thereby recognizing that a charter is a limitation of power, would still leave a hazard to charter municipalities, assuming that they desire to exercise maximum power under Section 3. When confronted with the task of framing a charter in face of the knowledge that such a charter will constitute a limitation on the powers of the municipality, the charter commission is placed in the difficult position of framing a charter which will be as slight a limitation as possible. In an effort to overcome this difficulty, the framers of the Cincinnati charter incorporated in Article I the following language: "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 herein, in such manner as shall be provided by ordinance of the council." The charter for the City of Cleveland has a similar provision. But it seems clear that if in subsequent articles of such a charter the drafters incorporate specific limitations on the municipal powers, such specific limitations would prevail over the general reservation of the type quoted above. So, it follows, a charter, no matter how carefully drawn, will impose limitations on the powers of the municipality.

Willard P. Owens

Procedure in Home Rule Charter Making

Before the amendments to the Ohio Constitution in 1912, every municipality in Ohio operated under a form of local government prescribed by general law as promulgated by the state legislature. By the amendments of 1912, the municipalities were given independent powers of local self-government and the power to establish by home rule charters their own forms of local government.

At the present time there are three possible methods of determining the form of local government available to any municipality. It may continue to function under the form of government defined by the state legislature. It may adopt one of the three optional forms of government, designed by the general assembly, by employing the procedure of initiative and referendum defined in Ohio General Code Sections 3515-1 to 3515-13. Finally, the city or village "may frame and adopt or amend a charter for its government" by following the procedural requirements of Sections 8 and 9 of Article

XVIII of the Ohio Constitution.[1] It is to the constitutional device that this discussion is devoted.

It would seem evident from the language of Section 8 and 9 that they provide the exclusive procedure for framing and amending a home rule charter. It has been so held as to Section 9.[2]

Regardless of its size, any city or village which has incorporated under general law, has the constitutional authority to frame its own charter.[3] Many of the other home rule states are not so liberal in granting the charter-making authority, but limit the size of the municipality to which such power is available. For instance,

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[1]OHIO CONST. Art. XVIII §7.

OHIO CONST. Art. XVIII §8: "The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, 'Shall a commission be chosen to frame a charter.' The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein."

OHIO CONST. Art. XVIII §9: "Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments shall be mailed to the electors as hereinbefore provided for copies of a proposed charter. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote."

[2]Switzer v. State, 103 Ohio St. 306, 133 N.E. 552 (1921); 1937 OPS. ATT'Y GEN. (Ohio) No. 86.

[3]OHIO CONST. Art. XVIII, §§ 1, 7.

Missouri's Constitution confines the grant to cities with a population of 10,000 or more, and in Texas, municipal charters are available only to cities of 5,000 or more persons.[4]

Any incorporated village or city which desires its own charter must rigidly follow the procedural steps set out in Article XVIII, Section 8, of the constitution. These procedural requirements are mandatory. At first glance Section 8 seems adequately to describe the necessary pre-charter conduct but further study will reveal many questions which are unanswered by the constitutional provision. Some have been answered by a scanty number of cases on the subject, Opinions of the Attorney General, and state statutes, while others remain unsettled.

Charter-making can be initiated by a two-thirds vote of the members of the legislative authority of the municipality. In *Flotron* v. *Barringer*[5] the court declared that the expression "legislative authority" in Sections 8 and 9 includes the council of a municipality or the commission of a municipal corporation which is organized under the commission plan of government. Thus, the council by a two-thirds vote of its members may initiate the charter-making proceedings by passing an ordinance for the submission of the question, "Shall a commission be chosen to frame a charter?"

Under the municipal code form of government a village council is composed of six members while a city council is made up of seven.[6] Does the constitution require a two-thirds vote by the entire membership, the actual membership, or a quorum of the council? No case has been found on this point but from the fundamental importance of such action it would seem reasonable to suppose that a two-thirds vote by the entire membership is needed to pass the ordinance.

