League of California Cities

Member National League of Cities *"Western City" Official Publication*

HOTEL CLAREMONT
BERKELEY 94705
PHONE 843-3083

702 STATLER CENTER
LOS ANGELES 90017
PHONE 624-4934

Charter vs General Law

INTRODUCTION

The purpose of this report is to answer those questions most frequently presented to the League by city officials interested in the question of whether their city should adopt a charter. This treatment of the subject is not intended to be comprehensive. Rather, it is designed to discuss the basic differences between a general law and charter city.

Additional copies of the report may be secured from the League Office by request.

maybe examine benefits of citizens Oakland

2

Flood Control

tax utilities

CHARTER OR GENERAL LAW CITY?

In California, cities have a very broad grant of powers and, unlike cities in other states which are governed by state law, California cities enjoy considerable freedom in the form of government desired by the people and the type of activity cities can perform. The principle advantage of a charter form of government in California would be that under a charter a city may exercise broader authority than is now contained in the general law as well as a custom-tailored form of organization. Conversely, if so desired by the community, a charter can be voted limiting municipal authority.

The principle advantage of the general law city is that practically every phrase and clause of the general law has been interpreted, and, generally speaking, there is a better understanding of what can and cannot be done in this type of a city. On the other hand, freeholder's committees in drafting a new charter can and have drawn language from many different charters resulting in a charter lacking in consistency and confusing to citizens and city officials alike.

A good yardstick in determining the desirability of a charter is to ask the question -- is there something we want to do in our city which we cannot now do under the general law? Most cities which have adopted a charter have done so because, on some occasion in their history, they wanted to do something which they could not do under the general law, either as to internal organization or as to the exercise of a power. About four-fifths of all cities in California - most of which are cities under 50,000 population - find the general law adequate. The following figures show the number of cities in each population group which have adopted charters under provision of Article XI, Section 8 of the State Constitution:

Size	Total in Pop. Group	Number of Chartered Cities
Under 5,000	141	3
5,000 - 10,000	55	5
10,000 - 25,000	95	13
25,000 - 50,000	48	13
50,000 - 100,000	39	24
Over 100,000	17	16
Total	395	74

A greater number of large cities are chartered than are smaller cities. Yet some cities of 90,000 and 100,000 population remain general law cities. When, then, does the general law become inadequate? The answer lies in an examination of the municipal powers and form of organization needed to carry on the municipal operations desired by the individual community.

POWERS (CHARTERED V. GENERAL LAW CITIES)

Regulatory and Corporate. Every power exercised by a city in California is either a regulatory power or a corporate power. One is the power to regulate the conduct of citizens; the other is the power to perform a particular type of service or activity. General law and chartered cities draw identical regulatory power from Article XI, Section 11 and the corporate power to establish and operate public works is granted equally to both types by Article XI, Section 19 of the State Constitution. In all other cases, however, there is a fundamental distinction between general law cities and chartered cities. The key is found in the phrase "municipal affairs".

"Municipal Affairs". Sections 6 and 8 of Article XI provide that chartered cities shall have power to make and enforce all laws in respect to "municipal affairs", subject only to charter limitations. Thus, if a matter is a "municipal affair", a chartered city has plenary power to act with respect to it except to the extent that its charter or the State and Federal Constitutions limit or restrict it. The courts, of course, are the final arbiters concerning whether a matter is or is not a municipal affair. The following matters have been held to be "municipal affairs": Popper v. Broderick, 123 Cal. 456 (the pay of municipal officers); Tevis v. City & Co. of San Francisco, 43 Cal.2d 190 (extra compensation for employee vacation allowances); Los Angeles G. & E. Corp. v. Los Angeles, 188 Cal. 307 (the sale and distribution of electrical energy manufactured by a city); Ainsworth v. Bryant, 34 Cal.2d 465, West Coast Advertising Co. v. San Francisco, 14 Cal.2d 516, City of Glendale v. Trondsen, 48 Cal.2d 93 (taxation); Socialist Party v. Uhl, 155 Cal. 776 (the election of municipal officers); Lawing v. Faull, 227 Cal. App.2d 23 (initiative and referendum); South Pasadena v. Pasadena Land Co., 152 Cal. 579 (supplying water); Cramer v. City of San Diego, 164 Cal. App.2d 168, Mefford v. City of Tulare, 102 Cal. App.2d 919 (providing water and sewer facilities); Byrne v. Drain, 127 Cal. 663 (improvement of city streets); Pasadena v. Charleville, 215 Cal. 384 (procedure for letting of city contracts); Klench v. Board of Pension Fund Commrs., 79 Cal. App. 171, Murphy v. City of Piedmont, 17 Cal. App.2d 569 (pensions of city employees); Adler v. City Council of Culver City, 184 Cal. App.2d 763 (mode and manner of passing ordinances); Wiley v. City of Berkeley, 136 Cal. App.2d 10, Marysville v. Boyd, 181 Cal. App.2d 755 (disposition of parks); Roseville v. Terry, 158 Cal. App.2d 75 (revenue bond procedure).

