

Division of Local
Government Services

Adopting and Amending County Charters

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

A Division of the New York Department of State

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Introduction

In 1926, Governor Alfred E. Smith proposed a major restructuring of New York's counties ". . . for reasons of economy and efficiency." Although his proposal went unheeded, the counties of today resemble those of the 1920's in little more than name and geographical area.

County government has undergone profound changes in both form and function. These changes have transformed them from instrumentalities existing largely for state purposes to true units of local government endowed with their own powers to carry out an extensive array of new duties and service responsibilities. One of the most important changes was the power, extended by the County Charter Law, to reorganize and shape county government organizations and operational arrangements to fit local needs and preferences.[1] What the counties may do under this law and how they may go about doing it most effectively form the substance of this publication.

The residents of 19 of the State's counties have chosen to reorganize their county governments under charters. Four of these counties – Nassau, Monroe, Westchester and Suffolk – were initially organized through a different process than the remaining 15 counties, of whose residents drafted and adopted their own charters by utilizing their home rule powers. While the most populous counties were first to adopt and implement charters, medium-size and smaller counties are becoming increasingly interested in exploring home rule charter possibilities.

This publication will provide guidance to persons who wish to develop a new home rule charter or modernize an existing charter.

Legal Requirements

The idea of "charter" counties is relatively new in New York. Cities have had charters since colonial times and many villages were granted charters by the State Legislature in the early 19th century. The county, however, was seen as a different kind of entity. The granting of a charter implies a certain autonomy, to be exercised within the terms of the charter, but nevertheless embodying important areas of local discretion. It was not until the 1930's that counties began to be perceived as service-providing units of government in their own right, with a possible need to organize and operate in accordance with special local requirements.

What is a County Charter?

A charter, in classic terms, is a grant of authority from a higher governmental unit to a lower unit over which it has jurisdiction, enabling it to do certain things in certain ways. When the grant of authority from the higher unit permits the residents of the lower unit to draft and adopt their own charter, it is said to be a "home rule" charter. Such is the case with the County Charter Law in New York State. It authorizes any county outside of New York City to develop its own charter, within prescribed and procedural limits; to adopt it by popular vote; to implement it; and to change it, all by local action.

A county charter, therefore, is a locally drafted and approved law which:

- provides for the basic structure and organization of the county government;
- specifies the powers and authority of the county government and allocates those powers among the agencies and officers of the county, to establish responsibility and accountability for the exercise of those powers; and
- prescribes certain procedures for the exercise of county powers.

[1] Municipal Home Rule Law, Article 4, Part 1.

The County Charter Law in Historical Perspective

The basic guide for counties in developing charters is the County Charter Law (Article 4, Part 1 of the Municipal Home Rule Law) enacted in 1959, although its roots are embedded in earlier developments.

The State Constitution was amended in 1935 to authorize the Legislature to enact "alternative" forms of county government which could include transfers of functions of local political subdivisions — cities, towns and villages — to the county, subject to voter approval. Pursuant to this constitutional authorization, in 1937, the State Legislature enacted an Optional County Government Law; Monroe County adopted an optional charter under this law before the later repeal of the law in 1952. Special county charters enacted for Nassau County and Westchester County in the 1930's by the State Legislature established alternative forms of county government for those counties. Also by special legislation, in 1958, the state adopted, subject to a county-wide referendum, an alternative form of county government for Suffolk County.

Moreover in 1958, the voters of the State approved an extensive constitutional amendment relating to county government, including a requirement that the Legislature confer on all counties outside the City of New York power to prepare, adopt and amend their own charters. Pursuant to this constitutional directive, in 1959, the Legislature enacted the County Charter Law. By the end of 1963, Erie, Oneida and Onondaga Counties had developed and adopted charters under this law.

Another constitutional Home Rule Amendment in 1964 continued earlier constitutional provisions requiring the Legislature to enact a statutory structure through which counties may provide alternative forms of government for themselves. Accordingly, the County Charter Law provisions were incorporated into the new Municipal Home Rule Law.

Together these constitutional and statutory provisions supply counties outside the City of New York with the wide flexibility for local choices in drafting and adopting their own charters by action of their legislative bodies, subject to voter approval. To become effective, a proposed county charter must be approved by a majority of eligible voters in a county-wide referendum. In addition, the proposed county charter must be approved by a majority of the voters of all cities in the county considered as one unit and also by the voters outside the cities considered as one unit. That is, the charter proposal must receive a majority of all votes cast in the cities within the county and a majority of all votes cast in the towns within the county. Table I lists charter counties with the dates of charter adoption.

What a Charter Must Do, May Do and May Not Do

The Municipal Home Rule Law requires that county charters have certain provisions, gives counties the *option* of including others and excludes several areas from charter consideration.

A county charter must:

- Prescribe the structure of the county government.
- Provide for an elective legislative body to determine county policy, exercise powers of local legislation and appropriate money.
- Specify the agencies and officers responsible for the performance of the functions, powers and duties of the county.
- Provide the manner of election or appointment, terms of office and method of removal of county officers.
- Provide for equalization of real property taxes consistent with standards prescribed by the State Legislature.

A county charter may:

- Provide for the appointment of county officers (except members of the legislative body and specified elected officers) or provide for their selection by any method of nomination and election.
- Assign executive or administrative functions, powers and duties to elective or appointive officers.

- Provide for a county executive officer who may be either elective or appointive. However, only an executive elected on a countywide basis may be given power to veto actions of the legislative body. In this event, the charter may provide for overriding of vetoes by the legislative body by a specified percentage of the total voting strength.
- Provide for the transfer of local government functions and duties among the county and the cities, towns and villages in the county. Such transfers may include abolition of offices or agencies of units of government where all of their functions or duties are transferred.[2]
- Provide for an administrative code which sets forth details of administration of county government, the terms of which may include existing laws and regulations that have been revised, simplified, consolidated, codified or restated. The code must be consistent with the charter since it would implement the provisions of the charter.
- Provide for the termination of terms of office of incumbent officers upon implementation of the charter.

