

OPINION NO. 2013-009**Syllabus:**

2013-009

R.C. 1901.31(A)(1)(h), rather than Chapter III, §§ 16 and 25 of the Toledo Municipal Charter, governs the manner in which a person may be nominated as a candidate for the office of clerk of the Toledo Municipal Court.

To: Julia R. Bates, Lucas County Prosecuting Attorney, Toledo, Ohio

By: Michael DeWine, Ohio Attorney General, March 26, 2013

You have requested an opinion about the authority of the City of Toledo to establish procedures for nominating candidates for public office. You have informed us that R.C. 1901.31(A)(1)(h) and Chapter III, §§ 16 and 25 of the Toledo Municipal Charter establish conflicting procedures for nominating a candidate for the office of clerk of the Toledo Municipal Court. In light of these conflicting procedures, you ask whether R.C. 1901.31(A)(1)(h) or Chapter III, §§ 16 and 25 of the Toledo Municipal Charter governs the manner in which a person may be nominated as a candidate for the office of clerk of the Toledo Municipal Court.

Nominating Candidates for the Office of Municipal Court Clerk under R.C. 1901.31

R.C. 1901.31 provides various procedures for selecting a person to serve as the clerk of a municipal court.¹ The statute sets forth a prescribed method for nominating and selecting a person to serve as the clerk of a municipal court when the population of the territory served by the court equals or exceeds 100,000 at the regular municipal election immediately preceding the expiration of the term of the present clerk and when such population is less than 100,000.² R.C. 1901.31(A). The statute also exempts certain municipal courts from these procedures and, instead, prescribes specific procedures for selecting a person to serve as the court's clerk. *Id.*

¹ As your question does not concern filling the office of clerk of the Toledo Municipal Court when a vacancy occurs, we will not discuss the statutory procedures for filling a vacancy in that office. *See, e.g.*, R.C. 1901.31(B) (procedures for filling the office of clerk of a municipal court when a vacancy occurs “in the office of the clerk of a municipal court for which the population of the territory equals or exceeds [100,000]”).

² R.C. 1901.31(A)(1)(a) provides that, when the population of the territory served by a municipal court equals or exceeds 100,000 at the regular municipal election immediately preceding the expiration of the term of the present clerk, the clerk is “nominated and elected by the qualified electors of the territory in the manner that is provided for the nomination and election of judges in [R.C. 1901.07]” unless R.C. 1901.31 provides otherwise. R.C. 1901.31(A)(2)(a) states further that, except in certain municipal courts, “in a municipal court for which the population of the territory is less than [100,000], the clerk shall be appointed by the court.”

With respect to the Toledo Municipal Court, R.C. 1901.31(A)(1)(h) provides as follows:³

Except as otherwise provided in division (A)(1)(h) of [R.C. 1901.31], in the Toledo municipal court, candidates for election to the office of clerk of the court *shall be nominated by primary election*.⁴ The *primary election* shall be held on the day specified in the charter of the city of Toledo for the nomination of municipal officers. Notwithstanding any contrary provision of [R.C. 3513.05 or R.C. 3513.257], the declarations of candidacy and petitions of *partisan candidates* and the nominating petitions of independent candidates for the office of clerk of the Toledo municipal court shall be signed by at least fifty qualified electors of the territory of the court.

The candidates shall file a declaration of candidacy and petition, or a nominating petition, whichever is applicable, not later than four p.m. of the ninetieth day before the day of the *primary election*, in the form prescribed by [R.C. 3513.07 or R.C. 3513.261]. The declaration of candidacy and petition, or the nominating petition, shall conform to the applicable requirements of [R.C. 3513.05 or R.C. 3513.257]. (Footnote and emphasis added.)