By dictum in the decision in Mallon v. City of Long Beach, 44 Cal. 2d 199, the Supreme Court characterized the following as purely municipal affairs (at pages 211-212): City of Grass Valley v. Walkinshaw, 34 Cal. 2d 595 (sewer); Jardine v. City of Pasadena, 199 Cal. 64 (isolation hospital); Stege v. City of Richmond, 194 Cal. 305 (city streets); City of Pasadena v. Paine, 126 Cal. App.2d 93, (city library); Alexander v. Mitchell, 119 Cal. App.2d 816 (off-street parking facilities); Perez v. City of San Jose, 107 Cal. App.2d 562 (city highways); Beard v. City & County of San Francisco, 79 Cal. App. 2d 753 (public hospital); Armas v. City of Oakland, 135 Cal. App.411 (fire protection).

In general law cities, an entirely different rule obtains. A general law city has no power to act in its corporate capacity unless it can point to a constitutional or statutory grant of authority. The bulk of the corporate powers vested in general law cities will be found in their"general law charter"(Sections 34,000 et seq. of the Government Code). These powers run the gamut from Assessments to Zoning.

"Dillon's Rule". In construing grants of authority to general law cities, the California courts have adopted a rule which was laid down by the famous Judge Dillon in his textbook on the law of municipal corporations which became the Bible of

municipal lawyers. This rule is stated in Frisbee v. O'Connor, 119 Cal. App. 601, as follows:

> "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation -- not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."

This rule and this entire theory of corporate powers is in direct conflict with those decisions which have construed Article XI, Section 11 to authorize the performance of corporate functions. Thus, if on the theory of the case of Jardine v. City of Pasadena, 199 Cal.64, Article XI, Section 11 is adequate to authorize a city to establish and maintain an isolation hospital, no grant of corporate authority to do so would be required. Yet Dillon's rule purports to make a grant of corporate authority a prerequisite to the performance of a municipal function. Thus, as suggested above, the safer rule, particularly in general law cities, is to assume that Article XI, Section 11 does not grant any authority other than the authority to enact regulatory ordinances and that the authority to provide municipal services must be granted by the State Legislature. As a result of this rule, the Legislature has been asked at each session for additional grants of corporate powers to general law cities to enable them to cope with emerging problems.

EXAMPLES - "MUNICIPAL AFFAIRS" V. GENERAL LAW AUTHORITY

Taxation.

Chartered Cities. As pointed out above, in chartered cities the important question is whether or not a particular subject is a "municipal affair". Generally, if a particular subject is one upon which the state has not legislated and one which has direct interest to the inhabitants of a city, the courts, who are the final arbiters, will hold the subject to be a "municipal affair". An example of a broad field which has been held to be a municipal affair is taxation. (West Coast Advertising Co. v. San Francisco, 14 Cal.2d 516). In this connection, probably the best example of the California "municipal affairs" concept and the operation of a charter limitation is the case of Ainsworth v. Bryant, 34 Cal. 2d 465. In that case, the City of San Francisco had attempted to impose its "purchase and use tax" upon a retail liquor dealer. It was conceded at the outset that the general subject of taxation in a chartered city is a "municipal affair", but the plaintiff contended that the State Constitution had reserved to the state exclusive taxing jurisdiction over alcoholic beverages.