A county charter may not:

Unless specifically authorized by the State Legislature, contain provisions relating to:

- Taxation of state property including property held by any of its agencies;
- Exemptions from taxation;
- State aid to units of local government;
- Division of the county into two or more counties or the creation, enlargement, diminution or abolition of a city, town, village or school district;
- Compensation of members of the judiciary fixed by the Legislature;
- Composition, functions or jurisdiction of a court or its officers.

Supersede a general or special law of the State which:

- Relates to how taxes are imposed or to the judicial review of the distribution of taxes or benefit assessments;
- Relates to the education system or to a school district:
- Requires that functions of government be performed or financed by units of local government, except to transfer such functions to other units of local government:
- Relates to a state function financed by the State:
- Relates to legal actions or proceedings against the county:
- Relates to a public authority;
- Is contained in one of certain specified laws.[3]

Why Adopt a County Charter?

Counties adopt home rule charters for two primary reasons: First, to put someone clearly "in charge" of the county government who can be held responsible and accountable for the day-to-day operation of county programs, activities and services; Second, to supersede state laws which may otherwise limit the county's ability to govern in the best interest of its residents. The most important differences between charter and noncharter county governments are found in the first of these — the creation of an executive/administrative branch.

[2] An example of a transfer of function would be a law that establishes a county police department, transfers responsibility for all policing in the county to that department, and abolishes all city, town and village police departments.

[3] Municipal Home Rule Law, Civil Service Law, Election Law, Eminent Domain Procedure Law, Environmental Conservation Law, Executive Law, Judiciary Law, Labor Law, Local Finance Law, Multiple Dwelling Law, Multiple Residence Law, Public Authorities Law, Public Housing Law, Public Service Law, Railroad Law, Retirement and Social Security Law, State Finance Law, Volunteer Firefighters' Benefit Law, Volunteer Ambulance Workers' Benefit Law, or Workers' Compensation Law.

While it is possible to create a county office to provide administrative supervision over county affairs without adoption of a charter, it is only through a charter that such an official can be given powers independent of the legislative body. In a noncharter county, an administrator can have only whatever authority the legislative body specifically delegates to him or her, to be exercised *on its behalf*. All of the powers remain with the legislative body and cannot be delegated. In a charter county, on the other hand, the executive or administrator derives powers — not just authority to exercise powers — from the same source as does the legislative body: the charter.

Although the establishment of an executive/administrative branch is found in most if not all of the county charters now operating in New York, it should be noted again that a wide range of local choices exist as to how strong that office shall be.

The Charter Making Process

Several preliminary and basic questions will confront a county whether it is considering charter development for the first time, resubmitting a charter proposal after failure of a previous attempt or reviewing and revising an already adopted charter:

- How is the charter process set in motion?
- Who will draft or review and revise the charter?
- How will the charter study be conducted?
- What are the key issues and basic decisions that charter drafters will consider?
- How and when does the new or revised charter take effect?

How is the Charter Process Started?

Historically, population growth and rapid increases in the size of county budgets have been the factors most responsible for stimulating interest in the development of home rule county charters.

Most of the populous counties in the State now operate under charters, and an increasing number of intermediate-size counties have found it expedient to exercise their authority under the Municipal Home Rule Law to draft and adopt their own charters. As the population of a county increases and as its people concentrate in urban clusters, the county's duties and responsibilities multiply accordingly: New service requirements must be met and new activities must be undertaken.

As the service requirements of a county increase, so do its budgets. It is reasonable to question whether a governmental structure designed many decades ago to manage an operation providing few services and costing perhaps less than a million dollars a year is suitable to efficiently handle current requirements.

The necessity to meet new service demands and deal with increasing costs at the same time quickly exposes another critical need: improved operational methods which can increase service productivity without increasing costs. Accordingly, the desire to increase the county's capacity to improve management tends to stir added interest in charter possibilities.

In some cases, the need is to revise an already adopted charter, the provisions of which may have fallen short of expectations or which may have become outmoded. In any case, the process is similar, once a need is perceived.

It is the growing recognition of the combined impact of population growth, soaring costs and the need for improved operations that sets the charter process in motion. The county legislative body, whether a board of supervisors or a county legislature, then becomes the arena of further action.

Who Drafts a County Charter?

A proposed charter or proposed revision of an existing charter may be prepared by or under the auspices of the county's governing body directly or by a specifically appointed charter commission. The charter drafting process may be initiated by the governing body itself or by voter petition and referendum.

Legislative body initiative. A county legislative body may provide by resolution that a charter draft be prepared under its supervision or under the supervision of an officer or committee of the legislative body. In either case, the actual writing of the charter may be accomplished by a committee of the legislature, by a county officer such as the county attorney or by a consultant hired for that purpose.

Alternatively, a county legislative body may create by resolution a charter commission to undertake a charter study and draft. Members of the commission may be drawn from the legislative body, from elected or appointed county officers, from community leaders and organization representatives, or from a combination of any or all of these.

Voter initiative. Under a procedure set forth in section 33 of the Municipal Home Rule Law, the voters of a county may petition the county legislative body to establish and appoint a charter commission. The petition calling for the creation of the charter commission must be signed by qualified voters equal in number to at least 10 percent of the votes cast in the county for Governor in the last gubernatorial election.

In response to such a petition, the legislative body may create and appoint a charter commission on its own motion. Otherwise, the county legislative body is required by law to submit to a referendum the question of whether a charter commission should be established and appointed. If a majority of the votes cast on the question are in favor of the proposition, the legislative body must create a commission and appoint its members within two months following voter approval.

Composition of the charter commission. There are no legal provisions prescribing the size, organization or term of a charter commission, except that it shall be composed and appointed as the legislative body directs. Nor are there rules of thumb identifying the most desirable makeup of a charter commission.

