves or the commission prematurely on

controversial matters. The best answer to some questions raised in a public meeting is, "We are still studying the question."

It has been found helpful for the commission to have reprints of good speeches and articles on its problems and work for public distribution to interested members of audiences, clubs, debate groups, school children and anyone who seeks information.

The writing of a new city charter is a splendid subject for citizenship education in the schools. It has dramatic quality and local importance that catch the interest of students and provide excellent material for essays, debates, scrapbooks and other exercises, including junior charter commissions. All this serves to educate those who will soon be responsible, as voters, for the success of the new charter. Of more immediate importance is the fact that the students, by bringing their discussions home, help to interest and inform the older members of their families. The charter commission should cooperate with the schools in such activities.

At the end of its work the commission should prepare and issue a "Report to the Voters," telling what principles it has followed and explaining the main features and merits of the new charter. It should be written like a letter to a friend, telling briefly in laymen's language and in a dignified fashion what benefits may be expected from the charter and why it deserves a majority vote. It is often helpful to include an organization chart of the city government under the proposed charter. Such a report is generally printed at public expense and is frequently bound with the proposed charter so that every reader has this digest to aid him. Another reason for a "Report to the Voters" is that it can serve as a press release to accompany the draft of the charter when it is given to the newspapers, thus guiding reporters and editors as to what the charter commission itself considers the most important features of the new document. It is important that first impressions be correct impressions.

The commission can well consider issuing other publications with information of value to the voters. If the commission cannot do so, a citizens committee should consider publishing a "comparison," in textual or columnar form, of the main features of the old and the proposed charters.

If the charter commission can determine the date of the election at which the fate of its work will be decided, it should consider the matter carefully in the light of local patterns of living. Some factors to be considered are: weather, holidays, vacation periods, possible conflicts with other programmed events, as well as the political calendar. Sufficient time should be allowed between the filing of the charter draft and the election for a thorough educational campaign.³

³ See Charlton F. Chute, "Charter Campaigning," and "How to Get a New City Charter," *National Municipal Review*, December, 1956, pp. 537-545; September, 1951, pp. 403-410.

Charter commissions and other organizations promoting charter improvement will find helpful suggestions on campaigning in, *The Citizen Association: How to Win Civic Campaigns*, National Municipal League, 1958, 64 pp., \$1.00.

COMPLETING THE DRAFT OF THE CHARTER

Major decisions must not be hurried but they must be made before extensive drafting can begin. This is especially true of the following interdependent decisions: (1) The general form of the city government; (2) The extent to which the charter shall prescribe the details of the city's administrative organization and procedures; and (3) Whether to submit a complete new charter or amendments.

Problems involved in making the first two of these decisions are discussed later. The right answer to the third question depends on a number of factors, including the nature of the existing charter, the extent and nature of the changes contemplated, and the problem of the voter when he is asked to render the verdict on the commission's work. If a charter requires many or fundamental changes it is almost always better to submit them as a clean, new draft of a complete charter. This is especially true if they include a change in form of government.

Charters have so many interlocking provisions that it is difficult to produce a consistent, coherent result by submitting a series of separate amendments. More than one city has been bedeviled for years because of an attempt to produce a basic change in government by patchwork amendments. In some cases the result has been disillusionment and reversion to the earlier type; in others, after years of frustration, a second charter commission has had to finish the job that should have been done the first time.

Another reason for complete revision as distinct from piecemeal amendment is that almost every old charter has minor defects in draftsmanship, organization and substance that ought to be cleaned up but that are not important enough in themselves to justify imposing them on the voters as separate propositions.

One of the common arguments for separate amendments is that opposition to a particular part of a charter might jeopardize an otherwise acceptable whole. Usually such overriding opposition would be centered on one or two features. If a commission fears, for example, that the method of electing the city council it considers best may generate such opposition as to endanger the charter, it can, in many states, submit the charter with alternatives on this one matter. This has been done successfully in New York, Philadelphia and other cities. In most of the known cases where this has been done the people have voted not only for the charter as a whole but also for the alternative preferred by the commission. The burden of proof, therefore, is on those who advocate complicating the voter's task by giving him more than one over-all question to decide.

The drafting will normally fall almost entirely on the principal consultant. The commission as a whole should pass upon the draft chapter by chapter and decide all major questions. It goes without saying that petty quibbling over words should be avoided, but members should be satisfied

that they understand the meaning of every word and the reason for its use. If the commission members are sincere and have confidence in the consultant, he should be able to help them resolve verbal difficulties.

Before the entire draft has been completed some competent attorney might start to examine it, chapter by chapter. In this way it may be double-checked for legal points almost as rapidly as the commission adopts the chapters. Some revision will be required. In the end there must be one session at which the entire draft is approved and the consenting majority of commission members signs the requisite number of official copies.

As already indicated, it is good practice to adopt a tentative draft, give it to the public and hold public hearings on it. After the hearings the commission would meet to decide what if any changes to make before submission of the charter through the proper official channels to the voters. This helps to clear away doubts, resolve conflicts of opinion and, above all, to inform the voters. The people, in whose hands the final decision lies, *never* have too much information concerning vital issues.

SOME DO'S AND DON'TS FOR COMMISSION MEMBERS

Membership on a charter commission offers an unusual opportunity for unselfish public service. The greater the success of the commission in advancing the welfare of the city, the more honor will come to its members.

Charter commission membership should not be used as a springboard for an immediate dive into candidacy for office. The public welfare should be put first. See the charter through and help to get it into operation before you turn to other things. If a genuine citizen movement drafts you for office, well and good. In that case the office has sought the man, and you, as the man in office, are also in a more independent position.

Don't ride your personal hobby with respect to any part of the charter to unreasonable lengths. A hobby in this case is an idea more or less personal or peculiar to you that has not been tried out elsewhere or been advocated by others or, unknown to you, has been tried successfully and been found wanting. Advocacy of some widely accepted principle or form of government does not fall in the category of a hobby, but there is a limit beyond which the support of even such a principle or form does little or no good.

Of course, an idea is not necessarily unsound because it is new or relatively untried. There is still room for genuine political invention. The recall and the council-manager plan are examples of such inventions. There will doubtless be others. If your idea is good and your colleagues decide against it, maybe you will be able to sell it somewhere else. The council-manager plan, first proposed for Lockport, New York, had its first adoption in Sumter, South Carolina.

Don't think you can or should correct every abuse in the former government by writing a specific change or prohibition into the charter. Power is

always subject to possible abuse in the hands of the wrong people. The problem is to establish a system that will enable the people to hold their officials responsible for the way they use power. There is no gain in setting up a new government and then hamstringing it by denying power essential to any effective government.