It has been held in *Payne* v. *State*[7] that the veto power of the mayor is not included within the meaning of "legislative authority." The mayor, therefore, was denied the authority to veto an ordinance enacted by two-thirds of the council for the submission of a question of an amendment to the home rule charter. This principle was announced by the court in spite of the fact that the home rule charter gave the mayor the power to veto *all* ordinances passed by the council so the rule would certainly apply when a charter is being initiated under Section 8.

While the Municipal Code requires a record of the individual yeas and nays of the council members for regular ordinances, it is not necessary for an election ordinance. Since the ordinance provided for in Section 8 has been construed to be an election ordi-

[4] MISSOURI CONST. Art. VI, §19; TEXAS CIVIL STATUTES c. 13, Art. 1165.
[5] 94 Ohio St. 185, 113 N. E. 830 (1916).
[6] OHIO GEN. CODE §§ 4206, 4215.
[7] 32 Ohio App. 189, 166 N.E. 907 (1928).

nance it is enough that the council's minutes show a two-thirds vote of the entire body in favor of the ordinance.[8]

Under Section 8 charter-making may also be initiated by a petition of ten percent of the electors, and the council must then enact an ordinance for the submission to the electorate of the question of whether a charter commission shall be chosen. Article XVIII, Section 14, clarifies the meaning of ten percent of the electors by the following statement: "The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election."

The "electors" referred to in Section 8 evidently means persons eligible to vote as described in Article V, Section 1. Under Section 4785-34 of the General Code one must register in order to qualify for voting, for filing a declaration of candidacy, or for signing a nominating petition. If this statute should be interpreted to extend to persons signing a petition for a charter, then such persons must not only be "electors" within Article V, Section 1, but also registered voters under Section 4785-34.

The petition should be addressed to the council of the city or village.[9] The constitution is silent concerning with whom the petition should be filed. The Attorney General of Ohio has ruled that a petition must be filed with the council and that a petition filed with the city auditor placed no duty on the council to take action.[10]

The court in *Kuertz* v. *Gas & Electric Co.*[11] said that the word "shall" in Section 8 placed a duty upon the council, when a proper petition for a charter was presented, to pass an ordinance submitting the issue to the people. In that case the referendum petition materialized under Section 5 as a protest against a public utility ordinance. The court further declared that it was incumbent upon the council to investigate and determine the validity of the petition as to whether it contained the proper number of signatures of qualified electors.

There is a strong inference in the *Kuertz* case that the discretion of the council upon the sufficiency of the petition is not absolute because the court declared that where the council failed to submit the question to the voters, there was a presumption that the petition was legally defective. This was based on the old doctrine that the law presumes public officers have faithfully performed their duties until it appears otherwise. This presumption was not rebutted in this case because the petition was found to be actually invalid.

Two later cases decided by the Ohio Supreme Court accepted

[8]State *ex rel.* McCormick v. Fouts, 103 Ohio St. 345, 132 N.E. 729 (1921).
[9]ELLIS, OHIO MUNICIPAL CODE 1390 (9th ed., Weinland, 1935).
[10]1914 OPS. ATT'Y GEN. (Ohio) Vol. II, No. 1150.
[11]27 Ohio N. P. (N.S.) 221 (1927).

a determination by the council as to the sufficiency of a petition for a charter amendment under Section 9 as conclusive in the absence of a clear showing that the finding was based on fraud or a gross abuse of discretion.[12]

Signers may withdraw their signatures until action upon a petition by the council. Where withdrawals brought the number of petitioners below the required minimum, it was held to be within the discretion of the council to refuse to submit a public utility ordinance to a referendum vote.[13]

A defective petition for a charter commission was involved in *McCormick* v. *Fouts*,[14] but the council passed the election ordinance by a two-thirds vote. The decision was that a two-thirds vote by the council cured any defect in the petition. The court, however, said that it was assuming the council's action in passing the ordinance was voluntary since the ordinance made no mention of the fact that it was passed in compliance with the petition. A federal tribunal sitting in an earlier Ohio municipal case held that even a majority vote of the electors of a municipality in favor of a proposed charter amendment would not cure a defect in the original petition.[15]

If the legislative body discovers a defect in the petition but still desires to initiate action itself, it clearly should be able to do so by two-thirds vote. However, suppose the council examines an invalid petition, mistakenly believes it to be good, and merely passes it in obedience to the constitutional command. Can it be claimed that this perfunctory action cures an invalid petition?

