

MEMORANDUM

To: The EDUCATION, PUBLIC INSTITUTIONS AND LOCAL GOVERNMENT
COMMITTEE of the OHIO CONSTITUTIONAL MODERNIZATION
COMMISSION

From: Eugene L. Kramer, Attorney at Law

Subject: Article X Ohio Constitution: County and Township Organization and
Government: The Ohio Constitutional Revision Commission Local
Government Committee Perspective

Though the report on Local Government by the Ohio Constitutional Revision Commission dated March 15, 1975 was submitted to the General Assembly nearly forty years ago, most of the considerations that led the Local Government Committee, for which I acted as its consultant, to make the recommendations to the OCRC that are contained in that report still exist. Those considerations are, if anything, even more relevant and urgent than they were when that report was written. The OCRC was concerned about the proliferation and cost of local governments in Ohio and the adverse effects on the state's economy, the environment, and the quality of life of our residents that resulted, and continues to result, from our fragmented and uncoordinated system of local government. The "Overview of Local Government" provision of the report, except for some of the statistical information, could be written today. A recent report by The Fund for Our Economic Future graphically illustrates the large and increasing divergence between a static population in Northeast Ohio and sharp increases in the overall cost of local government in the area.

As will be seen from the OCRC report, the OCRC believed that the most promising way to address through changes in the Ohio Constitution what it perceived to be a serious situation, as outlined in the statement quoted on pages 12 and 13 of the report, would be to strengthen and enhance the role of counties. For that reason, most of the OCRC recommendations for constitutional amendments concerning local government related to Article X of the Ohio Constitution, which deals with counties and townships.

Contrary to what sometimes seems to be popular belief, the Ohio Constitution does not create counties, townships, or municipal corporations, or any of the offices within those political subdivisions. Instead, the original constitution recognized the prior existence of counties and townships and provided for authority in the General Assembly to provide by statute for the organization and government of those political subdivisions. Since those subdivisions were the creatures of statute, they all initially were subject to what is known as "Dillon's Rule": that they have only those powers that are expressly provided for by statute or that are necessarily derived from those expressly granted powers. It was to free municipal corporations from those restrictions that the 1912 Constitutional Convention proposed the municipal home-rule amendments that became Article XVIII of the Ohio Constitution.

The desire to give counties the ability to exercise some degree of home rule resulted in the citizen petition that led to the adoption of Sections 3 and 4 of Article X providing for the adoption of county charters. More of that history is found in the OCRC report.

TOWNSHIPS

The OCRC did not recommend any change to Article X, Section 2, dealing with townships, explaining that it believed the General Assembly has ample authority under the existing language to provide for the organization and operation of township government. I believe the Local Government Committee members in particular did not feel it would be advisable to enhance the role of townships, especially if to do so could inhibit the ability of counties and municipal corporations to deal with problems on a more regional and cooperative basis. The General Assembly has since enacted Chapter 504 of the Revised Code, which provides for "limited home rule government" for townships — an authority that has to date not been widely used, even though the process of adoption of township home rule is relatively simple, as compared to the procedures for the adoption of a municipal or county charter.

COUNTY CHARTERS

Having been advised by persons who had been involved in some of the unsuccessful attempts to have a county charter adopted, the OCRC Local Government Committee proposed an alternative to the method that involves election of a fifteen-member charter commission. That group then drafts a proposed charter for submission to the electors a year after the election of the charter commission. It appeared that the long period between the election of the charter commission and the election on the proposed charter tended to lessen the original enthusiasm for county government reform and also gave opponents an extended time in which to work against adoption of the proposed charter. Sections 3 and 4 were proposed to be amended to, among other things, give the people of any county the right to draft a proposed charter and to have it submitted directly

to the electors for their approval or rejection. One of the few OCRC proposals to make it to the ballot, this amendment was championed in the General Assembly by then Senator Kenneth Cox, the former mayor of Barberton. That experience demonstrates the need to have forceful advocates in the General Assembly if proposals by a group such as the Ohio Modernization Commission are to receive a fair hearing.

Since the adoption of the amendments to Article X, Sections 3 and 4, two county charters, in Summit County and Cuyahoga County, have been adopted, each by a large majority vote, pursuant to the petition procedure, and no elections have been held for the adoption of a county charter commission. A petition for the adoption of a charter for Ashtabula County is being circulated now and is expected to result in an election in November 2013. Every other proposed effort to adopt a county charter that has been initiated in recent years has, to the best of my knowledge, contemplated use of the petition procedure.

Since the petition procedure has proved in practice to be workable, there would seem to be no compelling need at this time for any change in those procedures, even though some of the other procedural changes recommended by the OCRC but not adopted would still be helpful. The OCRC did propose a reduction, from ten percent to six percent, of the registered voters in a county as the required number of signatures on a petition calling for the election of a county charter commission or for placing a proposed charter on the ballot. Your committee may wish to revisit the question whether the current requirement of ten percent is too burdensome.