Remember that no one knows the formula for perfect fool-proof government. As to your particular solution, what experience supports it? How can you prove its value? Try it out on your fellow charter commissioners. Among them you should find common sense and shrewd judgment. If you can convince any of them, try it out also on your consultant and on some experienced and respected city officials. In this way you may get some excellent suggestions for improving an idea you thought was perfect in its first form.

Try to find a basic pattern that, with active intelligent citizen participation, will offer the people a better opportunity to get good results. So get all the facts you can before you make up your mind and then, when you have decided, go out in earnest for the plan you think offers the most for your city.

Be willing to compromise and to change your mind in the light of evidence. But to compromise does not mean to give up your good ideas and to accept inferior ones of others. It does not call for amiable surrender of sound principles to the stubborn opposition of a truculent adversary. It is not "practical" or "realistic" to compromise at every hint of opposition. Halfway measures have little appeal. Most citizens will respond to leadership which has the courage to offer real remedies for known evils or deficiencies. Compromise, properly speaking, is a group process of give and take in which the most practical ideas of all are blended together and made into a workable system. The total result may not please you in all respects, but—

Don't refuse to support what is good, what is on the whole an improvement, just because you think something more nearly perfect could have been devised. Remember that perfection in social and political arrangements is humanly unattainable and that the perfectionist—the man who insists on perfection or nothing—may be non-constructive if not a bar to improvement. If Washington, Hamilton, Madison, Franklin and their colleagues could compromise in making the United States constitution, maybe you can do so (and also support the final result) in preparing a new city charter.

When you accept membership on a charter commission you accept responsibility for leadership in the most important single civic effort that any community can undertake. The fact that a charter commission is authorized is usually indicative of an underlying popular urge for substantial improvement. The duty of leadership is to find the highest attainable level of improvement, not just a token advance. Statesmanlike compromise is simply a means to this end.

PART III

Principles of Charter Making

THIS PART of the *Guide* is necessarily written specifically around the problems of municipal charter commissions. However, much of this discussion will apply perfectly well to a county charter. Counties of all sizes are assuming more and more functions previously confined to municipalities and, with the increase in county business, it has come to be recognized that the basic patterns of county and city government and administration should not differ widely.

The special problems with which a county charter commission has to wrestle arise primarily from the differences in the legal status of counties and cities in a particular state. The National Municipal League can supply county charter commissions with additional material on the forms and problems of county government in general.

THE CHARTER AS A DOCUMENT

What is the charter of a city? In popular discussions the charter is generally pictured as a single printed document issued under the title *Charter of the City of X*. It may have been conferred upon the city by special legislative act, or adopted by the home rule process, or acquired in some other way.

In law and in practice this important document is, as it were, only the central portion of the city's charter. At least, if the charter be looked upon as the basic law that organizes, empowers and regulates the government, the citizen will have to look farther than simply to this one printed document. General and special state laws that regulate a city's taxing powers, its borrowing of money, and its police, health and civil service departments, for example, are fully as important as many provisions of the so-called charter. As the Minnesota Supreme Court stated years ago, "If independent acts relate to the rights, powers, duties and obligations of the city, they are to be regarded as parts of the city charter."

This is an important principle for charter commissions to bear in mind. They are responsible for drafting or revising the central document of the city government—the city charter. They are not called upon to change all the laws that govern a city. Indeed, even under constitutional home rule the city may have no power to change some of the statutory provisions of law that bind it. This is a point on which each commission should get

good legal advice so it may know the extent of the local power to change a city charter in the state concerned. No two home rule states have exactly the same rules upon this point and within any state the lawyers may differ considerably in their views on the issue. "Good legal advice" on home rule powers will not generally be obtained from a lawyer who is unusually timid, conservative or attached to things as they are. Unless the Supreme Court of the state has ruled otherwise, home rule provisions should always be interpreted liberally in favor of the right of the city to write a good, clear, forward-looking charter. A commission should not refrain from claiming a power or including a provision in the charter just because there is doubt of how it will stand up in the courts. The powers of many a city have been unduly limited not by the laws or courts of the state but by the timidity of the city's own lawyers or charter commission.

In revising the charter, or in writing a new one, the commission and its consultants must keep in mind, therefore, the other laws that control the city's government and also those that govern the county, school district and other local units. Not only must conflicts in provisions be avoided but in some cases positive provisions must be made to enable the city to take advantage of or to escape from certain state laws. In this way the city charter becomes a sort of harmonizing, integrating and controlling document.

What are the essential contents of the charter document? These can be named only in part because they vary from place to place. Many cities have peculiar circumstances, unusual functions that arise from special laws or trust funds, special relations with semi-public organizations such as art institutes and library associations, or with the county, school district, courts and so on. In some cases these can be discovered by the commission and provided for in the charter only after careful search and consultation with those who know.

All such local peculiarities aside, the essential provisions of most charters may be divided into four main groups:

1. The *powers of the city*, including corporate, proprietary and governmental powers;
2. *Organizational provisions* covering the local legislature or council; executive and administrative organization, including the mayor or city manager, heads of departments and agencies; essential principles of organization within departments; and organizational relations among all;
3. Certain basic *procedures* or safeguards for such activities as council and board proceedings, granting of franchises, tax assessment and collection, licensing, eminent domain and special assessments;
4. *Modern administrative practices* such as the merit system, budgeting,

central financial management and accounting, central purchasing and adequate reporting;

5. *Popular controls* over the government, including nominations, elections, referendums and so on.

What are the qualities that make a charter a good piece of draftsmanship?

1. Its language should be as simple, clear and compact as possible without sacrificing readability, which is an important quality in a document that regulates the local government. Like a constitution, a charter should be written for laymen as well as lawyers. Laymen, for the most part, will have to operate it. High school students and other citizens should be able to make fair sense out of it without the aid of a law dictionary. Long, involved sentences and unnecessary repetitious expressions, "heretofores," "provided thats" and other heavy and uninteresting terms should be avoided. Much of the best modern legal drafting is in clear, simple language. However, a clause which has been accepted by the courts as having a precise meaning should be preferred to a less legalistic expression that might not mean the same thing to the courts.
2. It should be consistent and uniform in language, in content and in the handling of comparable provisions. Lack of consistency is not only inartistic, it is confusing and may lead to needless litigation. Provisions of substance that do not harmonize with each other may breed disunity and unhealthy bickering and paralyze the government. A charter or a constitution is a single instrument, not a series of statutes which may safely be harmonized simply by having the courts, in case of conflict, give effect to the latest enactment. This is one reason why a charter cannot be written by pinning together the reports of a number of subcommittees, however good they all may be. It is also a reason why, once the commission has selected a basic form of government, it should be wary about embellishing it with features borrowed from other forms. Responsibility in a so-called council-manager government can be destroyed, for example, by provisions that permit the mayor to wield administrative powers that he ought to have in a mayor-council government. Variations within a form are permissible but care must be exercised to avoid creating a system that is at war with itself.
3. As to content and length, the charter should be comprehensive in the sense of giving an over-all pattern of government, but not in the exhaustive sense. To state all the essential and important things in a brief, terse way should be the objective. Details should be omitted as far as possible—most of them can be dispensed with. The more verbiage there is, the more uncertainty will prevail, the more litigation will be encouraged, and the more often the charter must be amended. On the other hand, brevity at the expense of clarity and precision is as bad as a surplus of vague words and phrases. The correct rule is to express the in-

tended meaning with the fewest and best words, whether it takes ten or a hundred. In any case, a good charter will be a relatively short charter. How short? Who can say? Most recent well drafted city charters are much shorter than their immediate predecessors. The length of a particular charter will necessarily depend somewhat on state law, on whether or to what extent such matters as civil service, planning and elections need to be included in the charter.