A major consideration in determining the composition of a commission, and one which may influence its size is the type of representation desired. The representative base in turn should be determined to a great extent by the degree of social and economic homogeneity within the county and also the number and kinds of constituent units of government it contains. For example, a county comprising one or more cities and several towns may seek to assure an appropriate balance of city and town representation.

If the number of constituent governmental units is not too great, it may be possible to draw representative(s) from each constituent unit. Experience has shown that community representation on a charter commission tends to make the charter more acceptable to the electorate.

The Charter Commission at Work

Before a county charter can be drafted or revised a substantial amount of preliminary research and investigation is necessary. To ensure that such work is conducted in an orderly, comprehensive and timely manner, the commission should first consider its own organization, rules of operation, staffing and financial needs.

Whether a charter commission results from voter petition or the motion of the county's legislative body, it is in fact established by legislative resolution. The resolution may designate a chairperson for the commission, provide for staff assistance, appropriate money for the charter study and define in varying detail the scope or focus of commission concern. Alternatively, the resolution may leave all or some of these matters to the commission itself.

Charter commission organization and operation. If no chairperson has been named in the resolution creating the commission, this should be done during the first commission session, which should be convened by the chairperson of the legislative body. Once this basic organizational task has been accomplished, the commission may wish to choose other officers such as a secretary, a parliamentarian and a treasurer. A structure establishing subcommittees may also be set up once a work plan (discussed below) has been developed.

Other issues that may be considered at the first meeting are:

- how often and where the commission will meet;
- whether it will establish its own set of rules or operate under general parliamentary rules (particular attention should be given to defining a quorum, which, among other things, must require at least a majority of the fully-constituted board notwithstanding vacancies or absences); and
- how decisions will be made (by simple or extraordinary majority vote or by consensus) on both procedural and substantive matters.

Staffing and financing a charter commission. A thorough charter study usually entails a significant amount of data gathering and administrative analysis as well as legal interpretation of proposed organizational and procedural provisions to be incorporated in the charter document. A charter commission may, therefore, need clerical, stenographic, management and legal assistance.

A charter commission may be staffed in a number of ways. Legal expertise is often provided by assigning the county attorney to serve as an advisor to the commission. In this capacity the county attorney may also serve as commission parliamentarian. Persons with special competence in government organization, administrative operations and public administration can be found in universities, government agencies and the business community. Former or present local government officials may be available and willing to assist the charter commission. Secretarial help may be provided by appointing a current county employee to work with the commission. Alternatively, the commission may request an appropriation to enable it to employ secretarial and professional staff.

The charter commission will, in any case, need some money to conduct its work. The amount required will depend heavily on the extent to which outside consultants are used. Regardless of whether consultant expenses are to be incurred, the commission will require an appropriation to pay for supplies, postage, phones and printing and, perhaps, a small travel budget and funds for disseminating information to the public. If consultant services are not required and secretarial assistance is provided by the county, a small appropriation should suffice.

Developing a work plan. Once the charter commission has defined its organization, adopted its rules of operation and provided for necessary staff assistance, it can begin substantive work. This is the time for commission members to become familiar with those provisions of the State Constitution and other laws that relate to county charters and to the work of charter commissions. In particular, the Municipal Home Rule Law should be consulted.

The commission will then want to examine the existing organizational and operational arrangements of the county government. A specially designed questionnaire to be completed by county officers can be an effective means for gaining information about the way in which legislative, executive and administrative functions are performed and about their operational interrelationships. Questionnaire responses can then be supplemented by personal interviews and examination of a variety of countywide and departmental documents such as budgets, annual and interim reports and legislative proceedings.

It is common practice to divide the commission into subcommittees to design, administer and analyze the questionnaires and to interview county officers. (See Appendix I for sample interview questions.) The number of subcommittees designated will relate in some degree to the total membership of the commission. A good practice is to assign related functions to one subcommittee. One subcommittee might take responsibility for such functions as mental health, social services, youth services and other human services. One might concentrate on public works, parks, sewers and physical services. Others might look at public safety functions, legislative and intergovernmental relations, finance and budget, and other support functions such as personnel, purchasing and information systems.

An analysis of questionnaire responses, personal interviews and a review of documents will assist the charter commission in identifying existing practices, procedures and relationships that appear to be functioning satisfactorily and in perceiving problem areas requiring resolution.

Once the charter commission has completed the study of its own county, it may want to visit other counties or to invite officials from similar counties to speak about their operations. In this manner and through the independent study and professional experience of commission members, a set of alternative organizational and operational arrangements may be designed for those areas of county government identified as needing improvement.

Using the information it has gathered, the commission can prepare and evaluate alternatives, and make basic decisions as to the substantive content of the charter, keeping in mind what is likely to be accepted by the public.

The Basic Decisions

A county charter commission is, in the first instance, a decision-making body. It must decide an impressive array of issues which determine the kind of government the county is to have, and having done so, it records its decisions in the form of a charter draft for presentation to the county legislative body and, if the latter body approves, to the voters.

Authority of commission. In establishing a charter commission, a county legislative body may endow it with broad authority to determine the scope of its own concerns — or it may give the commission specific directives, such as to propose amendments to an existing charter rather than to draft a new charter. In any event, it is to the legislative body that the charter commission will submit its product, whether that be a new charter, a revision of or an amendment to an existing charter, or a recommendation that the existing county government remain unchanged. For this reason, development of a clear understanding of its own scope of action is an important early decision for the commission.

County charter commissions in New York, especially those in counties considering charter government for the first time, have had relatively broad authority to recommend such action as they deem necessary — or they have had a specific directive to draft and present a home rule charter. If sentiment in the legislative body is strong for extensive reform, the mandate is likely to be the latter. If, however, the legislative body is uncertain or wishes to be advised concerning options, it may leave to the commission itself the decision as to whether a charter is to be proposed.

A charter commission with an open mandate has a number of available options:

- It may draft and submit a charter.
- It may propose adoption of local laws to accomplish certain limited purposes (such as establishment of the office of county administrator) short of charter adoption, and requiring no referendum.
- It may recommend that there be no changes.