Under R.C. 1901.31(A)(1)(h), a candidate for the office of clerk of the Toledo Municipal Court may be nominated by primary election. As used in R.C. 1901.31, a “primary election” is “an election held for the purpose of nominating persons as candidates of political parties for election to” the office of municipal court clerk. R.C. 3501.01(E)(1); *see also* R.C. 3501.01(K) (as used in the statutes of

³ In 2000, the General Assembly amended R.C. 1901.31 to provide for the nomination of a candidate for the office of clerk of the Toledo Municipal Court at a primary election. 1999-2000 Ohio Laws, Part III, 6318, 6322-23 (Sub. H.B. 559, eff. Sept. 21, 2000).

⁴ R.C. 1901.31(A)(1)(h) states that, “[i]f no valid declaration of candidacy and petition is filed by any person for nomination as a candidate of a particular political party for election to the office of clerk of the Toledo municipal court, a primary election shall not be held for the purpose of nominating a candidate of that party for election to that office.” R.C. 1901.31(A)(1)(h) also sets forth the procedures for nominating a person as a political party’s candidate for the office of clerk of the Toledo Municipal Court without a primary election:

If only one person files a valid declaration of candidacy and petition for nomination as a candidate of a particular political party for election to [the office of clerk of the Toledo municipal court], a primary election shall not be held for the purpose of nominating a candidate of that party for election to that office, and the candidate shall be issued a certificate of nomination in the manner set forth in [R.C. 3513.02].

the Revised Code relating to elections, a “party candidate” is a “candidate who claims to be a member of a political party, whose name has been certified on the office-type ballot at a general or special election through the filing of a declaration of candidacy and petition of candidate, and who has won the primary election of the candidate’s party for the public office the candidate seeks or is selected by party committee in accordance with [R.C. 3513.31]”); 1996 Op. Att’y Gen. No. 96-035 at 2-137 (“[a] primary election is held for nomination of candidates by political parties”).

Further, the language of R.C. 1901.31(A)(1)(h) reveals that the primary election used to nominate candidates for the office of clerk of the Toledo Municipal Court is partisan in nature, rather than nonpartisan. The statute states that, notwithstanding any contrary provision of R.C. 3513.05, “the declarations of candidacy and petitions of *partisan candidates* . . . for the office of clerk of the Toledo municipal court shall be signed by at least fifty qualified electors of the territory of the court.” (Emphasis added.) *See generally* R.C. 3513.05 (“[e]ach person desiring to become a candidate for a party nomination . . . shall, not later than four p.m. of the ninetieth day before the day of the primary election, file a declaration of candidacy and petition and pay the fees required under divisions (A) and (B) of [R.C. 3513.10]”); R.C. 3513.07 (setting forth “[t]he form of declaration of candidacy and petition of a person desiring to be a candidate for a party nomination” at a primary election). R.C. 1901.31(A)(1)(h) thus explicitly permits (1) a candidate for the office of clerk of the Toledo Municipal Court to be nominated by a party at a primary election and (2) the name of a candidate for that office to appear on a partisan ballot in a primary election.

Nominating Candidates for the Office of Clerk of the Toledo Municipal Court under the Toledo Municipal Charter

Like R.C. 1901.31(A)(1)(h), Chapter III of the Toledo Municipal Charter establishes procedures for nominating a candidate for the office of clerk of the Toledo Municipal Court. Under the charter, the election of city officers shall be conducted in accordance with “the provisions of the general laws of the State . . . except as provision is otherwise made by this Charter.” Toledo Municipal Charter, Chapter III, § 11. The charter then proceeds to state that “[t]he mode of nomination and election for Clerk of Municipal Court . . . shall be in the manner provided by statute for the nomination and election of judges of the Municipal Court of the City of Toledo.” Toledo Municipal Charter, Chapter III, § 25. For purposes of the Toledo Municipal Charter, the term “statute” means “the general law of Ohio.” Toledo Municipal Charter, Chapter I, § 6. Accordingly, under the charter, the procedures for nominating a candidate for the office of clerk of the Toledo Municipal Court are the same as the procedures established in the Revised Code for nominating a candidate for Toledo Municipal Court judge. *See generally State ex rel. Rose v. Ryan*, 119 Ohio App. 363, 370, 200 N.E.2d 668 (Franklin County 1963) (“a charter can, and in practice many do, adopt and incorporate substantial portions of the state statutes. Under those circumstances, the statute becomes a part of the charter. As applied to municipal affairs, the statute then derives its efficacy as law

from the charter and not from the authority of the General Assembly” (citation omitted)).