4. A well drafted charter will leave far more discretion to the council than used to be the case. If details are omitted the council must supply them. A charter should confer upon the council a broad grant of powers to implement it and to promote the community welfare. This is in accord with the spirit of the age, a spirit that calls for active government in many fields of life. Furthermore, if urban people are to maintain local self-government they must free the hands of their principal elective officials instead of tying them. The only places where such restrictions as extraordinary procedural delays or mandatory referendum provisions are in order are in matters of such moment that posterity might be betrayed by irrevocable action, as in the granting of a long term utility franchise, adoption of a city plan or zoning ordinance, or the issuance of long term bonds.
5. A new charter, like a new dress or hat, should "do something" for the city. It should have some solid "talking points," some modern and distinctive features that will draw attention to it.
6. Other desirable qualities in the charter document are: (a) a simple, flexible numbering system for sections (perhaps a decimal system) so that amendments can easily be inserted where they belong; (b) use of specific and definite repealers, if any are called for, instead of vague and general ones; (c) avoidance of or extreme caution about inclusions by reference; what is to be in the charter should be definitely written in instead of being merely referred to as it appears somewhere in the laws. This would not necessarily apply to a reference to a well established procedure set forth in a general state law and commonly followed by cities in the state, for example, a provision that property should be acquired pursuant to the state condemnation law.
7. It is easier to draft a short, readable charter, limited to fundamentals, if it is provided or at least understood that the city council shall adopt an administrative code. An administrative code is simply a comprehensive ordinance or code of ordinances in which the council incorporates the details of administrative organization and procedures, and the more detailed procedures for protecting the rights of persons in their dealings with the administration. The administrative code is, of course, subordinate to the charter. All the provisions essential for protecting the citizens and other persons should be placed in the charter itself;

so should any provisions needed to preserve the essential character of the basic plan of government and the correct relationships between the council and the administration. The precise number of departments under the mayor or manager, the allocation of functions among them and the internal organization of departments can best be left to the administrative code which can be changed by council as needs and experience dictate, without burdening the people with technical amendments to the charter.

Some older charters contain long, detailed chapters that outline procedures in eminent domain (the taking of property for public use), special assessments and other fields where procedures are so involved yet so important. Other charters omit these provisions entirely, with the understanding that the city will follow the applicable state laws and procedures. It would seem to be better practice neither to freeze the details of procedures into the charter nor to force the city to follow exactly the procedures set forth in state laws. The alternative is to claim for the city the necessary powers and prescribe desirable standards by appropriate provisions in the charter and, if this is authorized under the state's home rule provisions, to permit the council to enact the procedures by ordinance, perhaps as parts of the administrative code. The code would then set forth details of both administrative organization and administrative procedure—two matters closely related.

If this plan is followed it might be well to set forth in the charter the *essentials of due process* that are to control all municipal agencies in their proceedings. What are these essentials? In all cases where any agency's decisions are judicial or quasi-judicial, i. e., where they take or seriously affect private or public rights, adequate notice and hearing should be required. Wherever a new rule or policy is contemplated (except in extreme emergencies like an epidemic) there should also be prior public hearings after adequate notice before it is put into effect. In certain cases there might be provision for administrative review of the decisions of lower administrative officers by their superiors. Such standards, set forth in the city charter, would control all administrative agencies, would prevent the council from permitting any serious injustices in administrative matters and tend to keep down the need for appeals to the courts.

Some of the subjects that could then be dealt with more fully in the administrative code, while the charter contained at most only brief and basic provisions concerning them, would be:

- Administrative organization
- Budgeting
- Accounting, expenditure, payrolls
- Auditing
- Purchasing

Purchase, lease and sale of real property
Safekeeping of public funds
Bonding procedures
Borrowing procedures
Personnel recruitment, classification, discipline, removals, etc.
Regulations of public property, assignment of space, concessions, permits, etc.
Franchises
Eminent domain
Special assessments
Tax assessment, levy and collections
Licensing and revocation of licenses
Abatement of nuisances
Inspectional services
Zoning, building and housing regulations
Planning
Public works procedures
Public utility services
Public records and reporting

GRANT OF MUNICIPAL POWERS

There was a time when some leading Americans believed they could get along almost without government. Restrictions of many kinds were placed in state constitutions, city charters and other public documents to prohibit governments from doing this or that. Cities especially were fenced in. The courts developed that rule of strict construction of municipal powers which said, in effect, that every doubt as to the possession of a power would be resolved against the city government.

During the 19th century it became the practice to enumerate in city charters in great detail every particular thing that the city government might do. These lists of powers became very long, up to over a hundred sections, as charter draftsmen indulged in the vain effort to state everything. Examples will be found in most of the 19th century charters of major cities. A few items from one such charter will illustrate the point.

The city council shall have power by ordinance. . . .

Sixth—To prevent the encumbering of streets, sidewalks, alleys, lanes, public grounds or wharves, with carriages, carts, wagons, sleighs, boxes, lumber, firewood, posts, awnings, or any other materials or substances whatever. . . .

Fourteenth—To prevent all persons riding or driving any ox, mule, cattle, or other animal on the sidewalks in said city, or in any way doing damage to such sidewalks. . . .

Thirty-third—To provide for and regulate the erection of hitching posts or

rings for fastening horses, or to prohibit them in any portion of the city, in its discretion. . . .

Forty-third—To regulate the piling of lumber, shingles or lath in said city, etc., etc., etc.

These are not entirely fair selections but they illustrate the attempt to cover everything in detail. Presumably the council could not legally regulate even hitching posts without specific authority. These selections show, also, how such provisions get out of date. When new things come along—automobiles, trucks, bicycles, kiddie cars, radio, airplanes—there must be new legislation or charter amendments every time. Furthermore, every stated power was construed narrowly; the power to regulate drays might not include that to regulate wagons even if wagons were used for the same purpose.

