Committee on Education, Public Institutions, and Miscellaneous & Local Government

Ohio Constitutional Modernization Commission

Articles X and XVIII of the Ohio Constitution
County, Township, and Municipal Government

Remarks of
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Chairman Taft and Members of the Committee:

Thank you for the invitation to appear today and offer you my thoughts regarding possible amendments to those provisions of the Ohio Constitution that address the framework of county, township, and municipal government.

I have served as an attorney in the Opinions Section within the Office of the Ohio Attorney General since 1985. I have written approximately 115 formal opinions that have been issued by the Attorney General. I also have supervised the preparation of several hundred more opinions by the attorneys who comprise the Opinions Section. My comments today are predicated upon that experience, insofar as this work involves the examination of Ohio law concerned with the operations of local government.

Article X of the Ohio Constitution concerns the organization and government of Ohio's counties and townships. Article XVIII of the Ohio Constitution focuses upon the organization and government of Ohio's municipal corporations (*i.e.*, cities and villages).

County and Township Government

In the case of local government, the work of the Opinions Section centers upon county and township government. Four sections comprise Article X, and only one of those, § 2, concerns township government. Section two grants the General Assembly the power to provide by general law for the election of township officers as may be necessary and to grant townships

powers of local taxation. Section two concludes with the statement that "[n]o money shall be drawn from any township treasury except by authority of law."

Sections one, three, and four of Article X are aimed at the organization of county government. Section one declares that the General Assembly "shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government." The General Assembly has exercised the foregoing powers by its enactment of Title III of the Revised Code.

Section three of Article X grants the people of any county the right to frame and adopt or amend a charter for their form of county government. In extending that right section three directs that a county's charter "shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law." A county's charter also "may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities." This provision of the Ohio Constitution also states that a county's charter "may provide for the organization of the county as a municipal corporation." Adoption or amendment of a county charter must be approved by the county's voters. Ohio Const. art. X, § 3.

Section four of Article X requires that the county electorate vote upon the question of forming a charter commission to frame a county charter. This section sets forth the procedures for that election and describes the process by which a charter commission is to operate in the event that the electorate votes to form such a commission.

In 1976 Summit County became the first county in Ohio to frame and adopt a charter for its government. A charter form of government was approved by voters in Cuyahoga County in 2009 that became effective January 1, 2010. No other Ohio counties have adopted charters under Article X of the Ohio Constitution.

My preparation in this matter included study of Attorney General opinions issued to the prosecuting attorneys of Summit County and Cuyahoga County on questions posed about the

language of their county charters and actions that are authorized by those charters. Those opinions number 13 in all.

In my view the language of the county charter provisions of Article X of the Ohio Constitution has not posed obstacles or challenges to the resolution of the issues presented to the Attorney General in those opinions. The Attorney General has had to read and apply specific language of the county charters adopted and implemented under Article X in resolving those issues and framing the advice delivered to the prosecuting attorneys.

In some instances the Attorney General has had to advise whether or not a county charter provision is foreclosed as being in conflict with state law on the subject in question. *See, e.g.,* 2001 Op. Att'y Gen. No. 2001-020 (county charter provision that creates county audit committee and department of internal auditing vests no authority in those bodies with respect to the operations of the probate division of the court of common pleas); 1996 Op. Att'y Gen. No. 96-043 (neither the county charter nor rules adopted thereunder may vest the county executive with the authority to establish personnel policies or make personnel decisions for the probate division of the court of common pleas). In these situations the Attorney General has not had to undertake a searching assessment of the purpose or meaning of language within Article X itself, or to resolve ambiguities or conflicts in that language.

In addition, litigation related to the county charter government provisions of Article X has been sparse (limited to a few cases out of Summit County) and offers limited insight about the efficacy of those provisions. The paucity of guidance from the courts is understandable given that only two out of Ohio's 88 counties have adopted a charter form of government in the 80 years since Ohio's voters made Article X, §§ 3 and 4 a part of the Ohio Constitution. This compares to the 100 years of studied jurisprudence and scholarly commentary on the municipal self-government provisions of Article XVIII, §§ 3 and 7.

In the case of township government, § 2 of Article X is brief and succinct. Its language is clear and unequivocal, and I do not believe that the provision has engendered litigation about its

uncomplicated directives. I would offer to the committee, therefore, that I do not discern a need to amend, repeal, or supplement the language of Article X, § 2.