In *Kittel* v. *Bigelow*[16] the *McCormick* v. *Fouts* rule was applied to a situation in which the ordinance recited that the council was acting in response to the petition. Yet, it was held that the defect in the petition became immaterial upon two-thirds vote of council, and the court refused to look behind the council's vote. If the council's action in response to a petition for a charter commission should be involuntary, the court will look back to the sufficiency of the petition only if the council has passed the ordinance by a simple majority as contrasted with a two-thirds vote.

The text of the ordinance calling for an election on the question, "Shall a commission be chosen to frame a charter?" must state the time for the election. Section 8 prescribes that the ordinance shall provide that the question be submitted at the next regular munici-

[12]State *ex rel.* Waltz v. Michell, 124 Ohio St. 161, 177 N.E. 214 (1931); State *ex rel.* Kittel v. Bigelow, 138 Ohio St. 497, 37 N.E. 2d 41 (1941).

[13]State *ex rel.* Wehr v. Council, 138 Ohio St. 93, 32 N.E. 2d 839 (1941); *cf.* State *ex rel.* McFain v. Bailey, 132 Ohio St. 1, 4 N.E. 2d 141 (1936).

[14]103 Ohio St. 345, 132 N.E. 729 (1921).

[15]City of Dayton, Ohio v. City Ry., 16 F. 2d 401 (C.C.A. 6th 1926).

[16]138 Ohio St. 497, 37 N.E. 2d 41 (1941).

pal election if one shall occur not less than sixty days after the passage of the measure nor more than one hundred and twenty days after its passage; otherwise a special election shall be provided for within that time. In one case the required ten-day period after the first publication of the ordinance had not elapsed before the constitutional sixty days had begun to run prior to the next general election, but it was held that it was only necessary that the ordinance be *passed* not less than sixty days before the election to satisfy the constitution.[17]

A special election, called less than sixty days after enactment of the ordinance, was enjoined in *Baldwin* v. *Akron*[18] on the ground that the constitutional period was mandatory not merely directory. If no regular municipal election is to occur within the time limit, then the council may determine at its own discretion when to call a special election as long as it falls within the constitutional span.[19] It is not an abuse of discretion for the council to call a special election on the same day as a general state and county election.[20] The words, "next regular municipal election" mean the first Tuesday after the first Monday in November in the odd years.[21]

The Attorney General, in a 1929 opinion, intimated that a clause in the charter commission ordinance providing a method for the nomination of commission candidates was valid, but his ruling was that, in the absence of such a provision, general laws governing the nomination of other municipal candidates would also apply to the nomination of commission members.[22] Since the general laws require nominating petitions to be filed at least sixty days before the election, it would be sound to enact a provision in the election ordinance setting forth nomination rules. This is true since an election may be legally called just sixty days after the passage of the resolution. This would leave no time for the nomination of candidates.

After the ordinance containing all of the relevant provisions has been enacted, it should be certified to the board of elections which by Section 14 must conduct all elections called in connection with Article XVIII. The filing of a copy of the original ordinance, properly attested by the clerk of the council, with the clerk of the board of elections is a proper method of apprising the board of the passage of the ordinance.[23] The election board may be compelled

[17]State *ex rel.* McCormick v. Fouts, *supra,* note 14.

[18]15 Ohio L. Abs. 314 (1933).

[19]State *ex rel.* Frame v. Council of Wapakoneta, 18 Ohio L. Abs. 356 (1934).

[20]State *ex rel.* City of Lakewood v. Bernstein, 115 Ohio St. 722, 156 N.E. 213 (1926).

[21]1927 OPS. ATT'Y GEN. (Ohio) No. 380.

[22]1929 OPS. ATT'Y GEN. (Ohio) No. 1021.