The San Francisco tax in this situation was unlike any comparable tax in the state for the reason that a section of the San Francisco charter prohibited the imposition of a license tax on retail businesses. As a result, the tax was levied exclusively on the "purchase and use" of personal property and was not a tax on the retailer or businessman. The charter limitation, therefore, did not restrict the city from levying the customary type of retail sales tax. The city had the basic authority to levy any type of tax since taxation is a municipal affair, but it was necessary to comply with all charter limitations on this plenary municipal power.

The Court's primary concern was whether or not the purchase and use tax was in conflict with the reservation of exclusive taxing power to the state in Article XX, Section 22. The conclusion was reached that since the state's exclusive jurisdiction was with respect to the taxation of the "business" of selling and dealing in alcoholic beverages and since the purchase by an individual of alcoholic beverages for consumption is not a business, the tax in question did not conflict with the State Constitution.

From the above it will be seen that chartered cities have taxing authority as broad as the entire field of taxation itself. In the absence of a limitation in the charter itself or a restriction in the state or deferal constitutions, a California chartered city may levy and collect any type of tax.

General Law Cities. General law cities have only those corporate powers which are granted expressly by statute or which, under Dillon's rule, are necessary for, or incidental to, the exercise of the granted powers. The field of taxation is an excellent example of this theory of general law corporate powers.

Property Tax. Sections 43,000 et seq. of the Governement Code authorize general law cities to provide a system for the assessment, levy and collection of city property taxes. Pursuant to this authority, some general law cities have either established their own property tax procedural ordinance for the levy of taxes or have incorporated the provisions of the Revenue and Taxation Code, dealing with assessment and collection of taxes by county officers as a part of their city ordinance. However, most California cities have transferred assessment and collection of city property taxes to the county assessor and tax collector pursuant to Sections 51,500 et seq. of the Government Code. In Sections 43068 and 43069 of the Government Code are set forth the basic one dollar tax rate limit and an enumeration of all the exceptions to this limit.

Excise Taxes. The other general class of tax authorized for general law cities is the so-called business license tax. General law cities are authorized to levy this type of excise tax by Section 37101 of the Government Code. Since the standard type of retail sales tax is a tax on the privilege of selling tangible personal property at retail, the authority to license retail and other businesses for revenue carried with it the authority to levy a sales tax similar to that levied by the State of California. In 1951, Section 37101 was amended to expressly authorize the levy of a complementary use tax by general law cities which had already levied or which simultaneously levied a sales tax. In 1963, Section 51030 was added to authorize general law cities to levy and collect a hotel room tax. Under this authority granted by the Legislature, the great bulk of California's general law cities levy a business license tax for revenue purposes, a sales and use tax and hotel room tax. In this connection, however, it is important to note that general law cities can levy only a property tax, as authorized by Sections 43,000 et seq., or a tax upon the transaction of business or a use tax under Section 37101, or a hotel room tax under Section 51030. They are not free to levy any kind of tax not prohibited by their charter or the Constitution, as are chartered cities.

Internal Organization.

Chartered Cities. Another very important municipal affair is the determination of the form of organization which the city government shall take. One of the subjects which is usually covered rather completely by a city charter is organization. Chartered cities are free to use any form of organization, and make any desired

allocation of duties, powers and functions between the elective and appointive officers of the city. California chartered cities most commonly use one of three basic forms:

(1) Mayor-Council, with the Mayor being elected from among the members of the council;

(2) Strong Mayor-Council, with provision for a directly elected Mayor having strong executive powers who may be required to devote full time to the job; and

(3) Council-Manager, with all administrative authority being vested in the city manager and policy-making powers reserved to the city council.

While the foregoing classifications are adequate to describe the general category into which most of California's chartered cities fit, there are many different minor variations in each of these forms as a result of local needs.

