

OPINION NO. 82-057**Syllabus:**

1. With regard to municipal elections, a county board of elections must observe the certification time requirements for placing municipal issues or questions, other than charter amendments, on the ballot which are set forth in the municipality's charter, rather than the certification time requirements set forth in R.C. 3501.02(F).
2. Municipal elections on charter amendments must be held in accordance with the requirements of Ohio Const. art. XVIII, §§8, 9. If there is no constitutional provision which is applicable to a particular election matter, charter requirements prevail over conflicting statutes.

To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: William J. Brown, Attorney General, July 30, 1982

I have before me your request for my opinion as to the proper time for submitting issues to the county board of elections for placement on the ballot. You note in your letter of request that R.C. 3501.02(F), which was recently amended,¹ now requires any question or issue, except a candidacy, which is to be voted upon at an election, to be certified to the board of elections for placement on the ballot at least seventy-five days before the election. You have informed me that section 136 of the charter of Akron, which reflects the language of R.C. 3501.02(F) as it read prior to its amendment, requires questions to be presented to the county board of elections at least sixty days prior to the day of election. The county board of elections has the duty to "[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers." R.C. 3501.11(K). See Wiss v. Cuyahoga County Board of Elections, 61 Ohio St. 2d 298, 401 N.E.2d 445 (1980); State ex rel. Kennedy v. Cuyahoga County Board of Elections, 46 Ohio St. 2d 37, 346 N.E.2d 283 (1976); State ex rel. Ehring v. Bliss, 155 Ohio St. 99, 97 N.E.2d 671 (1951); State ex rel. Behrens v. Board of Elections of Hamilton County, 74 Ohio App. 295, 58 N.E.2d 793 (Hamilton County 1943). Thus, in order to properly perform its statutory duties, the board of elections must be advised as to whether Akron's charter or R.C. 3501.02(F) governs the certification deadline for municipal questions or issues to be voted upon at the next election.

Your specific questions are as follows:

1. With respect to non-charter amendment issues or questions, is the Summit County Board of Elections bound by the filing time requirements of R.C. 3501.02(F) or should conflicting charter filing time requirements be observed?
2. With respect to charter amendment issues, is the Summit County Board of Elections bound by the filing time requirements of R.C. 3501.02(F) or should conflicting charter filing time requirements be observed?

It is well-established that a municipality which has adopted a charter is constitutionally empowered to regulate matters of procedural, as well as

¹R.C. 3501.02(F) was amended by Am. Sub. H.B. 1062, 113th Gen. A. (1979-80) (eff. March 23, 1981) to change the filing deadline for issues to be voted upon at the next election from sixty days before the election to seventy-five days before the election. Am. Sub. H.B. 235, 114th Gen. A. (1981-82) (eff. Jan. 1, 1982), which was mentioned in your opinion request, did not affect division (F) of R.C. 3501.02.

substantive, local self-government, even though such regulation is at variance with state statute. Ohio Const. art. XVIII, §§ 3, 7. See Benevolent Association v. Parma, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980); Mulcahy v. City of Akron, 27 Ohio App. 442, 161 N.E. 542 (Summit County 1924), aff'd, 111 Ohio St. 836, 146 N.E. 316 (1924). Indeed, "[i]t was contemplated by the framers of the [Home Rule] amendment to the constitution that the provisions in a charter, adopted by a city, would differ from the general laws of the state, within the limits defined by the constitution. The object of the amendment was to permit such differences, and to make them effective." Billings v. Cleveland Ry. Co., 92 Ohio St. 478, 484, 111 N.E. 155, 156 (1915). More specifically, the regulation and supervision of municipal elections has been held to be a matter of local self-government, over which a charter municipality has full authority and control. State ex rel. Taylor v. French, 96 Ohio St. 172, 117 N.E. 173 (1917); Fitzgerald v. City of Cleveland, 88 Ohio St. 338, 103 N.E. 512 (1913); State ex rel. Rose v. Ryan, 119 Ohio App. 363, 200 N.E.2d 668 (Franklin County 1963). See State ex rel. Automatic Registering Machine Co. v. Green, 121 Ohio St. 301, 168 N.E. 131 (1929).

