August 27, 1996

OPINION NO. 96-043

Maureen O'Connor
Summit County Prosecuting Attorney
53 University Avenue
Akron, Ohio 44308-1680

Dear Prosecutor O'Connor:

I have before me your request for my opinion concerning recently enacted amendments to the Summit County Charter. Specifically, you ask whether a charter provision may vest jurisdiction over probate court personnel decisions in a newly created Human Resource Commission. Your letter and its supporting materials set forth the following factual background pertinent to your request.

Effective January 1, 1980, Summit County became the first and only county to adopt a charter form of government pursuant to Ohio Const. art. X, §3. At the November 1995 election, Summit County voters were asked to pass several amendments to the county charter. One amendment, set forth as Article VI of the charter, seeks to consolidate administration of human resource functions under the County Executive for all "offices, officers, agencies, departments, boards, commissions or other public bodies...that are supported in whole or in part from taxes levied, or other financial assistance provided, by the county." Summit County Charter, Article VI, Section 6.04. The other two amendments referenced in your request seek to consolidate in the County Executive public information services and purchasing services for county supported agencies. Summit County Charter, Articles VII and IX. All of these amendments were approved by a majority of the voters of Summit County.

The specifics of your request involve Article VI of the newly amended charter, which creates the Summit County Human Resource Commission and the Human Resource Department as agencies of the County Executive. Pursuant to its charter mandate, the Human Resource Commission has proposed rules to implement Article VI. These rules vest the Commission with jurisdiction over personnel matters in the Summit County Court of Common Pleas, probate division. Your concerns arise because of certain constitutional and statutory provisions that may conflict with Article VI.

Generally, counties are creatures of statute and may exercise only those powers expressly granted by the General Assembly. 1994 Op. Att'y Gen. No. 94-095; *see Geauga Cty Bd. of Comm'rs v. Munn Road Sand & Gravel*, 67 Ohio St. 3d 579, 621 N.E.2d 696 (1993). Historically, counties have been considered administrative arms of state government for carrying out certain functions of administration and policy throughout the state. *Bd. of Comm'rs v. Mighels*, 7 Ohio St. 109, 119 (1857); 1989 Op. Att'y Gen. No. 89-106.

In addition to the statutory powers vested in counties, Ohio Const. art. X, §3 permits a county to adopt a charter, thereby enabling the county to exercise what is commonly known as home rule authority. Ohio Const. art. X, §3 provides in pertinent part:

> The people of any county may frame and adopt or amend a charter as provided in this article...[The charter] shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities....

Thus, the language of Ohio Const. art. X, §3 requires that a county charter continue to "provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law." The provision further permits a county to restructure its government with respect to both form and offices. Additionally, by making reference to the powers of municipalities, Ohio Const. art. X, §3 allows a county, through properly authorized charter provisions, to exercise those powers of local self-government vested in municipalities pursuant to Ohio Const. art. XVIII, §§3 and 7. While a county may adopt powers of local self-government analogous to those vested in municipalities, they are restricted in the exercise of those powers by the same limitations applicable to municipalities. 1994 Op. Att'y Gen. No. 94-095; 1989 Op. Att'y Gen. No. 89-106; 1985 Op. Att'y Gen. No. 85-039.

As I understand, Article 1.02 of rules proposed by the Human Resource Commission attempts to distance the Summit County Charter from home rule limitations previously imposed on municipalities. Article 1.02 provides:

> The power of the County of Summit in adopting its charter, the existence of R.C. 301.23; and the mandate contained in the November 7, 1995 amendment, are unique and can neither be measured by, nor compared to, the more restricted vehicle of municipal home rule. Readers of these rules are, therefore, cautioned against relying on state court precedence interpreting or restricting the charter actions of cities.

Municipal home rule power is derived directly from Ohio Const. art. XVIII, §3 and not from the adoption of a charter. *Northern Ohio Patrolmen's Benevolent Ass'n. v. City of Parma*, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980). The existence of a municipal charter is not a prerequisite to the exercise of home rule powers. To this extent, Ohio Const. art. XVIII, §3 may be deemed self-executing. *Northern Ohio Patrolmen's Benevolent Ass'n v. City of Parma*, 61 Ohio St. 2d at 381,

402 N.E.2d at 523 n. 3; 1959 Op. Att'y Gen. No. 819, p. 513. The same is not true of county home rule powers.

As previously stated, a county is a creature of statute and an arm of state policy. Ohio Const. art. X, §3 permits charter counties to assume home rule powers, not by expressed grant, but rather by reference to those powers vested in municipalities. As such, the limitations placed upon municipalities in the exercise of powers of local self-government are equally applicable to charter counties. Accordingly, the declaration in Article 1.02 of the proposed rules of the Human Resource Commission cannot operate to abrogate or alter principles of law that have been declared to control in this area by the Ohio Supreme Court, the courts of appeals, and the courts of common pleas.