The OCRC also proposed to eliminate from Article X, Section 3 the so-called "multiple majorities" requirement for the adoption of a county charter that would enable

the county to assume municipal or township powers without the consent of those subdivisions. The current constitutional provision requires either three or four majority votes (depending on the size of the population of the county) for the adoption of a charter of that kind. The General Assembly did not include that proposed change in the issue that was submitted to the electors.

The General Assembly, as directed by Article X, Section 3, has enacted Sections 307.94 and 307.95 of the Revised Code to provide for the procedures for placing a proposed county charter on the ballot pursuant to a petition. There probably is no need for any constitutional change as to those procedures, but the General Assembly might be asked to review those procedures to assure that they are not unnecessarily burdensome on citizens who wish to exercise their right to propose a change in their county government.

ALTERNATIVE FORM OF COUNTY GOVERNMENT

The same amendment by which Sections 3 and 4 of Article X were added to the constitution also added, in Section 1, the authority for the General Assembly to "provide by general law alternative forms of county government." Under that section, "No alternative form shall become operative in any county until submitted to the electors thereof and approved by a majority of those voting thereon under regulations provided by law." To implement this provision, the General Assembly has adopted Chapter 302 of the Revised Code, which provides a number of different governance structures, and a wide menu of options within those structures, for the governance of a county. It allows for a fairly extensive home-rule authority and for the creation of a number of county departments. An alternative form of county government can be placed on the ballot by a vote of the board of county commissioners or pursuant to a petition signed by three

percent (as compared to ten percent for a county charter petition) of the number of registered voters in the county.

Only a few proposed alternative form proposals have been submitted to a vote, and none has been adopted. One of the goals of would-be county government reformers that is frequently expressed is the change of some of the elected county offices to appointed offices and the combination of some of those offices. Chapter 302 of the Revised Code, however, does not permit any change in the status of the county elected officials other than the county commissioners. This provision may account for a lack of enthusiasm for the alternative forms of county government. The General Assembly could of course change the statutes. In the absence of a statutory change, an amendment to Article X, Section 1 could guarantee to the people of a county the right to determine, as they can under a county charter, which county officers are to be elected and which of them are to be appointed.

COUNTY HOME RULE

As explained above, the General Assembly has complete authority to provide by statute for the organization and governance of counties. It was the failure of the General Assembly to make any significant change to the basic structure and powers of counties that led to the citizen petition that resulted in the adoption of the Article X county charter provisions. The OCRC proposed adoption of a new Section 5 of Article X that would give a form of home-rule authority to every county in the state. The purpose would be to enable counties to exercise a greater degree of discretion in meeting local needs and to limit the need for counties to seek new state legislation as new situations arise. Your committee may wish to revisit this proposal.

NUMBER OF COUNTIES

Article II, Section 30 of the constitution provides the procedure for the creation of new counties in the state. Believing the creation of new counties to be an unlikely occurrence, the OCRC nevertheless proposed a new Section 6 of Article X to clarify the existing procedures and to provide for the possible reduction in the number of counties. That also appears to be a subject worthy of consideration at this time.

CLASSIFICATION OF COUNTIES

The OCRC Local Government Committee gave considerable attention to the question of the authority, or lack thereof, of the General Assembly, for the purpose of legislating, to divide counties into classes, with the legislation being applicable to only one or more of the counties because of their being in a designated class and thus did not operate uniformly. Article II, Section 26 of the constitution requires that "All laws, of a general nature, shall have a uniform operation throughout the state..." and in some cases legislative acts were held unconstitutional because they classified counties for various purposes. The framers of the 1912 constitutional amendments were concerned about this issue as it affected municipal corporations because of the history, especially in the nineteenth century, of the practice of the General Assembly to erect an elaborate system of categories of cities and villages. Separate legislative acts then were made applicable in some cases to only one of those cities or villages, and municipal officials had to lobby the General Assembly for such enactments. A considerable amount of log-rolling among advocates for the various proposals ensued. Now, the constitution allows for only one classification of municipal corporations, with 5,000 in population being the dividing line between cities and villages.

The proposed OCRC amendment to Article X, Section 1, providing for a limited number of classifications of counties for purposes reasonably related to the classification was not placed on the ballot, and the General Assembly has continued to engage in the classification of counties for various legislative acts. Recent acts of that kind apparently have not been challenged by litigation, but the potential for such challenges and for the kinds of abuses that occurred with respect to municipal corporation legislation still exists.

SUMMARY

Much of the work of the OCRC begun with respect to local government matters remains undone, and the need for many of the kinds of changes recommended by that body still exists. Your committee has the important task of assessing what changes may be called for under current conditions, and the extent to which any of the OCRC recommendations should be revived or modified. The form and structure and powers of our local governments have profound influence on the economic and other well-being of our citizens. They must be provided for with care and foresight.