Ohio case law is replete with examples of municipal charter provisions regulating election matters which have been found to be controlling, as to municipal elections, over conflicting state statutes. Without intending to be exclusive in its enumeration, the court stated in State ex rel. Rose v. Ryan:

Thus, a charter can prescribe the qualifications of electors and candidates, the time of holding the municipal election, and the method, manner and procedure for conducting such elections. . . . [T]he . . . Charter may establish specifications as to the form, make-up and format of the ballot for its municipal offices, and such specifications control over any provisions of state statutes to the contrary.

119 Ohio App. at 370, 200 N.E.2d 674. More examples may be found in: State ex rel. Taylor v. French (holding that a city, through its charter, could permit women to vote in municipal elections, even though at the time women were not permitted to vote in state and national elections); Fitzgerald v. City of Cleveland (holding that a city could provide in its charter a method of nominating candidates for elective offices different from the method provided for by state law); State ex rel. Horvath v. Haber, 102 Ohio App. 425, 128 N.E.2d 865 (Cuyahoga County 1955) (holding that a charter providing for nonpartisan primary elections prevailed over state law requiring primaries to be partisan); City of Dayton v. Horstman, 77 Ohio L. Abs. 570, 143 N.E.2d 879 (C.P. Montgomery County 1957) (holding that a charter city had the right to prohibit write-in votes).

In addition, it has been specifically held that municipal charters which specify a filing deadline for nominating petitions control over conflicting state statutes. State ex rel. Haffner v. Green, 160 Ohio St. 189, 115 N.E.2d 154 (1953); State ex rel. Stanley v. Bernon, 127 Ohio St. 204, 187 N.E. 733 (1933). The fact that your question involves the deadline for municipal issues or questions, rather than candidates, is not significant. Municipal issues and questions are no less matters of local self-government.

In answer to your first question, it is, therefore, my opinion that with regard to the certification of municipal issues or questions other than charter amendments, the county board of elections must observe the sixty day requirement set forth in the municipality's charter, rather than the seventy-five day requirement set forth in R.C. 3501.02(F). If the city of Akron wishes for its charter to remain in accord with R.C. 3501.02(F), its charter must be amended through the appropriate procedures.

I wish to emphasize that the foregoing discussion pertains only to municipal elections in charter municipalities. County and state elections are not a matter of municipal self-government, and municipalities have no power to prescribe regulations for the control of such elections. See State ex rel. Automatic Registering Machine Co. v. Green; State ex rel. Taylor v. French. Thus, R.C.

3501.02(F) is controlling as to non-municipal elections as well as to municipal elections in municipalities that have no charter or no charter provision fixing a contrary certification deadline. See State ex rel. Haffner v. Green; State ex rel. Rose v. Ryan.

In your second question, you ask whether a county board of elections is bound by R.C. 3501.02(F) or by conflicting charter provisions, with regard to charter amendment issues. As discussed above, charter provisions prevail over conflicting statutes with regard to matters of local self-government, such as municipal elections. However, an additional factor to be considered in answering your question is that the Ohio Constitution directly addresses the process of amending city charters.

Ohio Const. art. XVIII, §9, states in part:

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission. . . .

Section 8 of art. XVIII provides for the submission of the issue to the electors by ordinance, and states:

[t]he ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid.

Sections 8 and 9 have been interpreted as imposing a mandatory and exclusive duty on the municipality's legislative authority to determine the validity of a petition calling for a charter amendment, and if the petition is found sufficient, to submit the question to the electors within the specified time frame. State ex rel. Polcyn v. Burkhardt, 33 Ohio St. 2d 7, 292 N.E.2d 883 (1973); State ex rel. Blackwell v. Bachrach, 166 Ohio St. 301, 143 N.E.2d 127 (1957); State ex rel. Hinchliffe v. Gibbons. These duties must be exercised by the municipal council, rather than by the county board of elections. State ex rel. Polcyn v. Burkhardt; State ex rel. Blackwell v. Bachrach; State ex rel. Hinchliffe v. Gibbons. Once the petition's validity is determined, the legislative authority must enact an ordinance providing for the submission of the question to the electors not less than 60 days nor more than 120 days after the ordinance's passage, and then certify the proposed amendment to the board of elections for placement on the ballot. See State ex rel. Summergrade v. Rees, 102 Ohio App. 335, 132 N.E.2d 645 (Cuyahoga County 1956). See also State ex rel. Madison v. Cotner, 66 Ohio St. 2d 448, 423 N.E.2d 72 (1981). The action of council in submitting the amendment to the board of elections is administrative in nature, State ex rel. Rosch v. Cuyahoga County Board of Elections, and the board has a mandatory duty to submit the question to the voters after it has been determined that the procedural requirements of art. XVIII, §§8, 9 as well as statutory and local requirements have been met. See State ex rel. McGovern v. Board of Elections, 24 Ohio Misc. 135, 263 N.E.2d 586 (C.P. Cuyahoga County 1970); 1965 Op. Att'y Gen. No. 65-112.