[23]State *ex rel.* McCormick v. Fouts, *supra,* note 14.

by mandamus to put the question on the ballot if a copy of the ordinance has been properly certified to it.[24]

As to the nomination of candidates for the charter commission and the conduct of an election, general law apparently governs in absence of disposal of such matters in the ordinance.[25] By statute, petitions, which are signed by not less than one percent of the electors who voted in the next preceding election and which nominate the candidates for the regular municipal offices, must be filed at least sixty days prior to the election.[26] An elector cannot sign petitions for more candidates than there are offices open.[27] In other words, an elector could properly sign only petitions for fifteen candidates for the charter commission.

It may be desirable to present a "slate" of fifteen men for the commission for the purpose of insuring the opportunity of the electorate to vote not only for men capable of performing the task but also men who represent the major interests in the community. This may be accomplished by putting the names of fifteen such men on the same petition and obtaining the signatures of at least one percent of the electors, and later giving the necessary publicity to the "slate." *State* ex rel. *Boswell v. Tobin*[28] held invalid a petition containing the names of more than one candidate, because, under General Code Section 4785-91, each candidate must have a petition signed by sufficient electors from his district. In the *Tobin* case the petition was held defective not because there were several candidates for several offices on the same petition, but for the reason that each candidate was not from the same political district and there was an overlapping of districts so that it could not be discovered by examining the petition whether each candidate had the required number of signatures from his particular district. The court intimated that a petition with the names of several candidates would be valid if all candidates were from the same political division. It would seem, therefore, that a petition with the names of fifteen charter commission candidates would be upheld where all are electors from one municipality, as, of course, would be expected to be the case.

It is required by statute that notice of an election be given by posting a proclamation in a conspicuous public place at least ten

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[24]State *ex rel.* City of Lakewood v. Bernstein, 115 Ohio St. 722, 156 N.E. 213 (1926).

[25]1929 OPS. ATT'Y GEN. (Ohio) No. 1021.

[26]OHIO GEN. CODE §§ 4785-91, 4785-92.

[27]See the form in OHIO GEN. CODE §4785-91.

[28]132 Ohio St. 8, 4 N.E. 2d 144 (1936). The petition contained names of candidates for the following offices: U. S. Congressman; three state senators; five state representatives, and a county sheriff.

days before the election.[29] This is a function of the election board. Under general law each municipal enactment should be published in two English newspapers of opposite political parties in general circulation in the community.[30]

The ballot should be free of party designation, and contain the names of the candidates for the charter commission plus the question stated in Section 8. If no nominations shall have been made, the voters may write in names of electors of their choice.[31] The fifteen persons obtaining the highest number of votes shall be declared elected, and the election board shall certify the results of the election to the persons elected. In the event of a tie, the board of elections shall draw lots to ascertain the winner.[32] General Code, Section 4785-20, provides that all general election expenses shall be borne by the county but expenses of special elections are charged to the sub-divisions in which such elections are conducted.

When the results of the election are learned, and there has been an affirmative vote on the question presented on the ballot, the fifteen electors certified as having received the highest number of votes are members of an official "charter commission." The task of this commission is, in brief, to frame a charter for the municipality and to set a date for an election at which the charter so framed shall be submitted to the electors.

The complexity of the task that confronts this commission is largely dependent upon the number, size, and scope of the problems facing the municipality. The very fact that a charter commission has been elected is indicative that the electors feel there is something to be gained by the adoption of a charter by which the local authorities will be governed in their conduct of municipal affairs. The charter commission's principal responsibility is, after study and analysis of municipal problems, to prescribe the form of government best suited to the task of mitigating these problems. There is some danger in drafting a charter pointed to particular current problems, since the charter may emerge as a legislative instrument rather than an instrument of fundamental law.

It is not feasible to prescribe an inflexible procedure for the guidance of the commission. The purpose of suggesting a procedure is to provide the commission with a general outline to follow

[29]OHIO GEN. CODE §4785-5; Also, although not required, it is considered good practice to provide in the election ordinance for a proclamation of the coming election by the mayor. See ELLIS, OHIO MUNICIPAL CODE 1390 (9th ed., Weinland, 1935).

[30]OHIO GEN. CODE §§ 4228, 4229.

[31]OHIO GEN. CODE § 4785-131(6).