In paragraph 1 of the syllabus to *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968), the Ohio Supreme Court described a significant limitation upon the exercise of home rule power as follows:

> By reason of Sections 3 and 7 of Article XVIII of the Ohio Constitution, a charter city has all powers of local self-government except to the extent that those powers are taken from it or limited by other provisions of the Constitution or by statutory limitations on the powers of the municipality which the Constitution has authorized the General Assembly to impose.

Subsequent to *Bazell*, the supreme court summarized municipal home rule power as the power "to enact local legislation, as distinguished from matters of statewide concern, without regard to general laws on the subject, except to the extent this power is limited by the constitution itself." *Kohl v. Punipace*, 56 Ohio St. 2d 120, 121, 382 N.E.2d 1358, 1359 (1978). Under either limitation set out in *Kohl*, statewide concern or constitutional supremacy, Summit County is without authority to usurp the employment authority of the Summit County Court of Common Pleas, probate division.

The judiciary is one area where the power of local self-government has been constitutionally limited. 1980 Op. Att'y Gen. No. 80-014. Ohio Const. art. IV, §1 provides "the judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law." Specifically germane to your request is Ohio Const. art. IV, §4(C) which provides:

> Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. *The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts*.

Since the Ohio Constitution allows only judges of the probate division of the court of common pleas to employ and control employees of the probate division, Summit County may not achieve a contrary result by charter amendment. *See generally, Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923). Regardless of the provisions of the Summit County Charter or rules adopted

thereunder, the County Executive, through the Human Resource Commission, may not establish personnel policy or make personnel decisions for the probate division of the Summit County Court of Common Pleas.

The same conclusion results from an application of the statewide concern doctrine. The statewide concern doctrine is premised on the notion that home rule powers relate solely to the internal affairs of a municipality and may not extend to matters of general and statewide concern. The local enactment may not have extra-territorial effect or be contrary to constitutional or legislative enactments that manifest a genuine concern for statewide uniformity. *State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 431 N.E.2d 311 (1982); *Village of Beachwood v. Bd. of Elections*, 167 Ohio St. 369, 148 N.E.2d 921 (1958). As stated by the Ohio Supreme Court in *Cleveland Electric Illuminating Co. v. Painesville*, 15 Ohio St. 2d 125, 129, 239 N.E.2d 75, 78 (1968):

> Thus, even if there is a matter of local concern involved, if the regulation of the subject matter effects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest.

The Ohio Supreme Court has expressly held that the administration and operation of a system of courts is a matter of state sovereignty. In *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929), the court held in the syllabus as follows:

1. The sovereignty of the state with respect to its courts extends over all the state, including municipalities, whether governed by charter or general laws.

2. None of the various provisions of Article XVIII of the Constitution of Ohio are effective to abridge the sovereignty of the state over municipalities in respect to its courts.

The efficient and consistent application of the rule of law is of paramount statewide importance. Courts must be able to operate the affairs of legal administration in a manner that is consistent from county to county. The ability of a probate court to employ trusted people, capable of carrying out the proper administration of justice is essential to the uniform and consistent operation of all courts throughout the state. Piecemeal court operation is inconsistent with the overriding concern for statewide uniformity of judicial administration as an exercise of state sovereignty.

In addition to Ohio Const. art. X, §3, the General Assembly has expressed concern for statewide uniformity of court staffing with the enactment of R.C. 2101.11(A)(1) which vests authority in the probate court to appoint "deputy clerks, stenographers, a bailiff, and any other necessary employees." *See also* R.C. 2101.01 ("the probate judge shall employ and supervise all clerks, deputies, referees, and other employees of the probate division").

Consequently, personnel matters involving the probate division of a court of common pleas are matters of statewide concern that have been addressed in the Ohio Constitution and by the

General Assembly. The Summit County Charter cannot vest the County Executive with the power to do otherwise.

Therefore, it is my opinion and you are so advised, that neither the Summit County Charter nor rules adopted thereunder, may vest the County Executive, through a Human Resource Commission, with the authority to establish personnel policy or make personnel decisions for the Summit County Court of Common Pleas, probate division.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 96-043

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