A charter commission with a mandate to draft a new charter faces immediately a formidable array of basic decisions which will occupy its attention and consume its energies for many months.

Throughout its deliberations, the commission members should keep in mind that their fundamental objective is to tailor the county government to the special conditions and needs of their own community, and especially to the predilections and expectations of their fellow citizens. The unique capacity which each commission member brings to that task is his or her own judgment of what kind of county government is best suited to the community.

Executive-legislative separation. More often than not, one of the first questions the commission must confront is, “Shall there be an executive/administrative branch of county government, separate from the legislative branch?” It is the commission’s answer to this question, and its related question, “If so, how separate?”, that will have much to do with most of the other substantive concerns of the commission and will determine in large part the structure and operational interrelationships of the county government.

Under the County Law, county government has no separate executive/administrative branch. In this respect, it is unlike governmental arrangements at other levels in the United States, where the traditional pattern provides for a separation of powers among more or less independent executive, legislative and judicial branches, with an intricate pattern of checks and balances operating among the branches to assure that no one of them dominates the others. County government in New York developed without such a separation. In the absence of a charter, all powers are vested in a legislative branch, while the judiciary is generally regarded to be within the purview of state affairs.

While it is possible, under the County Law, for a county legislative body to provide itself with a certain amount of administrative assistance by establishing variously titled appointive positions, these appointees may exercise only the authority and carry out only the duties the legislative body specifies. These duties and the authority to perform them technically remain at all times in the hands of the legislative body, with the appointed assistant designated, functioning solely on its behalf.

The distinguishing characteristic of an executive/administrative branch in county government is that it derives its powers from the same source as does the legislative branch: the charter. The office is not dependent on the legislative body for its authority to exercise those powers, but receives that authority in its own right, directly from the charter, as does the legislative body.

One of the principal reasons for interest in developing a county charter is to provide some form of executive or administrative direction to the business of county government. Where no executive branch exists, the alternative is to try to provide day-to-day supervision of county affairs through a system of legislative committees and their chairpersons who in virtually all cases can devote only part time to the task. Where the legislative body is a board of supervisors, attention must be further divided between the duties of town supervisor and those of county government.

Executive/administrative options. A charter commission considering providing for a separate executive or administrator has two major options: an elected executive or an appointed administrator/manager.

Of the 19 charter counties in New York, one has an appointed manager, one has an appointed administrator, and 16 have elected executives. One other, Herkimer County, has provided itself with a county administrator by local law outside its charter. In the latter case, the administrator is not in fact charter-empowered, but exercises administrative authority on the legislature's behalf. Table II shows legislative and executive characteristics of New York's charter counties.

Remember, the basic question for the charter commission to answer is how much separation between the legislative and executive /administrative branches it wishes to recommend. As is indicated in the following paragraphs, the options extend all the way from very little to virtually complete separation of the two branches.

Appointed administrator/manager. An appointed administrator may be called a county manager, county administrator or by some other title, but the essential feature of the position is that the occupant is employed by the county legislative body to exercise powers and duties assigned to the office by the charter.

The county manager form of executive is a county government modification of the council-manager form of city government. The major advantage, its proponents claim, is that it makes possible the employment of a trained professional manager, often recruited in a nationwide search, to run the county government. The manager is, to some extent, once removed from the political arena, since he or she is an employee of the county legislative body.

Although there are exceptions, it can be noted that the manager form seems to work best in communities of relative political stability. If party control of the legislative body tends to shift frequently from one party to the other, and if the party organizations are strong and active in governmental organization and operation, the manager system may encounter difficulties. On the other hand, if leaders of all parties are sincerely committed to the manager pattern, it can be effective, despite shifts in party control.

The powers of an appointed manager may vary from county to county, but there are certain essential powers a manager should have if he or she is to function as a true manager. These include the power to appoint and remove department heads. The appointing power is usually subject to confirmation by the legislative body. Without this power, the manager will have little authority to direct the day-to-day affairs of county government.

The manager also should have full authority to prepare and submit to the legislative body both the tentative operating and capital budgets and to administer the budgets after adoption.

The charter should make clear that the manager is the administrative head of county government; that he or she is responsible for the operation of all departments. The legislative body should concentrate on developing policies and seeing to it that the manager exercises his or her responsibility properly to implement policy and produce an efficient and effective government.

One note of caution: The county manager system is not easy to operate. It requires a high degree of both understanding and restraint on the part of both the manager and the members of the legislative body. The legislators, having hired the manager, must recognize that his or her powers, like theirs, derive from the charter. They should refrain from direct contacts with the heads or employees of departments and agencies, except through the manager. The manager, in turn, must not become a direct participant in legislative decisions of a policy nature, beyond providing his or her recommendations when asked to do so, and should resist the temptation to "go to the people," in cases of disagreements.

The relationship between the legislative body and the manager is a delicate one, since the manager serves, in most cases, at the pleasure of the legislative body. It is possible to provide by charter for a specific term of appointment for the manager, or for a manager to be given a contract for a specific term.

Elected county executive. Sixteen of the State's charter counties have provided themselves with elected executives. The chief distinguishing characteristic of the office of elected county executive is that the occupant is responsible directly to the voters of the county as a whole and not to the legislative body. This is a political office since the occupant is first elected by party nomination, then serves a charter-specified term of office as does any other political officeholder.

The county executive, within his or her jurisdiction, is comparable to the elected mayor of a city or even the governor of a state. He or she clearly heads an executive branch of government separate from the legislative branch.

Within that general framework, county executive powers, duties and the characteristics of the office tend to vary from county to county. However, a number of the usual attributes and powers of the office are:

- The executive is elected at large for a specified term (usually four years).
- The office, since it is elective, has a "representative" attribute in addition to executive powers, which the office of manager does not have.
- The office of county executive tends to be fairly strong, since it is also a focus of political strength.
- In most cases, the executive has extensive authority directly from the charter to direct and supervise virtually all aspects of county government except those which are exclusively legislative or judicial.