R.C. 1901.07(C)(2) provides that, notwithstanding R.C. 1901.07(A)-(B),⁵ “[i]n the Toledo municipal court, the judges shall be nominated only by petition.” See generally R.C. 3513.261 (setting forth the form of a nominating petition and statement of candidacy and the procedures for filing the petition and statement). This means that, under the charter, a candidate for the office of clerk of the Toledo Municipal Court may be nominated only by petition. See Toledo Municipal Charter, Chapter III, § 25; see also R.C. 1901.07(C)(2).

In addition, Chapter III, § 16 of the Toledo Municipal Charter provides that “[n]o ballot used at any City election shall have printed thereon any party or political designation, emblem or mark of any kind or character, and there shall not be appended to the name of any candidate any such party or political designation or mark or anything showing how the candidate is nominated, or indicating the candidate’s views or opinions on any matter.” The purpose of this charter provision is to prohibit the use of partisan ballots in elections and ballots that identify a candidate as being nominated by a political party. Hence, in accordance with Chapter III, § 16 of the Toledo Municipal Charter, ballots used in past elections to elect a person to the office of clerk of the Toledo Municipal Court have not been partisan or identified a candidate as being nominated by a political party.

Conflicting Language of R.C. 1901.31(A)(1)(h) and Chapter III, §§ 16 and 25 of the Toledo Municipal Charter

A comparison of R.C. 1901.31(A)(1)(h) and Chapter III, §§ 16 and 25 of the Toledo Municipal Charter discloses that the statute and the charter provisions are in conflict. First, R.C. 1901.31(A)(1)(h) permits a candidate for the office of clerk of the Toledo Municipal Court to be nominated by petition or primary election. Chapter III, § 25 of the Toledo Municipal Charter, however, requires the candidates for that office to be nominated only by petition. Because R.C. 1901.31(A)(1)(h) authorizes a candidate to be nominated by primary election and Chapter III, § 25 of the Toledo Municipal Charter prohibits a candidate from being nominated by primary election, there is a conflict between the statute and charter provision. See generally *City of Lorain v. Tomasic*, 59 Ohio St. 2d 1, 4, 391 N.E.2d 726 (1979) (a conflict exists when a municipal ordinance forbids and prohibits what a statute permits and licenses); *Vill. of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph 2) (the standard rule for determining whether there is a conflict between a statute and local provision is whether the local provision “permits or licenses that which the statute forbids and prohibits, and vice versa”).

The second conflict exists because R.C. 1901.31(A)(1)(h) permits a candidate for the office of clerk of the Toledo Municipal Court to appear on a partisan ballot in a primary election. As stated previously, Chapter III, § 16 of the Toledo Municipal Charter prohibits the use of partisan ballots in elections. Again,

⁵ R.C. 1901.07(A)-(B) provide the general procedures for nominating and selecting municipal court judges.

R.C. 1901.31(A)(1)(h) permits something—the use of partisan ballots—that a charter provision, Toledo Municipal Charter, Chapter III, § 16, prohibits, and so, there is a conflict between the statute and charter provision. *See City of Lorain v. Tomasic*, 59 Ohio St. 2d at 4; *Vill. of Struthers v. Sokol*, 108 Ohio St. 263 (syllabus, paragraph 2).

R.C. 1901.31(A)(1)(h) and Chapter III, §§ 16 and 25 of the Toledo Municipal Charter thus establish conflicting procedures for nominating a candidate for the office of clerk of the Toledo Municipal Court. To determine whether the provisions of the statute or municipal charter apply, it is necessary to consider the constitutional home-rule powers of a municipal corporation and the manner in which those powers have been interpreted and applied by Ohio courts.

