

HOME RULE IN PA

HOME RULE GOVERNMENT STUDY COMMISSION PROCESS

WHAT IS HOME RULE?

PA Constitution and the Home Rule Charter and Optional Plans Law (1972) authorizes the right of counties and municipalities to adopt home rule charters and exercise home rule powers in order to reorganize local governments to increase effectiveness, efficiency, responsiveness and public participation.

The basic concept of home rule is to transfer authority to act in municipal affairs from state law (municipal codes) as set forth by the General Assembly to a local charter adopted and amended by the voters. In effect, home rule shifts responsibility for local government from the State legislature to the local community in which a municipality can tailor its governmental organization and powers to suit its special needs. A home rule charter is analogous to a local constitution providing a framework within which the local governing body can adopt, adapt and administer legislation and regulations for the conduct of municipal affairs.

Home rule charters are subject to restrictions found in the US and PA constitutions and State laws applicable to home rule municipalities. Local autonomy under home rule is limited. Local governments without home rule can act only where specifically authorized; home rule municipalities can act anywhere except where they are specifically limited by State law.

The PA Constitution and Home Rule Law states that:

“Municipalities shall have the right and power to frame and adopt home rule charters...A municipality which has a home rule charter may exercise any power to perform any function not denied by... the US Constitution, PA...Constitution, by its home rule charter or by the General Assembly at any time.”

The Home Rule Law establishes a procedure for adoption of a home rule charter through election of a government study commission, charged with studying the existing form of government, exploring alternatives and deciding whether or not to recommend change. If the commission decides to recommend home rule, it drafts a charter that is presented to the voters for their decision. Adoption of a home rule charter comes only with the approval of a majority voting in a referendum.

Optional plans of government for municipalities are adopted through the same government study commission process as for home rule, except the government study

commission merely selects one of the optional plans provided in Sections 2971 through 3171 of the Law. These include council-manager plan, an executive-council plan with three variations and a plan for small municipalities where the elected executive doubles as the president of council. Municipalities adopting optional plans gain no home rule powers; they remain subject to the provisions of their municipal code, except where it is superseded by the structural provisions of the optional plan.

BEGINNING GOVERNMENT STUDY COMMISSION PROCESS

The Home Rule Law provides two alternate methods for placing the question of having a government study commission on the ballot. The question may be initiated either by: (1) an ordinance of the municipal governing body or (2) a petition of the registered voters of the municipality. The ordinance or petition must designate one of the three questions permitted by the Home Rule Law.

The Home Rule Law contains three questions. One must be selected to be placed on the ballot in drawing up the ordinance or petition. The choice of the question will restrict the government study commission to a consideration of an optional plan, a home rule charter or, allow it to choose either an optional plan or a home rule charter. The text of the questions as set forth in the Home Rule Law follows:

- 1) "Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional plan form of government and to recommend whether or not an optional plan of government should be adopted?"
- 2) "Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of a home rule charter; and if advisable, to draft and to recommend a home rule charter?"
- 3) "Shall a government study commission of (seven , nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government or a home rule charter; to recommend the adoption of an optional form of government, or to draft and recommend a home rule charter?"

In addition to choosing one of the three questions, the petition or ordinance must designate whether the proposed government study commission is to have seven, nine or eleven members.

ELECTING MEMBERS OF THE GOVERNMENT STUDY COMMISSION

At the same election where the question of having a government study commission is on the ballot, voters are also asked to elect the designated number of members for the study commission. Even voters opposing having a government study commission are to vote for members of the commission.

The Home Rule Charter and Optional Plans Law establish a detailed procedure for simultaneously presenting to the electors two related questions: the first, whether a home rule study should be undertaken and secondly, the election of members to a study commission if the vote is favorable to such study.

For each referendum appearing on the ballot, the county board of elections is to prepare an explanation of the ballot question. The statement must be in plain English. It is to indicate the purpose, limitations and effects of the ballot question to the voter. The statement is to be included in the notice of the election and three copies are posted at each polling place.

If the voters do not approve the question of establishing a government study commission, then no study commissioners are elected and the procedure is ended. If an insufficient number of persons have filed nominating papers by the deadline to fill the positions on the government study commission, the question is still placed on the ballot. However, if additional persons are not elected to the study commission by receiving at least as many write-in votes as signatures required for the nomination paper, the question is deemed to be defeated. Even if a majority approve having the commission, a full slate of commission members must be elected before the question is considered approved.

OPERATION OF GOVERNMENT STUDY COMMISSION

The government study commission serves as representatives of the community at large in examining the current local government, considering alternatives, reaching decisions on how the local government might best be run, and presenting their recommendations to the voters.