To carry out extensive responsibilities the executive usually is given a substantial body of formal powers enumerated in the charter. Although these powers vary among counties, the following are fairly standard:

- Power to appoint and remove department heads and the members of boards and commissions; if appointments are not subject to legislative confirmation, the position of executive is strengthened.
- Full power to supervise and direct the administration of county government.
- Authority to serve both as the titular and actual head of county government.
- Power to prepare and present to the legislative body the operating and capital budgets.
- Power to recommend legislation.
- Power to veto legislation, subject, however, to legislative override by an extraordinary majority.
- Line-item veto of appropriations.
- Power to recommend organizational changes in county government.

The Legislative Body

Many of the other important decisions that a charter commission will make depend on how it resolves the questions of executive and administrative functions. If there is to be an elected executive, certain arrangements are appropriate to that decision. If, on the other hand, there is to be an appointed manager, and the

ultimate authority to choose and employ the manager is to reside in the legislative body, the questions to be resolved will be different. In general, however, the areas of concern are similar. Among the most important is a group of issues relating to the structure and operation of the legislative body.

County Legislature vs. Board of Supervisors. In the traditional statutory pattern of county government in New York, a board of supervisors serves as the legislative body. Section 150 of the County Law provides that the supervisors of towns and the supervisors of cities within each county must constitute the board of supervisors. At the same time, section 150-a permits the county legislative body by any name to carry on the functions of the traditional board of supervisors. If your county has not replaced its traditional board of supervisors with a county legislature, the question of whether or not to do so is likely to be one of the most important questions facing a charter commission. No charter county in New York has retained a board of supervisors.

Composition. County legislative bodies for many years were comprised of the supervisors of all towns and a prescribed number of supervisors from the cities, usually one from each ward with each member having one vote on the legislature without regard to differences in the population size of the municipalities represented. This practice was held to violate the "one person, one vote" principle of the United States Constitution. Today county legislative bodies by any name – board of supervisors, as provided for in section 150 of the County Law, or otherwise, as provided for in section 150-a of the County Law – must develop a system of voting that accounts for differences in population size to ensure, to the furthest extent practicable, that each person and each vote is counted.

To comply with this mandate, most, if not all, counties might consider the options of weighted voting or districting. Counties with the traditional county board of supervisors' governmental structure that use weighted voting have proceeded by modifying the relative voting strength of each supervisor: a vote from a supervisor representing a municipality with larger populations will weigh more than a vote from a supervisor of a municipality that is less populated. Other counties might choose instead to divide the county into districts and elect legislators from districts. This method generally results in each district representative occupying his or her position in that capacity alone, and the district boundaries may or may not coincide with town boundaries.

In light of the above requirements and other considerations, several questions should be asked about the character of the legislative body:

- Does the composition of the legislative body meet judicial standards for equality of representation among geographical areas represented?
- How large should the legislative body be?
- Shall the term of office be two or four years?
- If four-year terms are provided, should the terms be staggered to provide continuity or should all members stand for election at the same time?
- Shall the members of the legislative body receive compensation for their services? If so, how shall the amount be determined?

Reapportionment. To adjust to changes required by succeeding U.S. censuses, what provisions should the charter include to provide for reapportioning and redistricting seats in the legislative body? Since the 1960's, counties adjusted the representative bases for their legislative bodies in a variety of ways to meet the one person-one vote criteria imposed by the courts.

In virtually all charter counties, the traditional board of supervisors has been replaced by a county legislature, the members of which are elected from districts. Many noncharter counties also have adopted a county legislative form, while others retain a board of supervisors with votes apportioned according to a variety of weighted voting schemes.

From the standpoint of a charter commission, the task is one of deciding in the first instance whether or not it wants to propose a change in the way in which the legislative body is apportioned, and if so, to propose a specific plan. Such plans may be submitted to the voters in a referendum separate from the referendum to approve the charter as a whole.

The charter also should specifically provide a method for future reapportionments. The task may be assigned to the legislative body itself, or to a special committee or commission to be established by the legislative body for that purpose. New York law presently permits only one restructuring of a county legislative body in each decade, beginning with 1970, except to readjust a weighted voting scheme on the basis of current census data.

Legislative powers and duties. The powers and duties of the legislative body will vary according to the type of executive or administrator to be established. The relative strength of the executive in relation to the legislature will be determined largely by the allocation of powers and duties between the two. The provision of a workable balance between the executive and the legislative body is another important concern of a charter commission.

There are certain powers that must be vested in the county legislative body, and other powers that ordinarily would be assigned to the county legislative body. Among the most important of these are powers to:

- Enact local laws and adopt resolutions (both of which may be subject to executive approval).
- Adopt an operating and a capital budget.
- Levy taxes.
- Make or confirm appointments.
- Approve contracts.
- Provide for outside audits from time to time.
- Establish departments, agencies, boards and commissions.
- Provide its own internal organization and rules.
- Authorize the establishment and abolition of personnel positions.
- If the charter provides for a manager or administrator, employment of such an official should be a specific duty of the legislative body.

Legislative-executive relationships. The successful operation of county government under a charter providing for an executive/administrative branch depends in good part on amicable and effective working relationships between the two branches. For this reason, it is important that the charter, by clear allocations of powers and duties, eliminate as many potential friction points as possible.

Legislators should recognize that an elected executive, the choice of the voters of the whole county, is in fact expected to be a leader in matters of policy as well as administration. The executive, in turn, should respect the fact that each legislator has responsibilities to his or her own constituency and is expected by the voters who elected him or her to respond to their views and wishes.

Legislative-executive problems often develop because of inadequate flows of information. If legislators are expected to refrain from direct contacts with department heads, it should be clear from the charter that the executive or manager is to provide requested information promptly and completely. For example, the charter can include provisions requiring the executive to present an annual “state of the county” message to the legislative body and to provide a monthly or quarterly report on the fiscal condition of the county.