General Law Cities. Under the provisions of the Government Code, general law cities in California have the council-manager, council-administrator or the mayor-council form of government with a mayor being elected from among the members of the city council or by direct vote of the electorate. (Sections 34851, 34900-05, 36801, Gov. Code). A general law city may establish the council-manager form of government at the time of incorporation or subsequently by adopting an ordinance establishing the council-manager form or by an ordinance submitted to the electors by the legislative body or as an initiative measure. (Section 34851). In addition to the council-manager form of government, general law cities may establish a council-administrative officer form of government pursuant to the authority granted under Section 36505 of the Government Code providing for the appointment by the city council of all officers or employees deemed necessary. Under this alternative, the city council does not delegate any of its administrative authority to the administrative officer who merely acts as the agent of the council in performing the council's administrative functions. Thus, while chartered cities enjoy considerably more flexibility in the choice of alternative forms of organization, general law cities have substantially the same choices with the exception that there is no provision in the general law for the so-called "strong mayor" or "commission form of government".

The "Statewide Concern" Doctrine. The other side of the coin in chartered cities are those matters which are of "statewide concern". These are subject to the control of the State Legislature and outside the autonomous authority of a chartered city. With respect to a matter of "statewide concern", a chartered city must yield to conflicting state legislation. An example is annexation procedure. In order to annex territory outside of the city, a chartered city must proceed according to state law. (People v. City of Los Angeles, 220 Cal. 154). Annexation of territory outside its limits cannot be a "municipal affair" since the territory most directly interested is not, during such proceedings, municipal.

The principal powers which a freeholder's charter city operating under a charter framed pursuant to the State Constitution has, which a general law city does not have, are the following:

1. The authority to provide their own procedural ordinances to be followed in conducting special assessment proceedings.

2. The power to increase, lower or eliminate competitive bidding requirements insofar as the letting of public works contracts is concerned.

3. The power to levy every conceivable type of tax not prohibited by the State or Federal Constitutions or by the charter itself.

4. The power to establish a form of government tailored to fit the needs of the particular community.

5. The power to establish its own ordinance adoption procedure.

6. The power to provide the type of fiscal procedure desired.

7. The power to provide for the time and manner of holding municipal elections.

While it might seem that chartered cities with their autonomy in "municipal affairs" enjoy a substantial advantage over general law cities, analysis of the practical situation reveals the fallacy of this assumption. A very cooperative Legislature following the policy of home rule, as distinguished from the law of home rule, has granted general law cities every reasonable request for additional corporate authority. As a result, there are today very few powers possessed by charter cities which are not also available to general law cities. However, one should remember that no matter how vigilant those may be who are concerned with the maintenance of broad home rule authority, there is always the possibility that strong pressure groups may be able to secure passage of legislation which may limit the authority or impose additional burdens upon general law cities.

CHARTER TRENDS

There are seventy-four charter cities in California. Fourteen of these charters were adopted during the 1920's --- more than any other ten-year period. The following breakdown shows that relatively few cities have found it necessary to obtain a charter during recent years in order to organize and perform the municipal services needed by a community:

CHARTER ADOPTIONS

Prior to 1900	13
1900-1909	12
1910-1919	10
1920-1929	14
1930-1939	6
1940-1949	5
1950-1959	9
1960-1965	5

PROCEDURE

The procedure for preparing a charter and presenting it to the people is set forth in Article XI, Section 8 of the State Constitution. It provides that any city containing more than 3,500 people may adopt its own charter. The process is initiated through an election upon the question of drafting a charter and to choose a board of fifteen freeholders. The election may be called either by a two-thirds vote of the city council or by a petition signed by 15% of the qualified electors of the city. If a majority of the voters favor drafting a charter, the fifteen freeholder candidates receiving the greatest number of votes at the same election are given the responsibility of drafting a charter within a period of one year. An alternative method is to have a charter framed by the city council or its representatives which is then submitted to the voters.

If the proposed charter is ratified by a majority vote of the poeple, it is submitted to the State Legislature at its next session where it must be approved by a majority vote in both houses. No charter has yet failed to get legislative approval. After local sanction and legislative approval, the charter is filed with the Secretary of State. Any subsequent change in the charter must be ratified by the voters and approved by the Legislature.

CHARTER DRAFTING

Because of the many pitfalls in charter drafting, it is recommended that the freeholders or the city council consider employing a charter consultant at an early stage in the charter drafting process. As explained in "A Guide for Charter Commissions", published by the National Municipal League, a charter consultant can perform the following useful services for a charter commission:

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 the commission members may have.