A charter commission should not hamstring the city government by following this old formula for stating municipal powers, itemizing every single thing it wants the council, mayor, manager and other officers to do. If it does it will almost certainly overlook something it should have included and so the process of charter amendment will have to begin almost before the ink is dry. There will be plenty of litigation, too, as interests that want or don't want the city to do some particular thing take their cases to court and split hairs over the meanings of words.

The modern movement is wholly against such detailed, niggardly and restrictive grants of municipal powers. Constitutional municipal home rule is intended to free cities from the necessity of running to the state legislature every time the public welfare requires something new to be done or an old function to be performed in a new way. The purpose is at the same time to relieve the legislature, for the master who has to watch his slaves is almost as much enslaved as they.

For over a generation now the best advice to every home rule city has been to insert in its charter a broad grant of powers so as to take full advantage of home rule. Is there any real danger in this policy? None has appeared in practice and the reasons are fairly clear.

In the first place, most city councils are highly conservative and some are downright timid about undertaking new services or enacting novel regulations. In the second place, there is usually too little money available for a city to start out on important new ventures. In the third place, there are voters and elections to hold the city administration in line. Then, finally, even if it has all municipal powers a city will find itself still hemmed in by legal restrictions.

There are limits set by the state constitution, by the state legislature, and by court interpretations of municipal powers. And as if these were not enough there is always the United States constitution to prevent any city,

as an agent of the state, from depriving any person of life, liberty or property without due process of law. There is no country that provides more legal checks upon the abuse of powers or more easy access to the courts for testing any possible abuse.

The particular formula of words to be used in conferring a broad grant of powers upon the city is a matter for the charter draftsman. There are various wordings for achieving about the same result. The home rule charters of Cincinnati, Cleveland, Hopkins, Minn., and the *Model City Charter* are examples. Article I of the Cincinnati charter reads as follows:

"The city shall have all powers of local self-government and home rule and all powers possible for a city to have under the constitution of the state of Ohio. The city shall have all powers that now or hereafter may be granted to municipalities by the laws of the state of Ohio. All such powers shall be exercised in the manner prescribed in this charter, or if not prescribed therein, in such manner as shall be provided by ordinance of the council."

PLAN (FORM) OF THE CITY GOVERNMENT

This is not the place to go into a detailed discussion of the various plans of city government available to home rule cities. There are many other sources from which to obtain this information. This question is a most important one and it would be unfortunate to have the decision made on any basis short of a thorough study.¹

The 19th century forms of American city government (mostly weak mayor, strong council elected by wards, and various elective officers and boards, all dividing up the powers and confusing the voters) are still numerous but on the way out. The early 20th century drive for the so-called commission plan has spent itself. Virtually no cities have adopted that plan in recent years, whereas abandonments have been numerous and continue.

The weak mayor form, lacking an integrated executive results in diffusion of authority and responsibility. Usually this form provides for the election of several municipal department heads. Administrative direction is further diffused by dividing the responsibility for supervising the administration among council committees whose chairmen frequently act as if they were the heads of municipal departments. In addition, there may be administrative boards elected or appointed for overlapping terms.

The commission form of government has most of the defects of the

¹ Some of the most successful charter commissions have been pledged in advance to a particular form of government. This may be done by a prior referendum or simply by the members of the commission having been elected on a platform calling for a particular form. This latter was the procedure followed in Dayton, the first sizeable city to adopt the council-manager plan, in 1913. The Dayton charter commissioners completed their work within five weeks of the date of their election. Assuming that the prior commitment of the commission is the result of a careful city-wide program of public discussion and education, the work of the commission can then proceed in an atmosphere of public acceptance conducive to deliberate, untroubled decision on collateral matters and to a sound, clean job of drafting. The all-important point for the commission to keep in mind is its duty to avoid winking on its commitment by departing from essential features of a good charter of the type promised.

weak mayor form plus additional defects that are peculiar to itself. There is, for example, no organizational distinction between policy making and administration. When splits occur in policy making, evidenced perhaps by a three to two vote, it is difficult to enforce resulting policy on minority commissioners in their roles as administrators. From the citizens' viewpoint, when they wish to determine responsibility for particular action or inaction, they discover that the commission form with co-equal administrators is made to order for "passing the buck." There is also the added difficulty of finding and electing commissioners who have the unusual qualifications for effective work both as legislators and as administrators.

There remain two general types of organization, the so-called strong-mayor and council plan and the council-manager plan. Both provide for broad council control over city finances, ordinances and policy, and both concentrate in the hands of one man responsibility for supervising and directing the heads of the city's principal administrative departments. In the strong-mayor plan it is the elected mayor who holds this important office. In the council-manager plan it is a manager appointed, supervised and removable by the city council.

It is the virtually unanimous judgment of recognized authorities on municipal government and administration that unification of the city administration under one responsible head is a desirable thing. Most cities that have achieved thorough structural reorganization during the last 40 years have concluded that the council-manager plan provided the most satisfactory arrangement for a responsible chief executive. For some time this plan, which is recommended in the *Model City Charter*, has been gaining rapidly at the expense of all other plans. Forty-seven per cent of all cities over 10,000 and more than 38 per cent of those between 5,000 and 10,000 had the plan by 1967. The strong-mayor and council plan is set up as the alternative to the council-manager plan in the *Model City Charter*.

In adopting either the strong-mayor or the council-manager type of organization a charter commission is not bound to rigid requirements of detail. Many variations are possible, although not equally desirable, within each type. The council-manager plans in Cincinnati, Dallas, Oakland, Rochester and so on are not identical. There are, in fact, some strong and some questionable features in each. Even greater variations will be found among so-called strong-mayor plans.

It is hard to draw up a categorical list of strong-mayor charters because so few fully conform to all the standard tests for such charters. This is partly because some strong-mayor charters are the result of a gradual strengthening of the office of mayor over a period of years rather than a definite decision to adopt a new form. It is also the result of obvious reluctance on the part of the people of many cities to entrust a politically elected independent mayor with the same over-all responsibilities with respect to operations and personnel that have commonly been given to the

"controlled executive" or professional manager appointed by and continuously responsible to the elected council.

In recent years a number of metropolitan cities (Newark, New Orleans and Philadelphia among them) have adopted what is known as the strong mayor-administrator plan. The substance of the plan is to provide the mayor with one or more high level administrative aides to assist him in managing the city. To the extent that these staff arrangements facilitate the work of the mayor as head of the city administration, they are commendable.

The so-called chief administrative officer (CAO) plan is identified primarily with California although variations of it may be found throughout the United States. An administrative officer is employed by the legislative body to serve its bidding. In many communities the duties of the office are those of a glorified clerk, while in others they may involve so much responsibility that in actual operation the CAO performs practically as a city manager. In any event, the managerial authority of the CAO is likely to be more dependent on the will of the council than is that of a full-fledged manager. Thus the CAO plan at its best tends to provide a less stable basis for good management than the council-manager plan.