Turning to your question concerning R.C. 3501.02(F), I find that this section is not applicable to the certification of charter amendment questions. R.C. 3501.02(F) requires "any question or issue, except a candidacy" to be certified to the board of elections at least seventy-five days before the election. As used in R.C. 3501.02(F), "question or issue" means "any question or issue certified in accordance with the Revised Code for placement on an official ballot at general or

special election to be held in this state." (Emphasis added.) R.C. 3501.01(M). Charter amendment questions are not certified in accordance with the Revised Code. As set forth above, the Constitution provides the exclusive method whereby a charter amendment question is submitted to the electors. Thus, by its own terms, R.C. 3501.02(F) is not applicable to the certification of an ordinance providing for a charter amendment to the county board of elections for placement on the ballot. As a practical matter, it may be observed that, because it is the responsibility of the municipal legislative authority, rather than the county board of elections, to ascertain the validity of a petition calling for a charter election, less time would be necessary for the board of elections to fulfill its responsibilities with regard to placing a charter amendment question on the ballot than with regard to other types of issues.

Moreover, even if R.C. 3501.02(F) were applicable by its terms, it could not constitutionally be applied to charter amendment questions. The procedural requirements set out in sections 8 and 9 for submitting charter amendment questions to the electors may not be varied by general or local law. See State ex rel. Hinchliffe v. Gibbons, 116 Ohio St. 390, 158 N.E. 455 (1927); Payne v. State ex rel. Guitteau, 32 Ohio App. 189, 166 N.E. 907 (Lucas County 1928). See generally 1972 Op. Att'y Gen. No. 72-001. These sections of the Constitution require that a charter amendment question must be submitted to the electors not less than 60 days nor more than 120 days after the passage of the legislative authority's ordinance providing for the submission of the question. If there is no general election occurring within that time, a special election must be held.

The crucial consideration before the board of elections with respect to a charter amendment question is the date of the passage of the ordinance providing for the submission of the question. Once the ordinance is passed, the board must insure that the question is voted upon within the time set forth in §8 of art. XVIII. Under the constitutional scheme, the date of certification to the board of elections is irrelevant. As long as the requirements of sections 8 and 9 are met, the amendment question must be put before the electors regardless of when it is certified to the board of elections. Because the state Constitution prevails over conflicting general and local law, neither the General Assembly nor the legislative authority or electors of a municipality may pass an enactment concerning certification to the board of elections, or any other matter, which would prevent the question from being voted upon if properly submitted under the Constitution. I note, however, that procedural matters relating to charter amendment questions that are not addressed by the Constitution may be regulated by municipal charter or state statute. See State ex rel. Rosch v. Cuyahoga County Board of Elections, 42 Ohio St. 2d 364, 328 N.E.2d 793 (1975); State ex rel. Poor v. Addison, 132 Ohio St. 477, 9 N.E.2d 148 (1937).

Thus, in answer to your second question, neither R.C. 3501.02(F) nor a charter provision which is similar in language to R.C. 3501.02(F) may properly be applied to charter amendment questions.

In conclusion, it is my opinion, and you are advised, that:

1. With regard to municipal elections, a county board of elections must observe the certification time requirements for placing municipal issues or questions, other than charter amendments, on the ballot which are set forth in the municipality's charter, rather than the certification time requirements set forth in R.C. 3501.02(F).
2. Municipal elections on charter amendment questions must be held in accordance with the requirements of Ohio Const. art. XVIII, §§8, 9. If there is no constitutional provision which is applicable to a particular election matter, charter requirements prevail over conflicting statutes.