THE OHIO ALTERNATIVE FORM COUNTY GOVERNMENT LAW

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The Alternative Form County Government Law enacted by the General Assembly, effective October 16, 1961, is the first major change in Ohio county government structure in over a quarter of a century. Its need evolves from the population explosion which has occurred in Ohio since the outbreak of World War II. Its objective is to provide the most flexible machinery possible for counties to meet their individual governmental problems.

The new Law does not replace the traditional forms of organization in any county unless it is approved by the voters. The question of adoption is placed on the ballot by petition of ten per cent of a county's voters; and a majority vote at the subsequent general election in a particular county is required to make it effective.

In sum, the Alternative Form Law permits an optional number of County Commissioners—three, as now, five, seven or nine (incumbents serve out the remainder of their terms)—and the commissioners remain the policy making body for the county. A county executive assumes many of the administrative duties of the commissioners. He is responsible for general executive activity, board resolutions, enforcement of state laws, and preparing and submitting the budget along with advice as concerning fiscal matters.

The law also permits the establishment by the commissioners of county finance, welfare, purchasing, health, public works, and other departments. The power of the county to contract with other political subdivisions including adjoining counties is specifically set forth, and this represents a major advancement in local governmental relationships.

As a matter of background, Ohio counties traditionally are agents of the state, primarily concerned with the local administration of state policies. Functions assigned to the county, among others, include law enforcement, health and welfare services, safety, construction and maintenance of highways and other public works, tax assessment and collection, administration of elections, and public record keeping. To discharge these and other functions of statewide concern, the county, as a political subdivision of the state, is granted the necessary powers by general law.

This relationship to the state differs substantially from that of a

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municipality to the state. The Ohio supreme court commented at length on this distinction in the Board of Commissioners of Hamilton County v. Jesse W. Mighels, 7 Ohio St. 109, 118 (1857):

> Counties are local subdivisions of a state, created by the sovereign power of the state, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them. The former organization (municipalities) is asked for, or at least assented to by the people it embraces; the latter is superimposed by a sovereign and paramount authority. A municipal corporation proper is created mainly for the interest, advantage, and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the State at large, for purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for the general administration of justice. With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the State, and are in fact, but a branch of the general administration of that policy.

This judicial description is still true today with regard to much of the existing state legislation governing county affairs.

The Ohio General Assembly possesses the constitutional authority to establish by general law alternative forms of county government, any of which may be adopted by a county upon the approval of a majority of its electors voting thereon. Specifically, Article X, Section 1, of the Ohio Constitution directs the General Assembly to provide by general law for the organization and government of counties and empowers it to provide alternative forms of county government. The latter provision is permissive and the section further states that:

> . . . No alternative form shall become operative in any county until submitted to the electors thereof and approved by a majority of those voting thereon under regulations provided by law. Municipalities and townships shall have authority, with the consent of the county, to transfer to the county any of their powers or to revoke the transfer of any such power, under regulations provided by general law, but the rights of initiative and referendum shall be secured to the people of such municipalities or townships in respect of every measure making or revoking such transfer, and to the people of such county in respect of every measure giving or withdrawing such consent.

The General Assembly thus has the constitutional authority to enact an alternative forms law including one or more optional forms of county government; but, no such alternative form would replace the traditional organization in any Ohio county unless submitted to and approved by the electors of that county.

Until 1933 the constitutional provision with respect to county organization specified only that the General Assembly was to provide, by law, for the election of such county officers as may be necessary. After the county home rule amendment became effective, however, the General Assembly was empowered to provide alternative forms on an optional basis, in addition to the traditional organization and government of counties established by general law.

It should be noted that the alternative form law cannot serve, under existing constitutional provisions, as a vehicle for the establishment of an integrated, metropolitan area government. The transfer of local powers of self-government, granted by the municipal home rule amendment, from municipalities to the county can only be undertaken voluntarily by contract or through the adoption of a locally initiated county charter approved by the requisite majorities established by Article X, Section 3 of the Ohio Constitution.

The present law, therefore, was guided through the legislative process upon this constitutional basis. It has one basic objective: to provide means for meeting modern county governmental problems, within the existing governmental framework. Hence, the evolving pattern of the bill reflects a county manager form of administration under the jurisdiction of the Board of County Commissioners along with a specific assertion of the county's contracting power. These represent the most significant aspects of the new law.

The law relating to the county executive is set forth in Ohio Revised Code sections 302.14, through 302.18 inclusive:

> *Sec. 302.14.* There shall be a county executive, who shall be the chief executive officer of the county. He shall be either (A) an elective county executive as provided for in section 302.15 of the Revised Code, or (B) an appointive county executive as provided for in section 302.16 of the Revised Code.
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> In case of the absence of disability of the county executive as determined by the board of county commissioners, his duties shall be performed during his absence or disability by whomsoever the board of county commissioners shall designate by resolution.
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> *Sec. 302.15.* In a county adopting the elective executive plan the chief executive officer shall be known as the county executive. The county executive shall be elected at the first regular county general election following the adoption of the alternative form and shall hold his office for a term of four years. Only an elector of the county shall be eligible for election as county executive and shall be nominated and elected in the manner provided by general law for county officers.
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> In case the office of county executive is or becomes vacant by reason of death, resignation, or removal, it shall be filled by the board of county commissioners for the unexpired term.

> The salary of the county executive shall be established by the board of county commissioners.
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> *Sec. 302.16.* In a county adopting the appointive executive plan, the county executive shall be an elector of the county and appointed by the board of county commissioners. No persons elected to membership on the board of county commissioners shall thereafter be eligible for appointment as county executive until the conclusion of one year after the expiration of the term for which he was elected.
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> The county executive shall be appointed for an indefinite term, but may be removed by the board of county commissioners.
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> *Sec. 302.17.* The county executive shall be responsible for the proper administration of the affairs of the county placed in his charge, and by resolution of the board of county commissioners, may serve as the head of any county department created by the board pursuant to Sections 302.01 to 302.24, inclusive, of the Revised Code, provided he has the qualifications required by law.
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> *Sec. 302.18.* The county executive shall be the administrative head of the county and shall have all powers and shall perform all duties of an administrative or executive nature as shall be granted and imposed by the board. He shall execute the resolutions of the board of county commissioners and the laws of the state relating to or required to be enforced by his office.

The law specifically permits a county to contract with other jurisdictions and other counties in Revised Code section 302.21 in the following terms:

> *Sec. 302.21.* The Board of county commissioners as provided in Section 302.22 of the Revised Code, may enter into an agreement with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil conservation district, water conservancy district, or other taxing district, or with the board of any other county and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render.

As a matter of legislative procedure the bill was introduced in the House, and was heard before the Metropolitan Areas Committee. Witnesses representing county commissioners, civic groups, governmental research organizations, and county officials appeared in its support. There were no witnesses who appeared in opposition. It passed the House and was referred to the Senate State Government Committee.

The bill was then referred to a sub-committee composed of Sen-

ator Kenneth Berry, as Chairman, Senator John Brown, and Senator Joseph Bartunek. It was referred back to the Senate State Government Committee and recommended for passage. Shortly thereafter it was passed by the Senate, the House concurred in the Amendments, and on June 16th, 1961, the Governor signed the bill.

In conclusion, it should be noted that the new law has received favorable editorial and governmental attention throughout the state as a moderate step toward a solution of county administrative problems.