A frequent point of legislative-executive friction involves appointments and removals. The charter should clearly identify the appointing and removal authority for each county office. If legislative confirmation is to be required for all or some appointments and removals, that requirement too should be straightforward and clear.

Departments, Agencies, Boards and Commissions: The Administrative Structure

Generally, county charters have not altered the powers and duties of the so-called “constitutional officers”: the sheriff, district attorney and county clerk. However, some charters have assigned the sheriff’s law enforcement functions to a county police department of which the sheriff may or may not be the head. If not, the sheriff may exercise civil duties as an arm of the courts and/or may be given correctional duties as operator of the jail.

The office of treasurer may be abolished by charter, and many counties have done so, assigning its duties to a department of finance and administration or to an elected comptroller. Similarly, the elective office of coroner may be replaced by an appointive medical examiner.

A county charter commission has a wide range of choices in proposing a revised administrative structure for the county. There are few limitations, although in some cases such as commissioner of social services, state law prescribes qualifications and a term of office.

The charter commission will also want to be mindful that there is no need for the charter to spell out in minute detail either the organization or operating procedures of each department. This can often be accomplished in an administrative code to be adopted later by the county legislative body on recommendation of the executive or manager. In many cases, it may be enough for the charter to establish a department or agency, specify a method for naming its head, and enumerate only in broad outline its duties and functions.

Long-Form or Short-Form Charter

Along with other basic decisions, the charter commission will have to determine how much detail it wishes to include in the charter. The question is presented as a choice between a "long-form" or a "short-form" approach.

As might be expected, the choice in fact is rarely so sharply defined, and is more likely to be made between "long*er*" or "short*er*" forms. Most charter commissions will opt for a short form, but are likely to find that the results of their work are longer than they had expected.

The essential difference between long and short forms is that the short-form charter contains less detail concerning organizational arrangements and operational procedures. For this reason, the short-form charter usually is accompanied by an administrative code, enacted by the legislative body after the charter is adopted to spell out the necessary details of organization and procedures.

It is sometimes said that a charter specifies "what is to be done and who has authority to do it" and the administrative code spells out "how it is to be done." One advantage of the short-form approach is that it permits the separation of the essentials of county organization and allocation of powers — many of which are subject to referendum — from voluminous administrative detail. Changes in either the charter or administrative code may be subject to referendum, if they effect a transfer of power from an elected official, a transfer of function from one level of government to another, or pertain to matters that are subject to referendum under to any other law.

The short-form charter makes it possible to present to the voters a relatively simple, more easily understood document in which only essential organizational matters are covered, along with basic allocations of powers, duties and authority.

Many existing county (as well as city) charters include exhaustive lists of powers granted to the various elements of the government. In most cases, less numerous and less specific delegations of power, expressed in fairly broad terms, would prove both adequate and far more flexible. It should be remembered that the purpose of a charter is to facilitate the operation of the county as well as to specify limitations on its action.

Adopting and Implementing a Charter or Charter Changes

A county charter is a local law and is adopted in essentially the same manner as any other local law subject to mandatory referendum. Whether or not local laws effectuating charter amendments are subject to mandatory referendum depends on content.

Where a proposed charter or proposed charter amendment(s) results from the work of a charter commission, the report and recommendations are made to the county legislative body, which has discretionary power to act on the recommendations as it sees fit. In addition to submitting a charter draft, a commission may recommend to the county legislative body that it make certain changes in county government that do not require adoption of a charter—such changes can be made by the adoption of one or more local laws.

Adopting a County Charter

Ordinarily, county charter commissions propose full drafts of new charters, unless the resolutions creating them direct otherwise. The draft is usually in the form of a majority or unanimous report, but one or more minority reports may be attached. It is possible to place more than one charter proposal on the ballot for voter choice if the legislative body wishes to do so. It should also be noted that the legislative body may change a commission's proposed draft as it sees fit.

A proposed county charter must provide for its submission to the electors of the county at the next general election or at a special election, occurring not less than 60 days after its adoption by the county legislative body. Accordingly, for a county charter to be on the ballot at a November general election, it must be adopted by the county legislative body by the first week of September. The procedure to be followed by the county legislative body is the same as that for the adoption of a local law subject to a mandatory referendum.[4]

The clerk of the county legislative body, with the advice of the county attorney, is responsible for drafting a proposition to be submitted to the electors and for preparing a brief abstract of the proposed charter. The proposition and abstract are then transmitted to the county board of elections.

For adoption, a charter must be approved by a majority of those voting in all cities, if any, considered as a unit, and by a majority of those voting outside the cities, considered as a unit. If the charter seeks to transfer any function or duty to or from a village or villages, a similar separate majority is also required in all villages, considered as a unit.

If two or more charter propositions having conflicting provisions receive the majorities required for adoption, the proposition receiving the largest affirmative vote shall prevail to the extent of any conflict in the provisions.

Informing the Public — The Charter Commission's Role

A county charter commission is obligated to inform the public about what it is doing, and to seek input from the public in the identification of specific local issues and the discussion of alternative solutions. Of course, it is the public to which the results of the commission's work are likely to be submitted for final judgment.

Public education. A charter commission is in a good position to conduct a public education program. The earlier this process is started the greater are the chances for generating and sustaining widespread interest throughout the community in the efforts of the commission and in the result of its work. A broad-scale educational program may permit the charter commission to test public reaction to differing viewpoints and proposals which it is considering. It also can help to prepare the electorate to cast more fully informed votes on the charter question when it is presented to them.

Successful public education programs may be conducted by a variety of techniques. Early in the charter commission's work a member or subcommittee should be made responsible for posting and publicizing agenda prior to all meetings and for issuing accurate and complete press releases promptly following each meeting. Members of the charter commission may make themselves available for interviews and public appearances to explain the purpose of the charter commission and to urge popular input. It should be made clear from the start that the public is welcome to attend all commission sessions as provided under the Open Meetings Law.