The role of the government study commission is:

- 1) To conduct an in-depth study of municipal government.
- 2) To probe into the procedures and inter-relationships of different parts of government so as to discover weaknesses or defects.
- 3) To examine the municipal operations to identify improved practices that might be applied and adopted.
- 4) To identify an arrangement for better government.
- 5) To development a clear, logical and consistent structure and organization in the form of a proposed charter.
- 6) To educate the public and stimulate ideas leading to the adoption of a charter.

Home rule study commissioners are charged with the task of comprehensively reviewing, studying and analyzing their own governmental structure.

STUDY

The first substantive task of the government study commission is a thorough review of the structure and operation of the existing form of government. This includes gaining familiarity with the current administrative organization and methods of operation. Part of the information gathering is examining alternative approaches used in other areas or new structural models to meet emerging needs. This process is called fact-finding.

DELIBERATION

The commission is charged with comparing the municipality's government with other forms available under law. The commission has the duty to judge whether or not the municipality's government could be strengthened and made more responsible or accountable to the people, or whether its operation could become more economical or efficient under a changed form of government.

The commission must look for structural and operational weaknesses and review those areas where improvement appears desirable or needed. In this process, the commission can look to other municipalities whose experiences may provide some useful guides. In all cases, the commission must try to determine the kind of government which will best suit the unique needs of their own community. It must balance the desirability of change against the advantages of continuity and familiarity.

DRAFTING

The real task of the study commission is to produce a workable home rule charter to enable the local government to respond to the needs of its own citizens with flexibility and economy.

What is being proposed is a blueprint of the machinery of government for tomorrow that is flexible, adaptable, broad without being vague, and precise without being restrictive.

ORGANIZING GOVERNMENT STUDY COMMISSION

OATH

Members of the government study commission must take an oath of office within ten days after official certification of their election. Municipal study commissions take their oath of office before a district justice. Those elected to a county government study commission must take their oath before a judge of the court of common pleas. This ceremony can be done either at the organization meeting or at the office of the district justice or judge

The Home Rule Law requires the commission to organize and hold its first meeting as soon as possible and no later than fifteen days after certification of its election. The first meeting should be advertised as required by the Sunshine Law. The municipal secretary is the appropriate person to advertise.

OFFICERS

The Home Rule Law does not provide guidance on the organizational arrangements for a study commission. At the organizational meeting, one of the members is to be elected chairperson and one vice-chairperson. Additional officers have been those of secretary and treasurer.

The specific duties of the officers are left to the discretion of the study commission. In the case of secretary, duties greatly depend on the amount of paid help available. One of the first costs incurred is employment of stenographic and typing assistance.

PROCEDURAL RULES

At the organizational meeting, commission members should agree on procedural rules to guide their work. A majority of the members constitutes a quorum for the conduct of the commission's business, and the law further requires the recommendation of the commission to be adopted by a majority of the whole number of the members of the commission. Workshop sessions, research activities and committee meetings can be conducted with less than a quorum of the full commission.

VACANCIES

If any vacancy occurs in the commission, the remaining members must fill it by appointing a properly qualified voter to the position (registered voter) and should be filled as soon as possible.

Government study commissions may appoint alternates who attend meetings and take part in the commission's activities but do not vote. Alternates would fill vacancies providing the commission a replacement with experience and knowledge of the commission's work.

MEETINGS

At the organization meeting, the government study commission is required to establish its regular time and place of meeting. Meetings of the government study

commission must be advertised; it is an agency within the meaning of the Sunshine Law. All deliberations and formal actions must be taken at a previously advertised public meeting. The Home Rule Law requires the commission to provide for the widest possible public information and discussion on the purpose and progress of its work.

Government study commissions must hold at least one public hearing which are used to explain the commission's activities to the public and obtain public reaction, comment and suggestions. At least three occasions arise for a public hearing.

The first is early in the commission's life to gather citizen views on the existing government and generate public support and attention for the commission's activities. The second is at the point the commission is ready to make a decision on the nature of its recommendation whether to proceed to draft a charter, select an optional plan or recommend no change. The third arises with the formulation of the final recommendation whether an optional plan or a preliminary draft of a home rule charter.

COMMITTEES

Government study commissions have the choice of operating as a single group or delegating some of their tasks to committees composed of several members. Committees may be established on both a permanent or temporary basis. Examples of committees are for bylaws, finance, studying the current government, optional plans and home rule charters. After a commission votes to draft a home rule charter, committees may be established for charter drafting, transitional plan and report drafting.