A charter and a plan of municipal organization ought to be made to fit the community but it is a mistake to assume that one community is so "different" that its charter should depart from principles well tested by experience in a large number of places of all kinds and sizes. There are, for example, principles of organization and official responsibility which it is foolish for any charter commission to ignore. A good consultant will understand these principles and do everything he can to persuade a hesitant commission to employ them.

Council organization. In any plan of city government the council is a most important body. Most American cities have a one-house council, of relatively small size (say five to fifteen, although some are larger), elected at large rather than by wards, serving for fairly long terms—two or four years, and paid modest salaries for the part-time service required except in small cities where the position is often unpaid. The idea is to make council service attractive to able men and to concentrate authority in a small, compact, visible body, one in which every man is important and can be closely watched by the press and the voters.

In the granting of municipal powers it is the general rule that all the city powers not clearly delegated to some officer or board may be exercised by or at the direction of the council. Specifically, the council receives a general ordinance-making power and control over the city's finances (budgets, revenues, expenditures and borrowing) and its property.

Administrative departments. There must be administrative departments in every city government. It may be necessary or desirable to pro-

vide specifically for certain key departments, especially for those through which fiscal and personnel controls are exercised. In general, however, the less detail in the charter on departments the better. The council should have a good deal of latitude to keep administrative organization easily adaptable to changing requirements. Plans and proposals for administrative shifts and reorganizations generally should come from the manager in the council-manager plan or from the mayor in the strong-mayor plan.

Administrative Responsibility. The first principles of sound administrative structure are simplicity and responsibility. A charter commission should resist attempts to introduce needless complexity or to deviate from straight lines of responsibility. Such deviations are often proposed ostensibly as safeguards, "checks and balances." If the history of local government has taught us anything it is that such "safeguards" are actually pitfalls both for efficiency and for popular control. Therefore, all administrative departments should be headed by persons appointed by and responsible to the chief administrator—the mayor or city manager. (In cities like New Orleans where the mayor appoints a chief managerial assistant to ride herd on all or much of the administration, the appointment of department heads may well be given to this official.) The mayor is, in turn, responsible to the people, at least when the next election rolls around. And the manager is responsible at all times to the people through their elected representatives in council, who can dismiss him at will, subject only to his right to a public hearing. These are essential features of the standard strong-mayor and council-manager plans. Any appreciable deviation from them, such as council confirmation of appointments or special tenure for the manager, is almost bound to reduce the chances of satisfactory operation of the government.

This means that there is no room in either plan for independently elected administrative officers. Independent election of such officers defeats administrative responsibility and adds to the burden and confusion of the voter.

Neither should departments be headed by boards or commissions. Boards and commissions have their uses—for advisory purposes in some cases, to review administrative decisions or rules affecting persons or property, or to assist in developing and interpreting a new program which must be understood and accepted by the people before it can become effective in action.

Thus, there may be room in the administrative structure for an advisory health council, for a board of tax review, for a civil service board of limited function, for a planning board. But actual administration, involving direction of personnel and execution of policy in these as in all other fields should be the undivided responsibility of a single administrator responsible directly to the mayor or manager. Generally speaking, members of such boards or

commissions should be unpaid, or at most paid necessary expenses and possibly modest per diem rates for time necessarily spent.

Separate boards and agencies, more or less autonomous and more or less independent of the main city government, are found in many municipalities. It is no reflection on the unselfish service of fine citizens who serve on them to observe that many of these boards are hangovers from an earlier and sadder day in municipal government. Voters disenchanted with political mismanagement in decentralized weak-mayor governments sought to insulate new or valued services—libraries, parks, health, welfare and the like—from “politics” by putting them under “citizen” boards.

The modern movement for simplified, responsible government along the lines of the council-manager and the strong-mayor plans is partly the result of the fact that the multiplication of boards and commissions never cured and often intensified the basic ills. It is true that independent boards and commissions involved a number of selected citizens directly in governmental processes, with the result that certain functions were sometimes conducted on a higher level of integrity and service than the general government. Unfortunately, this frequently meant not more but less effective citizen participation in the essential task of making the whole city government what it ought to be. Good citizens, who might otherwise have led in a general clean-up, concentrated on a single service and, for fear of jeopardizing it, left most of the city government strictly alone. And some boards, of course, were just as “political” as any other department in the city.

Hence, retention of these old boards is not only inconsistent with the basic principles of modern, responsible city government, it is also an unsatisfactory, self-defeating method of arranging for wide citizen participation. There is a limit to the number of citizen officials, paid or unpaid, who can function inside government without getting in one another's way. There is, however, no limit to the number of citizens who as individuals, as participants in local politics as members of voluntary citizen organizations or in some cases as members of official advisory or watchdog committees without governing functions, can contribute to the vitality and soundness of local government.

It goes without saying that the line of responsibility should not be broken by burying a board with managerial powers inside a department. A park board, for example, can be just as independent in fact whether it appears on the organization chart as a separate department or an agency inside a tent labeled “department of public property.”

The general goal for the city government, therefore, should be to make it as far as possible a single, comprehensive unit because in unity there can be greater strength, better planning, surer progress and more effective overall control by an informed and alert citizenry. The trend in recent years has been to abolish all boards and commissions except school boards.

In no case should members of the council or council committees be

permitted to engage in administration. Except for purposes of investigation, all council dealings with the administration should be by the council as a whole through the chief administrator—mayor or manager. Nothing is better calculated to impair the morals as well as the morale, efficiency and economy of a city government than to have individual council members exercising administrative discretion or influencing administrative acts.

Fiscal control. Responsible government rests on sound procedures as well as on good structure and effective voting. The treatment of procedural matters generally is discussed elsewhere but the procedures for raising and spending money call for special attention. Much of the historic struggle for responsible government has been over the control of what goes into and out of the public purse. A government that looks good on an organization chart may be quite ineffective and irresponsible in fact if its fiscal arrangements and controls are inadequate.