[32]OHIO GEN. CODE § 4785-158.

in commencing its work. The commission should vary the suggested procedure to fit its local situation.[33]

When and where shall the first meeting be held? By whom shall it be called? The constitution and statutes fail to answer these questions. The commission should meet informally as soon as practicable after its election becomes official. The constitution allows one year from the date of the election of the commission until the charter must be submitted to the electors, but the advantage to be gained from commencing work while the interest and enthusiasm is at a peak is self-evident. The mayor or some other official may desire to call the first meeting, but, if not, it is suggested that a few members of the commission, acting informally, should decide upon a convenient time and place, schedule the meeting, and give adequate notice to all other members. Since there is no express provision for calling this initial meeting, it would seem advisable to select a time at which all fifteen members can be present. The use of a city hall, school building, or other public building for all meetings, is to be preferred to the use of private homes or offices, even though the meetings are not open to the public.

There is no provision in the constitution or the statutes for the internal organization of the commission. The matter of organizing and electing officers will probably follow the initial meeting, the primary purpose of which is to allow the members to become acquainted. In the course of introductions and informal conversation, the composition of the group will soon be revealed. Perhaps some of the citizens who were most active in sponsoring the charter election will have been elected as members of the commission. If this be not the case, surely there will be an opportunity to hear from the persons who have most actively sponsored the movement. The information gained by listening to these sponsors will be most helpful to the commission in choosing the best-qualified chairman or president. A secretary should also be chosen at this time.

Whether or not the commission desires to hear from any outsiders at the first meeting is a matter of discretion, and a committee of well-informed citizens may not need briefing on the local situation.

As soon as the officers are chosen, it is necessary to canvass the group to determine the best times for subsequent meetings. It is highly desirable to move cautiously at this stage so that future attendance will be assured. The frequency of meetings will vary greatly, but not less than two per month would seem desirable

[33] A GUIDE FOR CHARTER COMMISSIONS, published by the National Municipal League, 299 Broadway, New York 7, is designed to provide a pattern of action for charter commissions. It is intended as a companion piece to the MODEL CITY CHARTER which is also published by the League. Both of these publications are invaluable aids to a charter commission.

from the standpoint of sustaining the interest of the group and of the public. It is necessary to endow the president with authority to call special meetings when the occasion demands. A set of workable rules of procedure should be drawn up by the presiding officer or by a committee named for that purpose. Appointment of committees, definition of quorum and voting majorities, planning of regular and special meetings, and adoption of a standard work on parliamentary procedure should be provided for in these rules.

The meetings of commissions vary from those conducted in a very businesslike atmosphere with much accent on formality to meetings conducted informally and casually. A business-like program, carried out with as much informality as is practicable in the discussion from the floor, would seem best. By this approach the commission may be assured of progressing steadily without discouraging the participation of those members who are not accustomed to the formalities of parliamentary procedure.

The problem of adequate financing of the work should be raised at an early meeting. There is no provision in the constitution or statutes for the financing of the charter commission; but it is clear that the legislative authority of the municipality should provide reasonable funds to pay stenographers and consultants, and to cover expenses incurred in holding such public hearings and meetings as are necessary. If no provision for financing has been made, it behooves the charter commission to request the council or mayor to take steps to make the funds available. No compensation is to be accepted by members of the commission, and it seems advisable to avoid any trips or tasks which involve the payment of expenses to commission members. If consultants or experts are to be used, the services of the most competent men available should be sought. Although inexpensive consultants are readily available, the commission would be well-advised to avoid frugality in this matter, since attempted economy at this juncture may result in the production of an inferior charter.

The work of the commission can often be expedited by the use of committees from among its members. In general, very few groups operate without some use of the committee system. However, a fifteen-man commission is not so large as to preclude expeditious handling of most matters as a group. Informal committees, composed of those members most familiar with a particular problem, will probably be formed periodically. Usually these impromptu committees can conduct their discussion and arrive at a decision in the presence of the entire commission without undue delay. From this discussion all members will attain a general understanding of the problem involved and will be able correctly to evaluate the decision of the committee. The emergence of a

major controversy may necessitate the reference of the problem to a specially appointed committee. Frequent reliance upon a cooperative city solicitor for the clarification of legal problems will obviate the necessity for numerous committee references. The use of committees for the tasks of drafting and conducting public relations is essential.