Committees used by study commissions fall into three broad categories. Administrative committees deal with the operations of the commission in the areas such as program, budget, personnel, auditing and public relations. Research committees study various governmental forms and options open for recommendation. Charter drafting committees have responsibility for furnishing initial drafts of particular parts of charters.

WORK SCHEDULE

The study commission at its first meeting ought to start planning out a tentative schedule of its work which may be adjusted or refined as the work progresses and the

commission settles on a mutually agreeable pace. Adhering to a written schedule or outline is a good idea to keep the commission on track time wise and helps keep the commission's ultimate purpose in the forefront. Time limits for commission activity are established in the Home Rule Law. Schedules must be fitted within these deadlines.

If the referendum question has limited the commission to examining optional plans, it has nine months to complete its work. It might spend the first two months reviewing the existing governmental structure and gathering information on areas needing improvement. The next several months the commission can consider each of the optional plans and weigh their desirability for the community. By the seventh month the commission should have completed the major portion of its review and come to the point of making its recommendation so it can designate one or more members to begin work on writing the report.

For commissions drafting home rule charters, the work is much more complex. Even though such commissions are given eighteen months to complete their work, they must be aware writing a charter is a time-consuming task. After initial study and review, the commission ought to begin drafting a rough version of the charter by the sixth month or so of its deliberations.

To provide sufficient time to make necessary revisions, public hearings on a tentative draft ought to be held by about the twelfth month. Scheduling work will depend on the way the commission chooses to write the charter, but some tentative timetable will be necessary to guide the commission's work.

The activities of government study commissions fall into a general pattern, although variation is the rule rather than the exception. The first step is orientation. This includes the organization meeting, learning its powers and duties, working out a budget and planning its work.

The second step is research. The existing form of government is studied and local officials are interviewed. The commission also explores potential alternatives. They may interview officials from other types of municipalities, attend workshops and training courses on local government, visit other communities and study literature on local government structure.

The third step is a decision of direction-home rule, optional plan or no change. Testing public opinion through public hearings, citizen questionnaires or sample surveys may precede this decision.

The fourth step (assuming home rule is chosen) is drafting a charter. This may involve retaining local government experts or legal counsel. Drafts or sections are reviewed and placed in a tentative charter.

The fifth step is review and public discussion on the draft charter. This usually involves public hearings for citizen input, meeting with officials, submission to legal or local government experts and review by the members themselves.

The sixth step is writing the final report, printing and proofreading the charter and report, and submitting the report to the municipal secretary or clerk and the voters.

The final step is the period of voter education up to the time of the referendum. The commission has a duty to maximize public information and discussion on its work. It is not finally discharged until after the referendum.

FINANCES

Funding the operations of the government study commission is the responsibility of the local governing body. The Home Rule Law does not provide any specific guidelines for the amount of expenses, merely employing the terms necessary and reasonable. It is the responsibility of the commission to work up a budget and present it to the governing body. The amount finally appropriated is subject to negotiation between the two groups. It is important to remember the activities of a commission writing a home rule charter will be spread over at least two fiscal years of the local government.

Often the municipality will offer the commission services without charge. This almost always includes a meeting room or office, and sometimes includes telephone service, office supplies or clerical assistance. School districts, churches or fire companies will also provide places for public hearings in outlying neighborhoods.

Members serve without compensation but have the right to be reimbursed for necessary expenses. These can include registration fees for training courses and workshops, travel expenses, study materials and meals in certain instances.

Major expenses for a commission will fall in the areas of secretarial assistance, legal fees and printing costs. Minor expenses will be incurred for office supplies, postage, telephone, advertising and member expenses. Commissions may retain local government experts as consultants for the charter drafting process.

The Home Rule Law allows the commission to accept privately contributed funds and services. Where these occur, they are usually in the form of donated services such as consulting activity, office supplies or meeting rooms. Cash donations are rare.

The commission must keep a strict accounting of its funds. The Home Rule Law requires the final report of the commission to include a sworn statement by the members listing in detail the funds, goods and materials and services, both public and private, used by the commission in the discharge of its duties. Since the report is filed

before the final discharge of the commission, the financial statement should include all encumbered and anticipated expenditures. A final financial report should be made to the municipality upon termination of the commission.

CONSULTANTS

The Home Rule Law specifically allows a commission to retain consultants. Available local resources and the complexity of the government being studied help determine the need for outside assistance. The Law provides each commission with flexibility to arrange its operation to fit its needs and meet community expectations.

RECORDS

Minutes must be taken at all public meetings of the commission and promptly recorded. These minutes are classified as public records and must be open for inspection by any citizen.