3. Preparation of materials for discussion at meetings and participation in the discussions.

4. Drafting, first, sections of the proposed charter and, finally, the complete integrated document.

The legal staff of the League of California Cities will, upon request, review the technical details of the finished charter draft as a final check for legal pitfalls. Assistance on non-legal aspects of the charter is also offered by the League. An additional source of information is the National Municipal League, whose model city charter has been used by some California Cities as a general guide for charter drafting. Many California Cities have well-drafted charters. Reference to these would be helpful to a freeholders group.

CHARTER CITIES IN CALIFORNIA

The following is a list of all of the charter cities in California in alphabetical order giving population (December, 1964) and date of first and present charter (dates of amendments are not incidated).

CALIFORNIA CHARTER CITIES

City	Population	Date of First and present Charter (Under Constitution of 1879)*
Alameda	71,000	1907,1937
Albany	16,500	1927
Alhambra	61,000	1915
Anaheim	138,299	1965
Arcadia	47,100	1951
Bakersfield	64,500	1915
Berkeley	120,300	1895,1909
Burbank	93,900	1927
Chico	17,150	1923,1960
Chula Vista	48,850	1949
Compton	73,815	1925,1948
Culver City	33,100	1947
Dairy Valley	3,508	1956,1964
Del Mar	3,124	1960
Downey	90,700	1965
Eureka	28,137	1895,1959
Fresno	151,600	1901,1957
Gilroy	8,675	1959
Glendale	131,800	1921
Grass Valley	5,011	1893,1953
Hayward	83,856	1956
Huntington Beach	57,600	1937
Inglewood	85,000	1927
Long Beach	344,225	1907,1921
Los Angeles	2,702,500	1889,1925
Marysville	9,553	1919
Merced	22,923	1949
Modesto	43,250	1911,1951
Monterey	25,100	1911,1962
Mountain View	43,800	1953
Napa	26,929	1893,1915
Needles	4,590	1959
Newport Beach	34,100	1955
Oakland	385,700	1889,1911
Oroville	7,051	1933
Pacific Grove	13,450	1927,1955
Palo Alto	56,000	1909
Pasadena	119,600	1901
Petaluma	16,557	1911,1947
Piedmont	11,117	1923
Placentia	10,150	1965
Pomona	81,900	1911
Porterville	9,341	1927
Redondo Beach	50,100	1935,1949
Redwood City	52,100	1929

City	Population	Date of First and Present Charter (Under Constitution of 1879)*
Richmond	80,450	1909
Riverside	126,600	1907,1953
Roseville	16,900	1935,1955
Sacramento	262,918	1893,1921
Salinas	51,700	1903,1919
San Bernardino	100,300	1905
San Diego	638,900	1889,1931
San Francisco	755,700	1899,1931
San Jose	307,600	1897,1915
San Leandro	69,600	1933
San Luis Obispo	25,300	1911,1955
San Mateo	78,600	1923
San Rafael	24,786	1913
Santa Ana	126,500	1953
Santa Barbara	66,900	1899,1927
Santa Clara	81,800	1927,1951
Santa Cruz	28,000	1911,1948
Santa Monica	85,900	1907,1947
Santa Rosa	36,935	1903,1923
Seal Beach	16,100	1964
Stockton	91,457	1889,1923
Sunnyvale	78,900	1949
Torrance	119,500	1947
Tulare	14,598	1923
Vallejo	62,700	1899,1946
Ventura	37,800	1931,1933
Visalia	18,600	1923
Watsonville	13,950	1903,1960
Whittier	79,053	1955

* Source of information: Deering's California Codes and "State and Local Government in California" by Crouch, McHenry, Bollens and Scott.

A Citizens' Study Committee Report on Charter Adoption

Prior to initiation of the formal charter drafting procedure some cities have found it advisable to appoint a Charter Study Committee to review the basic reasons for charter adoption. The League does not necessarily endorse the statements contained in the following city report nor are the objectives and limitations described typical of the reasons for or against charter adoption. The Committee report is included only for the purpose of describing some of the considerations believed to be important by one city.

A. COMPARATIVE ADVANTAGES OF A CHARTER FORM OF GOVERNMENT

1. Provide local autonomy or "Home Rule" to the maximum extent permitted under State Law so as best to meet the problems and needs of the city, many of which are perhaps not common to other general law cities. A charter, if wisely drawn, can tailor the means and methods of local government to the specific needs.