Whether the commission should solicit the assistance of an expert or consultant raises a difficult problem. Perhaps its solution lies in an examination of the problems which the charter sponsors hope to solve. There must have been some compelling reason to prompt a small municipality to resort to a charter commission when the delay and expense of such a procedure are considered. If the municipality were motivated by a mere desire to change the form of government it could have adopted any one of the three forms made available by statute.[34] If the movement for a charter commission is bred of a more deep-rooted problem, one regarded by the citizenry as demanding something more than a change in the form of government under the statutory provisions, the need for a consultant would be more apparent. The problems faced by a municipality may have ramifications best known to the expert, even though he be unacquainted with the particular municipality. The expert consultant, moreover, may be able to suggest the remedial device that will effect the cure. Problems of the type which can be solved only by a new fundamental law framed by a charter commission are much more likely to occur in the large cities than in the small municipalities. A large city will probably have men on the commission who possess expert qualifications, but if not, the services of a consultant will be readily available. However, even in small villages, peculiar location and other factors may combine to breed such problems as illegal interstate traffic and widespread, long-continued gambling. The enlistment of the services of an expert may be particularly appropriate in such a village, since there the members of the commission are likely to lack the specialized knowledge required for the solution of difficult governmental problems. For the ordinary situation in which a growing city adopts a charter as a milestone in its progress rather than as an immediate cure for any pressing problem, an alert and sincere commission can probably produce a creditable charter without the help of an expert.

The emphasis placed on the commission's public relations program should vary directly with the opposition encountered. The efforts of the charter commission will, of course, have been futile if the electorate fails to adopt the charter at the election. Equally important, the charter must gain the wholehearted support of a

[34] OHIO GEN. CODE §§ 3515-1 to 3515-71.

large percentage of the citizenry so that its enforcement becomes a matter of civic pride. Some type of public relations program is desirable in almost every instance. It may not be necessary to adopt any extensive program of public promotion in a municipality already possessed of interest and enthusiasm for the charter. A moderate number of meetings should be opened to the public, and the newspapers should be used to keep the public informed of the commission's progress. On the other hand, there may be a well-organized and hard-hitting opposition bloc within the municipality. In this situation the commission faces the task of cultivating the interest and support of the public in every possible manner.

All interested local organizations should be permitted to participate in the formation of the charter through the medium of public meetings. If, as a part of the agitation for the whole program of charter adoption, or as a part of the election campaign of certain members of the commission, many public meetings have been held, the need for public programs may have disappeared. A program of mass meetings has the inherent dangers of domination by a highly vocal minority, development of petty wrangling, creation of needless ill-will, and wasting of valuable time. These dangers may discourage the commission's use of this wholesome method of engendering public support and goodwill. The foreseeing of these dangers will enable the president to alleviate their disastrous effects on the public meetings. This will necessitate the selection of the ablest and most tactful chairman for the meeting, an apportionment of representatives to the various interest groups, an outline of the subject matter to be covered during the course of the meeting, and a plan devoting part of the time to audience participation. No problem of the commission will necessitate a more carefully planned attack than the conduct of these public meetings.

The actual drafting of the charter requires a skill possessed by relatively few persons. It should, therefore, be determined at an early date who is to be appointed as draftsman. If a consultant be employed, he may be able to do a substantial part of this work; if not, the city solicitor or the attorney members of the commission may be relied upon to contribute to the drafting. It should be pointed out that not all attorneys qualify as good draftsmen.[35] In addition to lacking the special skill required, attorneys are often wanting in a broad knowledge of political science and public administration. A consultant well versed in these areas, will doubtlessly produce the sort of uncompromising charter which will facilitate a truly frontal attack on the problems of the municipality.

