



OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

REVISED MINUTES OF THE EDUCATION, PUBLIC INSTITUTIONS, AND LOCAL GOVERNMENT COMMITTEE

FOR THE MEETING HELD
THURSDAY, JULY 11, 2013

Call to Order:

Chair Chad Readler called the meeting of the Education, Public Institutions, and Local Government Committee to order at 9:32 a.m.

Members Present:

A quorum was present with Chair Readler, Vice-chair Gilbert, and committee members Brooks, Clyde, Macon, Sykes, and Taft in attendance.

Approval of Minutes:

The minutes of the June 13, 2013 meeting were reviewed and approved.

Presentations and Discussion:

Chair Readler announced that the next meeting of the committee would occur on August 8, 2013, indicating that Vice-chair Gilbert would be scheduling speakers and would appreciate the committee's suggestions for potential presenters. Suggestions included a representative from the attorney general's office and an Ohio college professor.

Chair Readler offered special thanks to Governor Bob Taft for organizing the speakers for the day's meeting, which would address the topic of local governments.

Chair Readler recognized Lavea Brachman and Alison D. Goebel of the Greater Ohio Policy Center to present on local government structure, cost, and opportunities for collaboration. Ms. Brachman is the co-founder and executive director of the organization, while Ms. Goebel is associate director. The speakers gave a PowerPoint presentation entitled "Overview of Local Government in Ohio." Following the presentation, Ms. Brachman and Ms. Goebel answered questions from committee members.

Representative Kathleen Clyde moved to take more thorough notes for the duration of the meeting because the Ohio Government Television was not taping the meeting like they were the previous day's meetings. Committee member Paula Brooks seconded the motion, and it passed unanimously.

Representative Vernon Sykes asked whether Ohio has a large number of local governments because it is a large state with many people who are in favor of local government services. Rep. Sykes continued, asking if the state could be more efficient with more government collaborations and fewer entities. The presenters said they are reporting on current data only but offered to return at a later date to talk about more options to streamline local government. Chair Readler noted that they would be added to a list of people to come back when the committee talks more in-depth about possible changes.

Gov. Taft asked about inter-county collaboration and whether the presenters were aware of any studies relating to the Summit County charter leading to further partnerships. The presenters noted that both formal and informal collaboration have occurred. They commented that Akron was not hit as hard by economic downturn as other counties in Ohio, a circumstance that can be attributed to work between the city, county and local chamber of commerce.

Ms. Brooks noted that Franklin County was the fastest growing county in Ohio and the only AAA rated county in the state. She inquired if the presenters had any data-driven studies to back up the Akron example. The presenters noted that Akron is doing better than other cities of comparable size. Ms. Brooks asked if there is data showing this information. The presenters noted that they could make available the data they have on trends and prosperity in Akron. Vice-chair Gilbert said strong relationships and same party affiliation have played a great role in Akron's ability to foster collaboration.

Committee member Larry Macon asked the presenters to note three startling statistics they have found over the course of their research on Ohio local governments. The presenters noted the decline in Ohio's population, the aging population, and that the state has not been attracting the Generation Y population as it should.

Chair Readler recognized Eugene Kramer, attorney-at-law and advisor to Summit and Cuyahoga Counties, to present on the creation of their county charters. Mr. Kramer provided testimony along with a memorandum entitled "Article X Ohio Constitution: County and Township Organization and Government: The Ohio Constitutional Revision Commission Local Government Committee Perspective." Following the presentation, Mr. Kramer answered questions from committee members.

Gov. Taft asked about the 1970s Commission's proposal to eliminate multiple majority power over municipalities and townships. Mr. Kramer noted that this proposal would not have succeeded. Mr. Kramer said the group will put a great deal of time and effort into proposals. The committee and Commission should focus on putting ideas together that could be championed by legislative members.

Vice-chair Gilbert asked if charters are generally citizen-driven. Mr. Kramer confirmed. Vice-chair Gilbert noted that in Cuyahoga County a suit was filed seeking for elected officials to be permitted to finish their terms before the charter government began. Mr. Kramer noted that elected office is not a vested right and that they were required to turn over their offices. Mr. Kramer further noted that, under Article X, county charters can provide for the number and selection method of county officials.

Ms. Brooks reiterated that there are only two counties that have instituted charters and asked why some small counties have not instituted them. She asked if Mr. Kramer could provide the committee with data supporting the notion that charters were associated with lower cost and had fewer employees. Mr. Kramer said Cuyahoga County showed a reduction in personnel and established human resources that brought employees under a personnel system.