Exercise of Powers of Local Self-Government by a Municipal Corporation

The home-rule powers of a municipal corporation that has adopted a charter are set forth in Article XVIII, §§ 3 and 7 of the Ohio Constitution.⁶ *See generally* 1980 Op. Att’y Gen. No. 80-014 at 2-66 (Article XVIII, § 3 of the Ohio Constitution “is commonly known as the Home Rule Amendment of the constitution”). Under Article XVIII, § 7 of the Ohio Constitution, “[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, *exercise thereunder all powers of local self-government.*” (Emphasis added.) Article XVIII, § 3 of the Ohio Constitution, which is specifically referenced in Article XVIII, § 7 of the Ohio Constitution, declares further that “[m]unicipalities shall have authority to *exercise all powers of local self-government* and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” (Emphasis added.)

These constitutional provisions empower a municipal corporation that has adopted a charter “to regulate matters of procedural, as well as substantive, local self-government, even though such regulation is at variance with state statute.” 1982 Op. Att’y Gen. No. 82-057 at 2-166 and 2-167; *see State ex rel. Regetz v. Cleveland Civil Serv. Comm’n*, 72 Ohio St. 3d 167, 648 N.E.2d 495 (1995); *State ex rel. Lightfield v. Vill. of Indian Hill*, 69 Ohio St. 3d 441, 442, 633 N.E.2d 524 (1994); *State ex rel. Bednar v. City of North Canton*, 69 Ohio St. 3d 278, 280, 631 N.E.2d 621 (1994); *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 524 N.E.2d 447 (1988). As explained in *Billings v. Cleveland Ry. Co.*, 92 Ohio St. 478, 484, 111 N.E. 155 (1915), “[i]t was contemplated by the framers of [Article XVIII, § 7 of the Ohio Constitution] that the provisions in a charter, adopted by a [municipal corporation], would differ from the general laws of the state, within the limits defined by the constitution. The object of the [constitutional provision] was to permit such differences and to make them effective.” *Accord* 1982 Op. Att’y Gen.

⁶ The term “municipal corporation,” as used in the Ohio Constitution and Revised Code, means cities and villages. *See* Ohio Const. art. XVIII, § 1; R.C. 703.01.

No. 82-057 at 2-167; see *State ex rel. Regetz v. Cleveland Civil Serv. Comm'n*; *State ex rel. Lightfield v. Vill. of Indian Hill*; *State ex rel. Bednar v. City of North Canton*; *State ex rel. Bardo v. City of Lyndhurst*.

It is further settled in Ohio that “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.” 1982 Op. Att’y Gen. No. 82-057 at 2-167; accord *State ex rel. Automatic Registering Mach. Co. v. Green*, 121 Ohio St. 301, 168 N.E. 131 (1929); *State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. 339, 126 N.E. 309 (1919); *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. Froelich v. Montgomery Cty. Bd. of Elections*, 65 Ohio App. 2d 23, 413 N.E.2d 854 (Montgomery County 1979); *State ex rel. Horvath v. Haber*, 102 Ohio App. 425, 128 N.E.2d 865 (Cuyahoga County 1955). This means that a municipal corporation has the power to set forth the procedures for nominating and selecting “purely municipal officers,” and such procedures prevail over procedures established by statute.⁷ *State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. at 339 (syllabus, paragraph 1); see *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) (syllabus, paragraph 3); *State ex rel. Horvath v. Haber*. See generally 1982 Op. Att’y Gen. No. 82-057 at 2-167 and 2-168 (charter provisions establishing procedures for nominating and selecting public officers prevail over conflicting procedures prescribed by statute “only [in] municipal elections in charter municipalities.” In “non-municipal elections” state law procedures apply rather than local procedures); 1939 Op. Att’y Gen. No. 1202, vol. II, p. 1763, at 1767 (if the “judges of the municipal court of Cleveland are municipal officers, it would follow that the Cleveland charter could prescribe the manner of their selection”).