After the discharge of the commission, all records, tapes, minutes of meetings and written discussions of the commission must be turned over to the municipal secretary or clerk for permanent safekeeping. Under the Records Retention and Disposition Schedule for municipalities, government study commission hearing transcripts and reports must be preserved for minimum of five years. Minutes and formal records, including the final report and recommendations of the commission, are permanent records.

PUBLIC RELATIONS

Communication with the public is necessarily a critical element of the government study commission's activities. Because the commission is to study the local government and consider recommendations for change, the widest possible input of citizen opinion and information will be needed to help guide the commission's work. If the commission's recommendations are to receive a fair and impartial hearing, they must keep the voters apprised of their ongoing activities. The Home Rule Law requires each commission to hold at least one public hearing and to provide for the widest possible public information and discussion on the purpose and progress of its work.

Regular meetings of commissions are open to the public and efforts are made to encourage attendance. These include publicizing meetings in the local newspapers,

sending requests to community organizations asking for representatives to testify and setting aside a time period for the general public to offer comments.

Public hearings and public forums are ways to reach out to citizens to keep them informed of the activities and progress of the commission. Some commissions rely on the media to reach out to the public. Often local newspapers and broadcasting stations are supplied with agendas of upcoming meetings and copies of minutes.

Questionnaires and surveys may be used and serve a dual purpose, gathering citizen opinion on local government and generating public interest in the government study commission's activities. The best response occurred when there was personal contact through individual interviews or where community organizations assisted in delivering and collecting questionnaires.

Copies of the final report are usually mailed to every household and are sometimes printed as a supplement to newspapers or summaries are mailed with instructions on how to obtain the complete report.

FINAL REPORT

The most critical element of the commission's relationship with the public is writing and distributing the commission's final report. The final report is the summation of the commission's work. The commission will spend most of their time considering various viewpoints, discussing the advantages and disadvantages of various governmental mechanisms and deliberating on the recommendations they will make. The final report constitutes the end result of this activity.

The final report is important for at least two reasons. The first stems from the very purpose for the study commission. Since the study commission represents the voters, the commission has a responsibility to report its activities to the people. A second reason for the report springs from the necessity for the voters to consider the commission's recommendations. If the commission's recommendations are to go into effect, the voters must first give their approval. This means the commission's final report plays a central role in informing the voters on the choice they must make.

The commission's final report should be a document of information and explanation. Before making their recommendations, the commission will have spent months reviewing the present government and gathering information on possible changes. The final report should summarize the commission's experience in this process. Since the voters themselves cannot assume the task of gathering information on the local government, the commission's final report is the tool to transmit this information to the voters.

The final report should be logical, clear, readable and as brief as possible without ignoring essential elements. After reading the final report, voters should have sufficient knowledge and information to make an informed decision on the recommendation to be placed before them.

CONTENTS OF FINAL REPORT

The study commission recommending a home rule charter must produce two documents. The first is the home rule charter itself, and the second is the commission's accompanying report explaining its findings and the reasons for its proposal to change the local government. The commission recommending an optional plan of government or no change need produce only a final report. In any event, the final report should follow a basic format. The study commission may want to review final reports produced by commissions in other municipalities as examples. The basic elements appearing in most final reports are listed below:

- 1) A table of contents.
- 2) A cover letter from the study commission to the voters and the local governing body.
- 3) The summary of the commission's recommendation including the date of the referendum on the recommended change and the effective date of the new form if it is approved by the voters.
- 4) A brief explanation of the purpose of the commission under the Home Rule Law.
- 5) The organization and activities of the study commission, including the date of the commission's election and a listing of the members of the commission. The report on the commission's activities can include the number and types of meetings, organization of the commission and its style of operation, and the individuals and groups tapped for advice.
- 6) A summary of the commission's findings on the present form of government.
- 7) Organization charts of both the present governmental form and the structure recommended by the commission.
- 8) An explanation of the recommended form and the advantages it will confer.
- 9) A survey of the areas of municipal government to remain unchanged under the new form.
- 10) Recommendations for establishing a committee to review problems of transition to the new form of government.
- 11) Relevant extracts from the Home Rule Law.
- 12) The required statement of the funds, materials and services used by the commission, and the suppliers of such resources.

These elements do not have to appear in the order listed, but the final report should give sufficient attention to each of them to give voters a comprehensive review of the commission's work and an explanation of its recommendations.

The opening letter of transmittal should be a brief statement from the commission to the voters and the members of the governing body. The letter should outline the

general purpose of the commission. Following this opening letter should be a summary of the commission's recommendations and an explanation of the values forming the basis for the commission's decisions.