Chair Readler then called on Harold Babbit, adjunct professor teaching local government law at Cleveland-Marshall College of Law, to present on municipal corporations. Prof. Babbit said he has been an educator on municipal law for 30 years. He indicated the history of Ohio reflects that the state was established as sovereign and the General Assembly all-powerful, subject only to the constitution. He said local governments were governed entirely by the state. He added that Article XVIII, which was adopted in 1912, changed the way local governments could be run, as previously they had been stifled.

Prof. Babbit explained that Section 3 is the heart of Article XVIII. He said Section 3 has had over 100 years of review by the Ohio Supreme Court and is well-centered. Under Section 3, municipalities were granted powers of local self-government and powers of local police (so long as they do not conflict with general law). Prof. Babbit noted that Senior Policy Advisor Steven H. Steinglass explained this in his book on the Ohio Constitution.¹ Prof. Babbit commented that although the book dates to 2004, there have been no major, new law changes in this section.

Prof. Babbit further explained that the Ohio Supreme Court still struggles with home rule jurisdiction between municipalities and the state. For example, he said an Ohio city passed an ordinance stating that natural gas drilling must be approved at the local level first, which is typically considered at the state level. He said a case is currently pending in the Ohio Supreme Court to decide whether home rule takes precedent on this issue.

Prof. Babbit noted that, at the time of the 1912 adoption, the drafters thought Section 7 was the heart, but that section has not proven to be quite as important. He said municipalities without a charter still have the same powers, just not procedurally. He indicated non-chartered cities have to abide by state law when they are established. Following his presentation, Prof. Babbit answered questions from committee members.

Ms. Brooks asked if municipalities have more authority than counties and why municipalities were given more authority. Prof. Babbit said this was part of a grander national movement to grant more power to the people, bringing government closer to its citizens.

¹ Steven H. Steinglass and Gino J. Scarselli, *The Ohio State Constitution* (2nd prtg. 2011).

Gov. Taft said Mr. Kramer referenced statewide law that restricts municipal regulation. Prof. Babbit noted that he was not aware of Supreme Court rulings on this matter. He said the most contentious issues involve mandatory employment of municipal employees. He commented that the General Assembly has the sole power to take up employment issues. He said other contentious cases have to do with police power regulations, such as the regulation of guns. Prof. Babbit noted General Assembly regulated that 15 rounds are allowed in a clip but a city passed an ordinance that said only ten rounds are allowed in a clip. He said, eventually, the General Assembly passed a law that said municipalities did not have power to regulate gun control that supersedes state law.

Gov. Taft asked if there are any areas of Article XVIII that the Commission should review. Prof. Babbit said that overall the language in Article XVIII is good.

Representative Vernon Sykes asked if there are any common understandings about municipal corporations that could be added to the constitution. Prof. Babbit said he could not think of any ideas offhand, and he had no further recommendations.

With no further questions, Chair Readler was excused from the meeting for a previously-held engagement.

Vice-chair Gilbert then called on Kevin McIver, chief of the Opinions Section at the Office of the Ohio Attorney General, to present on interpretations of local government sections of the Ohio Constitution. Mr. McIver provided written testimony. Following the presentation, Mr. McIver answered questions from the committee members.

Rep. Sykes asked if a chartered county should have more authority relating to home rule. Mr. McIver said Article X grants counties same home rule standards. There is the same jurisprudence under Article X as Article XVIII. Rep. Sykes asked if state law prevails over charters. Mr. McIver answered that there is very little guidance on this question, so it is subject to speculation at this point. Mr. McIver noted that as more counties adopt charters, it will become clear what laws prevail.

Vice-chair Gilbert asked why some county personnel in chartered counties are under different policy standards. Mr. McIver noted that personnel must follow the requirements of their charter. If specific information is not covered by the charter, they must follow state law.

Ms. Brooks asked to confirm that a charter could be better or worse than current government based on the language of the charter. Mr. McIver said adoption of a charter is only another plan for organizing government. There is no guarantee that problems will not occur based on the establishment of charter language.

Gov. Taft inquired about county commissioners proposing county charters and putting the proposal on a local ballot. Mr. McIver said that right now a majority of county commissioners could bring up an alternative government form.

Adjournment:

With no further business to come before the committee, the meeting adjourned at 11:47 a.m.

Approval:

The minutes of the July 11, 2013 meeting of the Education, Public Institutions, and Local Government Committee were approved at the August 8, 2013 meeting of the committee.

/s/ Chad A. Readler

Chad A. Readler, Chair

Edward L. Gilbert

Edward L. Gilbert, Vice-chair