Exactly what can and should be put in the charter on these matters will depend on the state constitution and law. With most major tax sources except property largely preempted by state and federal governments, cities should avoid putting arbitrary or unnecessary limitations on the taxing power of their own councils. Improvident tax rate limitations, for example, have forced many a city into unsound financial expedients to meet mandatory or urgent requirements. Fairness both to the taxpayer and to the city treasury requires that assessment and collection of taxes be uniform and certain. This means that assessment should be by qualified professionals responsible to the chief executive, never by a board of amateurs. There is no place for elected assessors or collectors.²

The specifications for a sound budget system, including a separate capital budget and provisions for administration of the budget through an allotment system, although somewhat technical, have, in recent years, won wide recognition among laymen as well as among professionals and have been written into a large number of city charters and state laws.³

Provision should be made to keep separate financial and accounting records for city-owned utilities. In general, such utilities should be on a self-sustaining basis, contributing to the general revenue of the city only an equivalent of normal taxes on a comparable private enterprise.⁴

It makes for most effective and responsible administration of a city's fiscal affairs to include the functions of tax assessment and collection, accounting, budgeting and purchasing in an integrated department of finance, the head of which is appointed by the chief executive—mayor or manager. In small cities some of these functions may be performed directly by the

² See suggested Article on Tax Administration, Appendix III, National Municipal League's *Model City Charter*, 5th edition, 1941.

³ See *Model City Charter*. Also the National Municipal League's *Model Cash Basis Budget Law*. 42 pp., 75 cents, *Model County Charter*. 71 pp., \$1.50.

⁴ See Article on Public Utilities, Appendix I, *Model City Charter*.

manager. The charter should include enough detail to insure the basic soundness and integration of fiscal operations. There should, for example, be safeguards designed to insure that the budget will be balanced in fact as well as on paper. The charter should clearly establish the responsibility of the chief executive for preparing, publicly explaining and administering a complete financial plan and the responsibility of the council for basic policy decisions as to the sources and amounts of revenue to be raised and the broad purposes for which they are to be spent. The old-fashioned "line item" type of appropriation is self-defeating and should be avoided. The objective of council control is to see that money is spent, with as little waste as possible, in support of the services and policies which it has called for. The council should be interested in the work performed, not in who gets what dollars for a given amount of time or material. What to do is for the council to decide; how to do it, within the limitations of law and accepted principles, is a matter of administration.

The council should appoint its own auditor or qualified public accountant to do a post-audit as an independent check on the administration. Neither the council nor its special agent should be called on to approve or certify for payment claims or bills for goods or services. This practice is, at best, a waste of time; at worst, an impediment to responsible administration.

METHODS OF POPULAR CONTROL

The city is the people and the municipal governmental organization that holds them together exists to enable them to promote their welfare. To this end they must have the means whereby they may control the city government. Consequently, a major goal in all city charter-making is to make the city government more democratic, more responsive to the real will of the people. If they are not ready for this responsibility now they never will be unless they are given an opportunity to learn by doing—and perhaps by making a few mistakes.

Not all the things done in the name of democracy in the United States have actually advanced the cause of popular control over government. At one time it was argued, for example, that the more officers the voters elect the more control they will have over their government. This idea led to what is called the "long ballot." Not only the mayor and the council but also various other officers, such as the auditor, treasurer, assessor, city attorney and even chief of police, and various boards for public works, parks and other services, obtained their positions through popular elections.

But did the voters really choose them? Hardly ever. Skillful manipulators, the bosses and the partisan political machines, were needed to make up the long and complicated lists of candidates. All the voter could do was choose between rival slates of candidates picked by somebody else. Further-

more, the city government itself became so disintegrated as a result of the long ballot that it took a partisan boss or machine behind the scenes to obtain any kind of unity. The era of the long ballot was the era of the worst American city government and of the least actual control by the voters. Where there was no boss or machine, as in many smaller communities, voters felt helpless and became apathetic under the burden of making so many decisions.

A charter commission may be somewhat restricted by the state constitution and laws in what it can do to improve popular control. Within the limits of what it can lawfully do, however, it will find the following arrangements helpful in achieving this objective.

Majority rule. Whenever in any popular election or in any action by a legislative body more than a majority vote is required (say 3/5 or 2/3 or 3/4) the effect is to give a minority control over the majority. In certain important actions by small select bodies such as a small city council it is not unreasonable to require a *majority of all the members* to vote favorably on the decision to be made, or even to require some delay in action voted for the first time by such a majority, but anything more than that leads to minority rule. In popular votes on issues a majority of all voting on the question should suffice.

Short ballot. Have the voters elect only the most important public officials and representatives, those who will have something to do with deciding broad public policies. This may mean reorganizing the government so as to concentrate more powers in those who are elected but it will increase popular control. By directing their attention to the few offices to be filled by election and to a correspondingly small number of candidates the voters can be helped to act far more effectively. The best plan is to elect only the council, except in mayor-council cities where the mayor must be separately elected.

Ballots without party designations. National and state parties have limited significance in municipal affairs and it has proved unfortunate to have municipal elections and issues decided solely upon the basis of electing Democrats or Republicans. If candidates are labelled on the ballot as Democrats or Republicans, or if straight party voting is encouraged by arranging all the candidates of each party in a single row or column, or by permitting a straight vote with a single mark (X), the major parties or a single dominant party can often exploit a local government without ever presenting any genuinely local issues.

By 1967, 64 per cent of the cities over 5,000 were reported as having nonpartisan local elections, that is, elections with no party designations. It is generally agreed this development has resulted in considerable improvement. This scheme does not necessarily eliminate political parties

but it tends to shift the basis of party division to one which makes more sense in terms of local issues. It also has certain other results. It tends to keep national party leaders more in the background in municipal elections. If they put up candidates, they cannot call for straight-ticket voting by any easy ready-made device, and they have to put up candidates who have some real merit and appeal as candidates for city offices. Ultimately a non-partisan tradition may come into being as it already has in many places. The voters, having a free choice among candidates for each office, frequently elect some candidates who are independents as well as some who in national and state politics are Republicans or Democrats. All these have to work together in the city government. As a result national party strife must be put aside so that concerns of the city become the principal basis of municipal action.

Primaries or run-off elections.⁵ To make elections without party designation more effective, and to guard against minority control, nominations are frequently made at primaries for which ballots are printed without party labels. To insure a clear cut majority choice at the final election the laws usually provide that only the candidates with the highest votes in the primary equal to twice the number to be elected to any office shall have their names on the final election ballot. This arrangement discourages candidates from making a straight party appeal because to do so is to risk losing the support of voters who are independent or who belong to some other party. Thus the combination of primaries and elections on ballots without party designation helps to put municipal politics on its own and to free city governments from domination by national, state or county machines. It is an important part of genuine home rule.

The essential reason for a nonpartisan primary is to avoid minority control which may result from election by simple plurality when there are more than twice as many candidates as positions to be filled. Consequently, some cities provide that if a sufficient number of candidates to insure majority control obtain an absolute majority in the primary or first election no second election shall be held. Thus the primary election may become the final election. If each of a number of candidates equal to a majority of the positions to be filled receives more than 50% of the votes cast in the first election, no runoff is required.