The actual drafting of the charter should be commenced as soon as it has been decided what degree of detail of the selected

[35]A GUIDE FOR CHARTER COMMISSIONS, p. 11 (1947), *supra*, note 33.

form of government should be incorporated in the charter. The drafting should follow the progress of the commission through the various phases of the charter. It is clear that each section of the charter should be individually checked by the commission as a whole to make certain the draftsman has correctly expressed the commission's will. Furthermore, the commission must charge itself with the task of inspecting the charter as a whole to determine whether the various provisions of the charter are harmonious. An experienced attorney should review the charter to assure its compatibility with the constitution and applicable general laws.

While the actual provisions of the charter are not within the scope of this comment, it must be pointed out, as a practical matter, that commissions have made most frequent use of other municipal charters for many purposes. One of the most common purposes of this comparative technique is to learn the details of the plans of government being used in other municipalities. The other charters may be used to an advantage in the drafting process if they reveal the manner in which provisions for local affairs have been adapted to fit the applicable state law. The use of the *Model City Charter* may also be most helpful to the draftsman as well as other members of the commission at almost every stage of their work.

When the final draft of the proposed charter has been approved by a majority of the commission members it is to be submitted to the legislative authority of the municipality. It should be accompanied by a "Report of the Charter Commission," a paragraph of which should recite that the members of the commission were duly elected on a certain date, and which should designate a date for the election on the adoption of the charter.[36] The signatures of the members who have approved the proposed charter should be placed at the end of this report. Duplicate copies of the proposed charter and report, complete with signatures, should be submitted.

Upon receiving the report the council should enact an ordinance providing for an election to be held on the designated date.[37] Not less than thirty days prior to the election date the clerk of the municipality *shall* mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election. In the case of *State* ex rel. *Vrooman* v. *Kaufman*[38] an application for mandamus against the clerk to compel him to mail copies of a proposed amendment to the electors was made less than thirty days before the election and the court denied relief on the ground that it was then too late to comply with the

[36]OHIO CONST. Art. XVIII, § 8.

[37]ELLIS, OHIO MUNICIPAL CODE 1390 (9th ed., Weinland, 1935).

[38]22 Ohio App. 282, 153 N.E. 897 (1926).

constitution. The expense of printing and mailing copies of the proposed charter should be provided for by the council.[39]

If the electorate of the municipality approve the proposed charter at an election conducted under general law, then a certified copy of the home rule charter or charter amendment must be filed with the Secretary of State within thirty days after the referendum vote.[40]

The procedure for amending a home rule charter is developed in Article XVIII, Section 9, which, on the whole, parallels the procedure for the adoption of a charter. While Section 9 imposes a duty upon the clerk to mail copies of the proposed amendment not less than thirty days prior to the election to the electors, it does not impose a duty to mail to such electors a copy of the portion or portions of the existing charter to which such proposed amendments are directed.[41]

In *Reutener* v. *The City of Cleveland*[42] the court stated that it was not necessary that the proposed amendments to a home rule charter should be printed in full upon the ballot by which the question was submitted to the electors. The printing of a digest of the amendments substantially expressing the purpose and terms was held sufficient compliance with Article XVIII, Section 9.

Where two conflicting amendments to a home rule charter are approved by a majority vote in the same election, the one receiving the greater number of votes shall become effective unless the charter provides otherwise. An elector may vote in favor of both of the conflicting amendments and his vote will be counted toward the total ballots cast for each amendment.[43]

While the scope of this comment does not extend to the abandonment of home rule charters it seems appropriate to mention that a municipality may abolish its charter by following the initiative and referendum procedure as prescribed in General Code Sections 4227-1 to 4227-13.[44] The powers of initiative and referendum are reserved to the people of a municipality by the constitution.[45]

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G. H. Savage

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[39]1914 OPS. ATT'Y GEN. (Ohio) Vol. II, No. 1253.
[40]OHIO CONST. Art. XVIII, § 9.
[41]1940 OPS. ATT'Y GEN. (Ohio) Vol. I, No. 2275.
[42]107 Ohio St. 117, 141 N.E. 27 (1923).
[43]1931 OPS. ATT'Y GEN. (Ohio) No. 3626.
[44]Youngstown v. Craver, 127 Ohio St. 195, 187 N.E. 715 (1933).
[45]OHIO CONST. Art. II, § 1 f.