The report should include the text of the question, as specified in the Home Rule Law, to be placed on the ballot and the date of the election. If the study commission wants an interpretive statement explaining the question on the ballot, then it should also be added. The interpretive statement should succinctly describe the new form of government resulting from a "Yes" vote. A "No" vote is to retain the existing form of government. The report should also specify the date the new form of government will go into effect if the change is approved by the voters.

Subsequent sections of the report should describe the activities of the commission, as well as justifications or the recommendations the commission proposes. As background to the commission's work, the report might briefly discuss the Home Rule Law. The report should then outline the establishment of the commission and list the commission members.

The way the commission arrived at its recommendations may be as significant as the recommendations themselves, so the final report should give sufficient attention to the organization and activities of the commission. A discussion of matters such as the number, frequency and types of commission meetings and the methods of deliberation will increase the voter's knowledge and appreciation of the commission's work. The commission will have spent much time searching for information; and the procedures and sources used in this search should be discussed in the final report.

The commission's conclusions concerning the present form of government and the reasons for suggesting a change will constitute perhaps the most important section of the report. The commission must justify any change it recommends to the voters. The commission should outline in detail what it considers are the shortcomings in the present governmental form and the way they will be remedied if a change is approved.

If the commission recommends a home rule charter, the final report should clearly outline the advantages this charter will offer over the present form of government. The report should clearly define the nature of home rule and indicate changes the home rule charter will allow and why such changes are desirable. If the commission recommends an optional plan of government, the final report should discuss the advantages of the recommended plan over the present form of municipal government. The final report should contain organization charts of both the current and the recommended structure of government. Accompanying text should clearly indicate the difference between both structures and reasoned analysis of the advantages found in the recommended form.

The final report should also note those areas of municipal government to remain unchanged if the commission's recommendations are accepted by the voters. Voters

should know the legislated limitations on home rule powers as well as limitations written into the charter.

If the voters approve the recommended change, plans will have to be made for transition to the new form. For example, an administrative code should be drafted before the newly adopted plan goes into effect. In its final report, the study commission should recommend the governing body appoint a committee to deal with matters of transition to the new form.

Two additional elements must be included in the final report. The Home Rule Law requires the final report to contain the complete plans as recommended. Finally, the Home Rule Law requires the commission's report include a financial statement, sworn to by members of the commission. It must list in detail the funds, goods, materials and services, both public and private, used by the commission in the performance of its work and the preparation and filing of the report. The list must specifically identify the supplier of each item noted.

OTHER RECOMMENDATIONS

The language of the Home Rule Law authorizes the government study commission to recommend "...such other action as it may deem advisable consistent with its function..." This clause is used most commonly to recommend creation of a transition committee if the voters approve change. It has been used by government study commissions recommending no change in which home rule or an optional plan is not necessary. However, their study of the present form of government has disclosed areas where changes are desirable and can be accomplished within the present system.

Most frequent among such recommendations have been the hiring of a professional manager or expanding the manager's duties, establishing better communications and response to the public, adopting administrative codes and personnel policies, and including long-range capital planning in the budgeting process. Some commissions have recommended placing another government study commission question on the ballot at a later date.

AMENDING FINAL REPORT

A government study commission recommending a home rule charter or an optional plan is not discharged until after the referendum. At any time up until 60 days before the election, the commission can modify or change any recommendation by publishing an amended report. Any amended report issued supersedes all prior final reports.

MINORITY REPORTS

Often adoption of the final recommendations of the government study commission is by a less than unanimous vote. The Home Rule Law requires the recommendations to be adopted by a majority of the whole number of members. A number of study commissions have included statements by dissenting members within their final reports which is discretionary.

PRINTING AND DISTRIBUTING REPORT

The Home Rule Law directs each government study commission to publish or cause to be published sufficient copies of its final report for public study and information, and to deliver sufficient copies to the municipal clerk or secretary to be supplied to any interested citizen on request. In most cases, printing and distributing the final report has been a responsibility of the government study commission and funded from its budget. In a few instances, the local governing body has undertaken the cost of printing and distributing the report.

DISCHARGE OF COMMISSION

If a commission recommends no change, it is discharged on filing its final report. If the commission recommends a home rule charter or optional plan, it is not discharged until after the referendum. Before its discharge, the commission should prepare a final financial report for the appropriate officer of the local government if there are any additions to the report included in the published final report. All records, tapes, reports, minutes or other written documents must be turned over to the custody of the municipal clerk or secretary.