Municipal Government

Article XVIII was added to the Ohio Constitution in 1913, and was intended to grant Ohio's municipalities all powers of "local self-government," otherwise known as "home rule." The operative language in that regard appears in §§ 3 and 7 of Article XVIII. The Ohio Supreme Court has ruled that § 3 grants a municipal corporation all substantive powers of self-government, and that in order to exercise procedural powers of self-government, a municipal corporation must frame and adopt a charter as permitted by § 7. *Northern Ohio Patrolmen's Benev. Assoc. v. City of Parma*, 61 Ohio St. 2d 375 (1980).

While I have a good understanding and working knowledge of Article XVIII and some of the extensive case law that article has engendered, our work in the Opinions Section does not often touch upon issues of municipal law, whether statutory or constitutional. That is attributable to the fact that the Attorney General does not provide formal advice to municipal corporations and their officers. Thus, the occasions in which the Attorney General considers questions of municipal law that implicate the provisions of Article XVIII are infrequent. When such questions have arisen, they have required us to apply the holdings and language of pertinent decisions of the Ohio courts under Articles XVIII, §§ 3 and 7 to the issues inherent in the opinion request. *See, e.g.,* 2005 Op. Att'y Gen. No. 2005-005 (applying the criteria in *City of Canton v. State,* 95 Ohio St. 3d 149 (2002), and advising that the statutory framework in R.C. Chapter 4740 for licensing specialty contractors is a general law for purposes of Article XVIII, § 3); 2003 Op. Att'y Gen. No. 2003-011 (syllabus, paragraph one) (pursuant to the test in *City of Canton v. State,* the provisions of R.C. Chapter 4766 authorizing limited municipal licensing as part of the statewide scheme under which the Ohio Licensing Ambulance Board licenses emergency medical service organizations, constitute a general law for purposes of home-rule analysis under Article XVIII, § 3); 1985 Op. Att'y Gen. No. 85-089 (applying the ruling in *Northern Ohio Patrolmen's Benev. Assoc. v. City of Parma* and concluding that state law competitive bidding requirements are substantive rather than procedural).

My sense is that the need to recommend amendments to the provisions of Article XVIII at this time in the state's history may depend upon what we have learned from the hundreds of court cases decided under that article. I suspect that so many decisions on a myriad of fact patterns makes the litigation of cases under Article XVIII, §§ 3 and 7 today a challenging task with which there is associated a fair amount of uncertainty. Uncertainty, I mean, in trying to predict how a court will come down in its application of the rules of law set down by the state's highest court on what is or is not a matter of local self-government. Yet we may have to concede that this is a feature common to constitutional law and the jurisprudence that explains and applies that law.

Consequently, I cannot say that specific amendments ought to be considered for the purpose of altering our expectations of what Article XVIII should accomplish.

Conclusions

The provisions of Article X of the Ohio Constitution have not presented problems with respect to the workings of county and township government, either individually or cooperatively. Accordingly, I discern no compelling reason to consider changes to the language of those provisions.

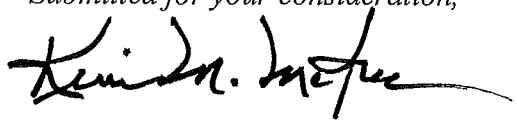
In the case of § 3 of Article XVIII of the Ohio Constitution, the abundant jurisprudence of the last 100 years has resulted from the need to address conflicts between state laws and municipal ordinances and regulations. These conflicts have been the inevitable and natural by-product of the language of § 3 that envisions tension between state law and municipal enactments. The members and officers of the Constitutional Convention of 1913 that gave municipalities powers of self-government likely expected that the resolution of genuine and sincere disagreements about the primacy of state law and municipal law would be the responsibility of the judiciary.

I am not aware of any claim having been made that the provisions of §§ 3 and 7 have fostered disagreements between our local governments or have been a serious impediment to cooperative action in seeking solutions to common problems. If I am in error on that score,

however, the Committee may wish to seek the views of attorneys and local officials that can provide examples of such problems that may have been avoided had the language of §§ 3 and 7 been amended in response to specific decisions of the courts.

I will address the Committee's questions on these subjects.

Submitted for your consideration,



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Kevin\Ohio Constitutional Modernization Commission\Remarks to Committee July 11, 2013

County charters-formal opinions of the Attorney General (through 2012)

Summit County	Cuyahoga County
2007-035	2011-013
2001-020	2011-006
96-043	2009-051
95-035	
94-095	
89-106	
85-047	
85-039	
85-008	
84-057	