However, to prevail over procedures established by the General Assembly, a municipal corporation’s exercise of its power of local self-government in enacting procedures for nominating and selecting municipal officers must be done within the limits prescribed in the Ohio Constitution. See *State ex rel. City of Bedford v. Bd. of Elections of Cuyahoga Cty.*, 62 Ohio St. 3d 17, 19, 577 N.E.2d 645 (1991); *Fenton v. Enaharo*, 31 Ohio St. 3d 69, 71, 509 N.E.2d 67 (1987); *State ex rel. Kohl v. Dunipace*, 56 Ohio St. 2d 120, 121, 382 N.E.2d 1358 (1978); *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968) (syllabus, paragraph 1); *Fitzgerald v. City of Cleveland*, 88 Ohio St. 338 (syllabus, paragraph 1); *Blauvelt v. City of Hamilton*, 2009-Ohio-2801, 2009 Ohio App. LEXIS 2355, ¶24 (Butler County June

⁷ For most purposes, the weight of authority favors classifying a clerk of a municipal court as a municipal officer. See 1992 Op. Att’y Gen. No. 92-070 at 2-293 through 2-295 (discussing in depth the cases and prior opinions of the Attorney General that have considered whether the judges and clerks of municipal courts are municipal officers). See generally 1990 Op. Att’y Gen. No. 90-110 at 2-489 (“municipal courts are not susceptible of uniform identification as entities of the state or one of its political subdivisions”).

15, 2009); 1996 Op. Att’y Gen. No. 96-043 at 2-162 and 2-163; 1994 Op. Att’y Gen. No. 94-095 at 2-469 and 2-470. One limitation imposed upon municipal corporations by Article XVIII, §§ 3 and 7 of the Ohio Constitution is that a charter provision may not have extraterritorial effect to be a valid exercise of the power of local self-government.⁸ See *State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 90, 431 N.E.2d 311 (1982); *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 66, 337 N.E.2d 766 (1975); *Vill. of Beachwood v. Bd. of Elections of Cuyahoga Cty.*, 167 Ohio St. 369, 370-71, 148 N.E.2d 921 (1958); *State ex rel. Taylor v. French*, 96 Ohio St. at 184; *State ex rel. Horvath v. Bd. of Elections of Cuyahoga Cty.*, 102 Ohio App. at 428; 1996 Op. Att’y Gen. No. 96-043 at 2-163 and 2-164. See generally *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 80 N.E.2d 769 (1948) (syllabus, paragraph 2) (“[t]he wisdom or desirability of the provisions of a municipal charter, adopted pursuant to Section 7, Article XVIII of the Constitution, so far as such provisions are of a strictly local nature and not in conflict with the general laws of the state, is not a subject for judicial inquiry”); 1994 Op. Att’y Gen. No. 94-095 at 2-470 (“[m]atters that are of ‘general and statewide concern,’ . . . are not encompassed within the field of local self-government”).

In explaining the history and purpose of Article XVIII, §§ 3 and 7 of the Ohio Constitution, the Ohio Supreme Court has stated:

Shortly after the adoption of [Article XVIII, §§ 3 and 7 of the Ohio Constitution], in the first of a long series of cases interpreting them, Chief Justice Shauck in *State, ex rel. City of Toledo, v. Lynch, Aud.*, 88 Ohio St., 71, 102 N.E., 670, 48 L.R.A. (N.S.), 720, Ann. Cas. 1914D, 949, made the basic definition of the meaning of the phrase, “all powers of local self-government,” when in the course of his opinion he said, “They are such powers of government as, in view of their nature and the field of their operation, are local and municipal in character.”

Over the course of the more than 45 years since the adoption of [Article XVIII, §§ 3 and 7 of the Ohio Constitution], with the above basic definition as a foundation, the extent of the power of local self-government in municipalities has been established.