The election provisions of the *Model County Charter*, especially Section 7.05, may be helpful to charter commissions interested in this arrangement. The likelihood of a runoff for the council is minimized by requiring that it be held only in case the candidates receiving a majority in the first election do not equal a majority of the positions to be filled. This insures majority rule while opening the door to some minority representation.

⁵ See *A Model Direct Primary Election System*. National Municipal League, 1951, New York. 46 pp. \$1.

The number of hopeless or frivolous candidacies may be limited by use of the so-called sponsor-deposit method of placing names on the ballot. This method is provided for both in the *Model City Charter* and in Section 7.02 of the *Model County Charter*. By this system a small number of persons may nominate and sponsor a candidate who must deposit a sum of money which is returnable if he obtains a certain percentage of the vote—perhaps 10 per cent if election is by plurality or majority vote at large.

Separate municipal elections. Another way to concentrate attention on local issues is to hold city primaries and elections at a different time from state and national elections. With most state and all national elections scheduled for November in the even-numbered years, the odd-numbered years are generally free for municipal elections. Many municipal elections are held in the spring. For clear thinking and intelligent action the voters need to have a separation of the issues presented to them. A separation of elections is an important step in this direction.

Council elections at large. Election of council members by wards sometimes tends to prevent real majority rule. A majority in each of a majority of the wards is not necessarily a majority of the city electorate. Then, too, the petty issues of the various factions of the city may come to predominate over those that concern the whole city and leaders who have city-wide views and followings will be swallowed up in the large number of representatives who are ward- rather than city-minded. The ward system often leads to gerrymandering and to bitter struggles to achieve a fair re-districting as the city grows and the population shifts. To overcome these and a number of related evils many cities have established election at large for all or a substantial proportion of the members of their city councils. By 1967 of all cities over 5,000, 62 per cent were electing all councilmen at large, while about 17 per cent were using the combination system and 21 per cent the ward system.

The combination system, whereby a certain number of candidates are elected at large and others by wards or districts, may be particularly useful in large communities or in communities where it is felt that election of all councilmen at large would leave important elements located in certain parts of the community with a feeling of being permanently unable to win representation. Draft provisions for this system are provided in both the *Model City Charter* and the *Model County Charter*. Section 7.09 of the *Model City Charter* sets up a method for drawing district lines designed so far as possible to avoid gerrymandering and unequal districts.

Proportional representation. In an ideal democracy a majority of like-minded voters would be sure to have a clear majority control over the government. At the same time any considerable minority would have its fair share of representation. Neither the ward system nor the ordinary

at-large system of electing the council guarantees this result. Under the usual methods of election, whether at large or by wards, the majority may not secure its fair share of representation and large minorities are frequently excluded altogether. The Hare system of proportional representation (P.R.) is a system designed to insure the majority rule and adequate minority representation. It also eliminates the need for primary elections.

The *Model City Charter* offers an alternative method using P.R. for electing the city council. The Hare system is the prevailing method for local elections in Ireland and is used to some extent in Australia and New Zealand.

Initiative, referendum and recall. Singly and in various combinations these three devices of direct democratic control over government are to be found in many American cities. They are no longer as frightening to conservative upholders of the ancient ways of doing things as they once were and neither is there as much enthusiasm for them as once prevailed in certain American circles. If the legislative and executive branches of the city government can be simplified, strengthened and made more responsible to the voters, there will be less need for the I., R. and R. On the other hand, they do give local citizens a degree of confidence in their own ultimate control of their city. To have them or not have them for ordinary purposes can be left to local preference. The decision as to recall may well hinge on the decision as to the length of terms. There is a good deal more point to provision for recall with four-year than with two-year terms.

Charter Amendments. In the matter of charter amendments, the initiative and referendum are fundamental. The people should not be at the mercy of their elected servants in making important changes. The charter initiative gives them ultimate control of their own government. Any charter changes should, of course, require popular approval at a referendum.

Access to public acts and records. Popular government depends on adequate information about the conduct of government. This in turn requires that government, so far as possible, be conducted in the open and that the people should have reasonable access to such public records as payrolls, tax rolls, accounts, etc. It also means that provision should be made for apprising citizens of contemplated public policies or administrative proceedings that may affect their interests so that they will have an opportunity to be heard and have a part in the making of policy. Charter provisions for publication of and public hearings on proposed ordinances, budgets and borrowings are of fundamental importance. If there is any doubt as to the adequacy of existing law giving citizens access to public records, the charter should clear it up. Provisions requiring that meetings of council be public and requiring the issuance of some sort of annual re-

port are common. Some charters go even farther in spelling out the affirmative duty of the city government to keep the public informed of its activities but in this as in other matters detailed procedures can best be left to the administrative code.

SOME CONCLUDING OBSERVATIONS

The goals of better charter-making are the same as those of better city government—better municipal services, greater efficiency in the use of manpower and other resources, and a more effective municipal democracy.

Some will argue that efficiency is not a test of good government at all, that it is a purely materialistic businessman's objective, without moral value. Don't let them fool you. Ask them to consider the moral implications of the doctrine of stewardship. When you are responsible for spending public money or other people's money under any circumstances, efficiency includes honesty and the avoidance of waste in any form. Thus it is a practical moral principle of a high order of value.

Answered on this point, some sophists ridicule attempts to make city government more democratic, more responsive to the public's needs and will. They say government is bound to be an oligarchy and a promoter of special interests rather than of the general welfare. Again, don't let them put you on the defensive. Admit the frequent indifference of the voters and sometimes long continued rule of entrenched political machines. But how have some of these machines been eliminated? Where has a corrupt, inefficient municipal oligarchy been cleaned up most effectively if not where the voters aroused themselves and had the means at hand for a house-cleaning? A good city charter is certainly one of the important weapons in such a drive. A charter that establishes adequate democratic controls, that puts power into the hands of the voters to regain control of their government when they need it, is essential to democratic morale and success. On the whole, in this country and abroad, the most truly democratic city governments have been the most responsive to the public welfare and the most progressive in terms of increased services, modern methods and efficiency:

The tests of good city government are always debatable. A low tax rate is not necessarily proof of good city government and neither is a low expenditure rate. Modern cities are administratively alive and functioning. They need to raise and spend money for the results the people desire. At the same time, a high rate of taxation and of expenditure is no proof, either, that the people are getting adequate services.

Getting the most possible in terms of public service and welfare out of every dollar spent is a partial measure of good government but it does not go far enough. An unprogressive city might well achieve such a result.

Progressiveness, planning and looking to future improvements in the city are also important tests. So, too, are a keen public interest and a high ratio of popular pride and participation in the work of the city government.

A city charter cannot alone achieve all these ends but it is an important tool for making them possible. It is a key that can help a city unlock the door of opportunity. As a member of a charter commission, you have assumed a long-time obligation to help the people use that key wisely and effectively. After you have presented the charter, the people will have a right to look to you for help in understanding its merits and help later on in making it work as it was intended to work. The better the charter to begin with, the lighter will be your responsibility in the years ahead, and the more fortunate will be your city.