2. Provide for a council of such number as will, considering the staggering of terms of office, retain a majority membership of experienced councilmen from year to year. It takes time to acquaint new members with problems then pressing for solution, the background of such problems and the past thoughts and actions bearing upon their solution.

3. Provide a realistic, yet adequate, tax base which will realistically meet the fiscal demands of the city.

4. Provide the particular type of mayor-council, mayor-staff and council-staff relationships that will best suit the city with the various powers and authority reasonably defined.

5. Provide efficiency and economy by the setting up of effective checks and balances in the utilization of each and all of the city's funds.

6. Yield a more informed citizenry and an enhanced public interest through hearings and meetings attendant upon the drafting of a charter and submission of a charter for evaluation and vote of the electorate and through the repeated focus of attention upon the city's problems by inevitable and repeated proposals to amend or revise an adopted charter.

7. Protect to the maximum extent permitted by State Law against State legislative action that may be disadvantageous to the city. Detrimental State legislation is one of the greatest single threats against satisfactory continued operation under general law.

8. If the city were to undertake to provide utility services, such as water, for instance, a charter could more effectively provide for the organization, the means of financing, the rate control, and other basic features of one or more departments.

9. Provide, to the maximum extent possible, restrictions and liabilities on issuance of bonds consistent with the desires of the city's residents.

10. Provide more responsive government at no greater cost.

B. COMPARATIVE ADVANTAGES OF THE GENERAL LAW FORM OF GOVERNMENT

1. There is difficulty in drafting a charter to cover the present needs of the city and to provide flexibility and provision for future, or now unenvisioned, conditions. Revisions and amendments of a charter are time-consuming and costly. The general law is existent and worthwhile amendments can be obtained at minimum cost to the city.

2. The State Legislature in recent times has been agreeable to and cooperative in enacting legislation requested on behalf of general law cities.

3. Much of the general law has been interpreted by the courts and is in the main more certain and reliable than the new and untested phraseology of a charter.

4. In general, most cities operating under general law appear to feel no particular handicap under this form of government.

5. General law provides a more flexible form of government in view of the tendency to make charter provisions more restrictive than general law in some areas.

6. The State Legislature has been sound in keeping laws broad to meet the different and changing local conditions and in revising the general law when necessary.

7. No generalized or predominant reason for adoption of a charter has been established.

8. It is unlikely that a city with a charter will be able to resist the forces that will have obtained so-called "detrimental" revisions of the general law.

9. The general law, being broadly based, is better law on the whole than that of local authorship.

10. The tax rate limitations of the general law were soundly and wisely conceived.

11. There is merit in being able to change even a majority of the council in a single election in order to provide more imaginative or more responsive elected leaders.

The committee respectfully requests that the council plan sufficiently in advance of the actual need for the drafting and adoption of a charter permitting at least two (2) years in which to complete the drafting and obtain approval of the electorate and submit the same to the California State Legislature for ratification.

The committee suggests that there be undertaken at or before the making of any decision to reinstitute additional charter studies or charter drafting an intensive campaign by the council and/or the staff to bring to all organized groups and interested citizens more intimate knowledge and realization of the functions and problems of the city government. Such an educational and informational campaign should have many benefits, one of which would be to stimulate and encourage community interest in and constructive reactions to the several elements of any proposed charter.

It is the committee's opinion that when the committee is reactivated or a new committee is appointed for the purpose of drafting a charter, the council should provide funds at such time for the employment of outside professional help in drafting charter provisions, preparing copies of drafts for the committee and the public and providing continuous staff assistance to the committee.

SO YOU WANT A NEW CITY CHARTER

by

Arthur W. Bromage
Department of Political Science
University of Michigan

Among the states of the Union some twenty-five of them have home rule constitutional provisions which permit local drafting and adopting of city charters.[1] Under these circumstances, the community becomes the tailor shop to design, cut and adapt a charter for the local body politic. Fitting a charter to a particular city or village is often the task of locally elected charter commissioners, aided and advised by citizens, consultants, lawyers and, last but not least, interest groups.