Some commissions have scheduled a series of public hearings for the purpose of receiving the views and recommendations of interested citizens and organizations. Although they are not required by law, public

[4] Enactment of a local law requires that it be submitted in final form to each member of the county legislative body at least seven calendar days, exclusive of Sunday, prior to its final passage, and a public hearing must be held by the county legislative body before it may act on the matter. Notice of the hearing must be published in a local newspaper at least five days in advance unless the county has previously enacted a local law reducing this period of three days. Publication of the county charter in its entirety prior to a public hearing is not necessary.

hearings throughout the charter-drafting process can be an effective way to increase both citizen awareness of the charter commission and its work, and also to measure public opinion.

The commission should also consider consulting publicly with county officials and employees in addition to soliciting their views through questionnaires and other surveying efforts. By turning to these officials and carefully considering their views, the commission is likely to gain the support of this influential group for many proposals which might otherwise be the object of intense opposition.

Educational programs should be undertaken during the course of the charter commission's work. It is after the proposed charter has been drafted and presented to the county legislative body that the most active phase of public information efforts begins.

Traditional public information techniques such as informational brochures, newspaper articles, interviews on radio, television news programs, public service announcements, and websites are useful in county charter adoption efforts. One approach which has been found especially effective is for charter commission members to make themselves available to explain the proposed charter in public speaking engagements at meetings of various organizations throughout the county.

A charter commission should prepare and publish a narrative final report of findings, along with a complete draft of the proposed charter. The narrative can be a statement to the voters in easily understood language spelling out the main features of the proposed charter and an explanation as to why each provision is being submitted.

Advocacy. In some cases, the resolution establishing the charter commission will specify that the commission shall cease to exist upon submission of its report to the legislative body. In other cases, the charter commission may continue in existence during the period immediately preceding the popular vote on the charter's adoption. It is at this point that the commission may choose to become an advocate for the adoption of its charter.

If the charter commission is to transform itself into an advocate either for or against the charter as proposed by the legislative body, it should establish a clear distinction between its "public education" efforts and its advocacy role. A charter commission which has been allocated tax money for public information activities in relationship to the charter should be very careful not to breach the distinction between education and advocacy in the use of its public funds. While educational activities may be funded from public sources, advocacy funds should come exclusively from private sources. The distinction is difficult to establish, but a charter commission intending to become active in the campaign must observe the distinction with circumspection.

Implementing the Charter

Voter approval of a county charter sets in motion the all-important process of implementing the transition from the old county government to the new. If the charter is a new one that supersedes important provisions of the County Law and other state laws, the implementation should be carefully planned and phased to minimize operational disruptions.

Although the charter commission has no formal role in the implementation process in most cases, its proposed charter should lay a well-thought-out groundwork for the transition. For example, a charter commission can provide valuable help to officials responsible for implementation by preparing outlines of major changes the charter would require and by providing a schedule for accomplishing those changes. Such an outline is not a formal part of the charter, but can be submitted to the county legislative body along with the charter draft, since it both identifies what needs to be done and proposes a schedule for doing it.

First, the commission should give careful thought to the effective date of the new charter. A number of steps will be involved in the transition, and sufficient time should be provided for their accomplishment. For example, the charter's effective date might be established such that offices are abolished at the end of their terms.

Second, if the charter provides for new elective offices, such as an elected county executive, the schedule of county elections must be taken into account. This is also true if the charter would replace a board of

supervisors with a county legislature representing districts. In the latter case, such matters as availability of current census data and time needed to draw district lines will be of concern.

If the charter contains extensive fiscal procedures, it will be necessary to consider the taxpaying schedule, the budget-making schedule and, in some cases, the inclusion in a transition budget of sufficient funds to cover new positions called for by the charter.

Charter commissions often find it appropriate to include in their charter drafts separate transition articles. These articles apply only to the implementation of the charter in the first instance, and contain such items as the proposed effective date, specific provisions for transfers of personnel where agencies or offices are moved or abolished, and any other provisions designed to facilitate the changes to be brought about by the charter.

APPENDIX I
AREAS TO BE COVERED IN DEPARTMENT HEAD INTERVIEWS

1. Duties and responsibilities of the department and its sub-units.
2. Laws (local, state, federal) — governing/affecting work of department; where legal authority comes from; mandates/controls by higher units of government.
3. Organization and staffing — table of organization, number of employees, method of appointment of department heads. (Obtain copy of schedule of positions and salaries and an organization chart.)
4. Lines of authority/internal relationships — who reports to whom, supervisory responsibility; where to get help on money problems, policy direction, personnel, administrative matters, conflict resolution.
5. External relationships — dealing with executive, other departments of the county, legislative body and its committees, advisory boards and commissions; nature, purpose and frequency of relationships.
6. Budget — fiscal year, current budget figures, how needs are determined, who prepares request; revenues such as dues, fees, state or federal grants; performance budgeting or other formats; capital budgeting (obtain copy of current operating budget).
7. Administrative procedures — written manual; reports to whom, how often, what kind; recordkeeping; formalized deadlines; purchasing, what items are needed.
8. Day-to-day operations — main services, program activities; how assignments are made to department head and to staff; how things run on a day-to-day basis (obtain copy of annual report).
9. Evaluation of operations — obtain frank estimates of strong and weak points including service delivery, financial, staff and external relationship consideration; barriers to needed improvement.
10. Changes — 5-10 year projection for increase or decrease in operations, services delivered by one agency or department which could better be delivered by another; general changes recommended.
11. Overall government organization — specific suggestions or recommendations regarding organization and administration of government.

APPENDIX II
SAMPLE RESOLUTION ESTABLISHING CHARTER COMMISSIONS

County charter commissions may have differing missions, depending on assignments in the resolutions adopted by the county legislative body establishing them. In general, charter commissions work within two broad types of resolutions: those that direct the preparation of a new charter and those that direct the revision of an existing charter.

Within this broad framework, the legislative body may impose various restrictions, or it may leave to the commission a broad scope of decision and action; it may name the commission members in the resolution itself, or it may provide a method by which they shall be named; it may set a specific deadline for the commission's report, or it may leave to the commission the setting of its own deadlines; finally, it may prescribe a study budget or do so in a subsequent resolution.