PART IV

Some Useful Materials and Sources

CHARTER COMMISSION MEMBERS will not have time to read all important material on city government and city charters. The charter consultant should select for the commission the materials he deems most important. Extracts from longer and less available works should be mimeographed for commission use if time and funds permit.

Some of the more technical works should be available for reference. Other items, like general books on city government, largely duplicate one another. Some commissions will have no need for some material which may be important to others. If a commission has special problems, it may wish to consult more detailed material on such matters as public utilities, tax administration, special assessments and the like. Up-to-date bibliographies on such matters may be found in the *Municipal Year Book*.

Special care should be taken in using charters of other cities. There are good charters but relatively few can be recommended unreservedly to others as models. Many older charters, even of well governed cities, could be improved in the light of more recent experience. Most charters are too long and detailed. Many show marks of compromises with local tradition or prejudice which are not worthy of export to other communities and do not even now fit the needs of the cities that have them. The representative charters listed below are suggested not as models but primarily as types in actual operation. Charters of other cities in your own state may be useful chiefly as indications of how other charter draftsmen have accommodated their work to your state law. All charters should be read in the light of the circumstances, skill and care behind their preparation.

Following is a list of useful material:

From Your Own City and State

Charter of your city and of other cities in your state

Constitutional municipal home rule provision and home rule enabling act or acts of your state

Leading charter and home rule decisions by your state supreme court

Selected general or special laws affecting the government of your city

Books, reports, pamphlets and articles on city government, city charters and municipal home rule in your state and city. Articles in local law reviews and state municipal league publications and reports by state legislative councils and committees, university research bureaus and local bureaus of municipal research may be valuable. These include, in a few states, model charters and other specific helps for charter commissions.

Materials of a More General Nature

- a. **Models and compilations** (available from the National Municipal League).
- Abstracts of Council-Manager Enabling Acts and State Constitutional Provisions.* 1966, 75 pp. mimeo., \$3.00.
- Model City Charter* (with commentary). 1964, sixth edition, 96 pp. \$2.50. (One of the most useful single items, widely used by charter commissions.) For detailed provisions on budgeting, borrowing, public utilities, special assessments and tax administration see *Model City Charter*, fifth edition, 1941, 172 pp. \$1.50.
- Model Council-Manager Plan Enabling Act*, 1965, 65 pp. \$2.00.
- Model County Charter* (with extended introduction). 1956, 71 and xxxviii pp. \$1.50.
- New Jersey's Optional Municipal Charter Law.* Analysis of Faulkner Act, most complete optional charter law, and of progress under it. 1967, 84 pp. \$2.00.
- b. **Representative city charters**
- Council-manager plan: Berkeley, Merced, Modesto, Oakland, Palo Alto, Sacramento, San Diego and Santa Monica, California; Boulder, Colorado; Hartford and Norwich, Connecticut; East Lansing, Marquette, Midland, Saginaw, Saulte Ste. Marie and Ypsilanti, Michigan; Hopkins and Montevideo, Minnesota; Kansas City and University City, Missouri; Rochester, New York; Cincinnati, Dayton, Delaware, Hamilton and Toledo, Ohio; Ada and Pawhuska, Oklahoma; Dallas and San Antonio, Texas; Richmond, Virginia; Richland and Vancouver, Washington.
- Mayor-council plan: Los Angeles, California; Denver, Colorado; Honolulu, Hawaii; Louisville, Kentucky; Baton Rouge and New Orleans, Louisiana; Baltimore, Maryland; Boston, Massachusetts; Dearborn and Detroit, Michigan; Duluth, Minnesota; St. Louis, Missouri; Omaha, Nebraska; Newark, New Jersey; New York, New York; Akron, Cleveland, Columbus and Lakewood, Ohio; Philadelphia and Pittsburgh, Pennsylvania; Providence, Rhode Island; Seattle, Washington.
- c. **Representative administrative codes** (some of these codes are issued separately, some are simply included in a general municipal code):
- Phoenix, Arizona; Anaheim, Berkeley and Palo Alto, California; Galena, Illinois; Rockland, Maine; Escanaba, Kalamazoo and Saginaw, Michigan; Kansas City, Missouri; Claremont and Concord, New Hampshire; Cincinnati, Cleveland, Hamilton and Willard, Ohio. Also see *Model Administrative Code*, National Institute of Municipal Law Officers, 1954, 17 pp. \$2.00.
- d. **Materials on forms of government and home rule**
- National Municipal League:
- The First 50 Years of the Council-Manager Form of Municipal Government*, by Richard S. Childs, 1965, 128 pp. paper \$1.00, cloth \$2.00.
- Forms of Municipal Government—How Have They Worked?* 1966, 20 pp. 25¢.
- Story of the Council-Manager Plan.* 1967, 31 pp. 25¢.
- Manager Plan Abandonments.* 1964, 40 pp. 50¢.
- Best Practice with the Manager Plan.* 1968, 8 pp. 25¢.
- National Civic Review*, occasional articles and notes. See particularly:
- "Home Rule As of Now" by Arthur W. Bromage, July 1964, pp. 365-370;
- "Home Rule Appraised" by Eugene C. Lee, October 1962, pp. 486-488.
- International City Managers' Association:
- Municipal Year Book* (published annually). Articles and regular departments on governmental data for cities of over 5,000 population.

Municipal Year Book, 1956, pp. 256-266, "Municipal Home Rule," by John R. Kerstetter.

Municipal Year Book, 1965, pp. 82-97, "Political and Socio-economic Characteristics of American Cities," by Robert R. Alford and Harry M. Scoble.
Recent Council-Manager Developments and Directory of Council-Manager Cities and Counties (published annually).

The Selection of a City Manager, 1957, 26 pp.

e. Books on American city government

There are as many as a dozen university-level textbooks in municipal government and administration which are useful to charter commissions for general background. These may be found in any college library.

f. Periodicals

National Civic Review, monthly (except August), National Municipal League.
Public Management, monthly, International City Managers' Association.

Where to Write for Information

National Municipal League, 47 East 68th Street, New York, N. Y. 10021

International City Managers' Association, 1140 Connecticut Avenue, N.W., Washington, D. C. 20036

National Association of Counties, 1001 Connecticut Avenue, N.W., Washington, D. C. 20036

National Institute of Municipal Law Officers, 339 Seventeenth Street, N.W., Washington, D. C. 20006

National League of Cities, 1612 K Street, N.W., Washington, D. C. 20006

Your state university governmental research bureau or department of political science, bureaus of governmental research in your own local area, and state leagues of municipalities.