If as a citizen you are involved in such a process, various arguments, concepts, and counter-views will be thrown at you. Unless you use some frame of reference to sort out the propositions, you may well be confused. What I have to say herein, won't be the last word, but is designed to be a series of first words as you approach the task.

As To Form

Can you approach the question of form of government for your community with an open mind? You may be urged to write a strong-mayor or a council-manager charter. Both sides will want to sell you on the inherent values of one system or the other. You will have to listen patiently to many arguments which overstate the case. Listen patiently, but remember that no system has built-in operating features which will prove out in every city or village. You must estimate how the political dynamics of any plan are likely to work out in your specific city or village.

The key to the strong-mayor system is a directly elected mayor with responsibility for leadership in community programs and for supervision of administrators. The council is predominantly a legislative body without direct authority over administrators.

The mayoral system is sometimes defined as either weak-mayor, strong-mayor, or strong-mayor-administrator. The weak-mayor plan developed early in the nineteenth century. Under this concept councils confirmed mayoral appointment of administrators and often exerted some supervision over administrators through council committees. As mayors developed sole responsibility under charters to appoint and remove department heads and to exert an influence over policy through the executive budget, they became known as strong-mayors. In this century, the development of chief administrative officers to assist strong mayors led to the strong-mayor-administrator scheme.

Proponents of the strong-mayor plan (with or without a general administrator under the mayor) often argue that this is more apt to produce dynamic political leadership in the city of more than 500,000 population or in lesser sized cities. The theory is that the elected, independent mayor leads in policy and controls the administrative bureaucracy. Philadelphia is one city where a managing director assists the mayor in supervising a large number of operating departments. New Orleans is another example, because a chief administrative officer serves under the mayor.

The emphasis, in my view, can well be placed on the election of councilmen at large. For many cities the nonpartisan ballot has also proved workable. If it is necessary to introduce a district system of election, consideration of alternatives such as election of some by districts and others at large is then in order.

The targets in composition of the council are nomination and election at large, nonpartisan ballot, overlapping tenure, four-year terms except for the low man on the totem pole, seven councilmen and keeping the mayor, however selected, as chairman of the council.

The management doctrine as to managerial duties is more settled than the political issues of electing councils and selecting mayors. Charters give evidence of similarity in defining executive management but diversity in schemes of political representation. However structured a council becomes the forum for formal decision making and takes the responsibility for appointing and removing managers.

Policy and management tend to run together in practice no matter how defined in theory or allocated by charter chapters. The duties of managers are perceived in terms of general supervision of the administration and of the enforcement of laws and ordinances. A key responsibility which inevitably brings managers into policy is the preparation of the annual budget and annual capital improvement program for council action. In administrative management, the source of managerial power is the capacity to appoint and remove department heads and other key subordinates. Liaison with the council involves regular reports on city operations and financial conditions, an annual report, and attendance at council meetings with authority to speak. Finally, managers are usually vested with responsibility to carry out all other duties specified by charter or prescribed by council. Most of all of these managerial powers and responsibilities are customarily incorporated in charter language.

No charter can define precisely the intricate teamwork which must exist between a manager and council in order to promote good practice in policy making and administration. However, precision in spelling out the office of manager will clarify the key administrator's responsibility over administration and suggest his potential role in policy making.

A charter must give a manager supporting arms for the executive tasks to be performed. He needs a well defined and integrated finance department to deal with budget preparation, accounting and pre-auditing, treasury management and property tax assessments. Either through a division within the finance department or a separate unit under his control, the manager will carry out the purchasing function. There is much to be said for bringing the city's law department under managerial control. Personnel administration is another key facet of management. The personnel officer likewise is logically part of the management team, although there may well be an advisory personnel board in a semi-independent status. For the bulk of employees a merit system is properly spelled out in general terms in the charter. Even the planning director in modern management concept must be closely related to the manager rather than responsible to a semi-autonomous planning commission. Managers have developed as a profession and their organization is the International City Managers' Association.[2]

Strong-Mayor Concepts

For a variety of reasons, some charter commissions conclude that the council-manager system is not the best choice for their city. Since the weak-mayor plan and government by commission are rarely recommended today, the alternative is most likely to be strong mayor. A decision in favor of a strong-mayor charter brings into play another series of concepts.