Appendix II-A and II-B, are samples of the two broad types of resolutions. It should be remembered that they are samples and not "models." County legislative bodies will want to draft their own resolutions to fit local desires and needs.

APPENDIX II-A
SAMPLE RESOLUTION ESTABLISHING COUNTY CHARTER COMMISSION

Resolution No. _____— 20 _____,
AUTHORIZING APPOINTMENT OF MEMBERS OF A COUNTY CHARTER COMMISSION AND APPROPRIATING FUNDS THEREFOR

WHEREAS, the Government of _____ County has become a substantial business, while its population has increased steadily to over _____ persons, and

WHEREAS, the 20_____ gross budget is _____, and

WHEREAS, the Board of Supervisors is a bifurcated body, with each member a local elected officer, and upon election to such office automatically becomes a member of the county governing body, and

WHEREAS, such divided loyalties may well affect the decision making process, and

WHEREAS, the State Legislature has long recognized this anomalous situation and through legislative action adopted the Municipal Home Rule Law to implement the search by the several counties of the state for a more viable and efficient form of government, and

WHEREAS, Article 4 of said law sets forth the method for a board of supervisors to appoint a commission for the express purpose of studying, drafting and presenting to that board a proposed county charter, and

WHEREAS, the members of said commission should represent a cross section of the citizens of the county, including members engaged in various occupations, professions, businesses, industries, commerce, and agriculture, and should include homeowners and retired persons, and

WHEREAS, it would appear that a fresh approach be made to the resolution of county government issues and that no members of the Board of Supervisors should be appointed members of the Commission, therefore be it

RESOLVED, pursuant to section 33 subdivision 5 of the Municipal Home Rule Law that a charter commission be and is hereby created and appointed for the express purpose of studying, and if a charter form of government is found to be most appropriate, drafting and presenting to the _____ County Board of

Supervisors a draft of a proposed county charter, such proposed charter to be prepared and presented as soon as it is possible, and it is further

RESOLVED, that because there are no federal and state funds available there be hereby appropriated expense funds not to exceed the sum of _____, and be it further

RESOLVED, that such assistance and cooperation as shall be required shall be employed or retained as special counsel, technical advisors and assistants, and any other direct costs involved in their duties, within the appropriation hereby made available as provided in section 33 of the County Charter Law, and it is further

RESOLVED, that the following named persons be and are hereby appointed as members of said charter commission:

APPENDIX II-B
SAMPLE RESOLUTION ESTABLISHING
COUNTY CHARTER REVISION COMMISSION

Resolution No. _____— 20_____
CREATING A _____COUNTY CHARTER
REVISION COMMISSION

WHEREAS, the present _____County Charter was approved by the voters of _____County and became effective _____; and

WHEREAS, said Charter has been amended on numerous occasions over the past _____years causing said Charter to become cumbersome and confusing; and

WHEREAS, this Legislature recognizes the need to revise said Charter so as to make the same more cogent and workable; Now, therefore, be it

RESOLVED, that there be appointed a _____ County Charter Revision Commission to consist of _____ members to be appointed as follows: _____ members to be appointed by the County Executive; _____ members to be appointed by the Presiding Officer of the _____ County Legislature; _____members to be appointed jointly by the County Executive and the Presiding Officer of the _____ County legislature, none of said appointees to be County employees at the time they serve on said Commission; and be it further

RESOLVED, that the members thereof shall receive no compensation but shall be reimbursed by the County of _____for all actual and necessary expenses incurred in the course of performing their duties as a member of the Charter Commission. The Chairperson of such Commission shall be elected by the membership thereof.

TABLE I
New York's Charter Counties

County	Date Charter Adopted	2000 Population	Number of Cities
Nassau	1936	1,334,544	2
Westchester	1937	923,459	6
Suffolk	1958	1,419,369	0
Erie	1959	950,265	3
Oneida	1961	235,469	3
Onondaga	1961	458,336	1
Monroe	1965	735,343	1
Schenectady	1965	146,555	1
Broome	1966	200,536	1
Herkimer	1966	64,427	1
Dutchess	1967	280,150	2
Orange	1968	341,367	3
Tompkins	1968	96,501	1
Rensselaer	1972	152,538	2
Albany	1973	294,565	3
Chemung	1973	91,070	1
Chautauqua	1974	139,750	2
Putnam	1977	95,745	0
Rockland	1983	286,753	0

TABLE II

Legislative and Executive Characteristics of Charter Counties in New York State

Charter County	Legislative Body			Executive Officer	
	Name of Body	Size of Body	Term of Office (Years)	Title	Term of Office (Years)
Albany	County Legislature	39	4	Executive	4
Broome	County Legislature	19	2	Executive	4
Chautauqua	County Legislature	25	2	Executive	4
Chemung	County Legislature	15	4	Executive	4
Dutchess	County Legislature	25	2	Executive	4
Erie	County Legislature	15	2	Executive	4
Herkimer	County Legislature	17	2	Administrator*	3
Monroe	County Legislature	29	2/4**	Executive	4
Nassau	County Legislature	19	2	Executive	4
Oneida	County Legislature	29	2	Executive	4
Onondaga	County Legislature	19	2	Executive	4
Orange	County Legislature	21	4	Executive	4
Putnam	County Legislature	9	3**	Executive	4
Rensselaer	County Legislature	19	4	Executive	4
Rockland	County Legislature	17	4	Executive	4
Schenectady	County Legislature	15	4	Manager	***
Suffolk	County Legislature	18	2	Executive	4
Tompkins	County Legislature	15	4	Administrator	***
Westchester	Board of Legislators	17	2	Executive	4

* Position created by local law, not charter law.

** Monroe: Beginning in 2005, legislators are elected to staggered terms of two and four years over a six-year cycle
Putnam: Beginning in 2002, legislators from three identified districts are elected to serve 3-year-terms.

*** At the pleasure of the legislative body.