The directly elected strong mayor is designed to lead in policy and to be responsible for executive supervision over departments. In many respects he performs a role similar to managers in policy formulation and control over the administrative mechanism. But, as a direct representative of the voters, he is usually free to disagree sharply with the city council, to veto ordinances and resolutions, and to hold himself responsible directly to the voters for the adequacy of administrative operations. In other words, he is a servant of the people, not of the council and possesses with the council a co-equal mandate from the voters.

There is more to this system than the office of strong mayor. The charter commission must have some reasonable estimate that candidates will be available in the community, either on a partisan or nonpartisan basis, to devote full time energies to the job of being a strong mayor. The mayor's salary should be geared to a full-time position, unless the commission decides to create a post of chief administrative officer under the mayor. The CAO will then be a full-time officer whose principle duty will be that of assisting the mayor in administrative management of city departments. He may also aid the mayor with the executive budget and formulation of overall policy to be presented to council.

Under the strong-mayor or strong-mayor-administrator plan, many of the executive duties assigned to city managers are properly centered in the mayor's office. They may be exercised by the mayor alone or by the mayor assisted by a CAO. Since in other than great cities it is sometimes difficult to get candidates for a full-time mayoral office, much can be said for creating a CAO in conjunction with a strong mayor.3

Once a charter commission has decided for a strong-mayor system, the council can be more freely designed than under the council-manager plan. The latter calls for the council to be a small "board of directors." But the strong-mayor system can presumably use a larger council with many variations in systems of nomination and election. This is not to say that any old kind of design can be used for the council under the strong-mayor system. But size, system of election, whether at large or by districts, type of ballot, and other features do not have to conform to a small group of directors. However designed, the council will be matched by a powerful directly elected executive who will hold direct powers in the areas of policy and administrative operations. The council will no longer be the sole mechanism for policy and leadership.

No one can do more than advise a charter commission whether the strong-mayor or council-manager system is to be preferred in a given community. The ultimate properly belongs to the charter commissioners who know the city intimately in its political traditions and capabilities. This is the most critical decision which any charter commission has to make. Much of the work of charter-drafting flows from this initial choice of the form of government.

Footnotes:

1. Authorities by no means agree on a list of home rule status. My preference is for a basic list of twenty-five constitutional home rule states: Alaska, Arizona, California, Colorado, Hawaii, Louisiana, Kansas, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington, West Virginia, and Wisconsin.

   This does not tell the whole story. Nevada has never passed any implementing legislation. On the other hand, Connecticutt without specific constitutional language has had a viable legislative home rule system since 1957. New Jersey is sometimes cited as a home rule state, because of its optional laws (alternative forms and sub-options) which permit local discretion in adaptation. Although Virginia is primarily an optional charter state, statutory procedures permit a local commission to prepare a draft charter, obtain local approval, and then request legislative enactment. Under limited constitutional language (1945) Georgia permitted a form of home rule in 1951. But the State Supreme Court invalidated the legislation in 1953. A new constitutional provision pertaining to "local self-government" was ratified in 1954, but has not been implemented. All this helps to explain the variations in the many lists of constitutional home rule states.

2. Information about the council-manager plan can be obtained from the International City Managers' Association, 1313 East 60th Street, Chicago, Illinois. The Model City Charter, 6th ed., 1964 is a council-manager charter. This is published by the National Municipal League, 47 East 68th Street, New York, New York. It provides alternative methods for the selection of councils and mayors under the council-manager system, defines managerial powers, and articulates the administrative system under the manager.

3. There is no model strong-mayor administrator charter comparable to the Model City Charter (council-manager). The Model City Charter, pp. 73ff., briefly sets forth the principles of the mayor-CAO plan. The origin of the strong-mayor-administrator system is usually dated by the San Francisco charter of 1931. More recent illustrative models from the 1950's are: Los Angeles, Newark, New York, New Orleans, and Philadelphia. By way of caution, the CAO system is only a general term, and each city vests differing powers and duties in the CAO. For example, New Orleans has a CAO (under the Mayor) who spans most of the administrative mechanism; Philadelphia uses a "managing director" to supervise the line (operating) departments; and Newark employs a business administrator with formal powers as to budget personnel, and purchasing.