The power of local self-government granted to municipalities by Article XVIII relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of statute conferring a broader power, municipal legislation must be confined to that area. Where a proceeding is such that it affects not only the municipality itself but the surrounding territory beyond its boundaries, such proceed-

⁸ In the context of the power of local self-government, a municipal corporation charter provision has an extraterritorial effect when it may be applied to land or persons located outside of the municipal corporation. See *State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 90, 431 N.E.2d 311 (1982); *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 66, 337 N.E.2d 766 (1975); *Vill. of Beachwood v. Bd. of Elections of Cuyahoga Cty.*, 167 Ohio St. 369, 370-71, 148 N.E.2d 921 (1958).

ing is no longer one which falls within the sphere of local self-government but is one which must be governed by the general law of the state.

To determine whether legislation is such as falls within the area of local self-government, the result of such legislation or the result of the proceedings thereunder must be considered. *If the result affects only the municipality itself, with no extraterritorial effects, the subject is clearly within the power of local self-government and is a matter for the determination of the municipality. However, if the result is not so confined it becomes a matter for the General Assembly.* (Emphasis added and citation omitted.)

Vill. of Beachwood v. Bd. of Elections of Cuyahoga Cty., 167 Ohio St. at 370-71.

Accordingly, if Chapter III, §§ 16 and 25 of the Toledo Municipal Charter affect only the City of Toledo, these charter provisions are a valid exercise of local self-government and prevail over conflicting state law. Conversely, if the charter provisions have extraterritorial effect, the provisions are not a valid exercise of local self-government and must yield to general state law.

Establishment of the Toledo Municipal Court

Article IV, § 1 of the Ohio Constitution declares that “[t]he 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.” Pursuant to this grant of authority, the General Assembly “has the power to create Municipal Courts and to provide for their maintenance and employees.” *State ex rel. Huppert v. Sparma*, 9 Ohio App. 2d 30, 32, 222 N.E.2d 798 (Stark County 1966); *see State ex rel. Cherrington v. Hutsinpillar*, 112 Ohio St. 468, 147 N.E. 647 (1925); 1980 Op. Att’y Gen. No. 80-014 at 2-66. *See generally State ex rel. Stanley v. Bernon*, 127 Ohio St. 204 (syllabus, paragraph 2) (“[m]unicipalities of this state have no power, by charter or otherwise, to create courts”).

In R.C. 1901.01 and R.C. 1901.02 the General Assembly has established the Toledo Municipal Court and set out its jurisdiction. The jurisdiction of the court includes the territory within the corporate limits of the City of Toledo. R.C. 1901.02(A). Additionally, R.C. 1901.02(B) states that “[t]he Toledo municipal court has jurisdiction within Washington township, and within the municipal corporation of Ottawa Hills, in Lucas county.”⁹ *See generally* 1990 Op. Att’y Gen. No. 90-110 at 2-486 (“R.C. 1901.02(B) gives certain municipal courts territorial jurisdiction beyond the municipality in which the court is located, some having jurisdiction within an entire county, some with jurisdiction in portions of more than one county, others with jurisdictions covering a variety of combinations of

⁹ In 1963 the General Assembly amended R.C. 1901.02 to include territory outside of the corporate limits of the City of Toledo within the jurisdiction of the Toledo Municipal Court. 1963 Ohio Laws 591 (Am. Sub. H.B. 266, eff. July 11, 1963).

municipalities and townships within a single county”). The territorial jurisdiction of the Toledo Municipal Court thus extends beyond the corporate limits of the City of Toledo.

In its territorial jurisdiction, a municipal court has subject matter jurisdiction over the civil, criminal, and traffic matters described in R.C. 1901.18 and R.C. 1901.20. In other words, the court is “established to administer justice within the territorial limits set out in” R.C. 1901.02. *Gibson v. Summers Constr. Co.*, 96 Ohio App. 307, 312, 119 N.E.2d 637 (Cuyahoga County 1954), *aff’d*, 163 Ohio St. 220, 126 N.E.2d 326 (1955). And, to do this, the judges and clerk of a municipal court may exercise their authority throughout the entire territory of the court.

If the territorial jurisdiction of a municipal court is coterminous with the geographical boundaries of the municipal corporation in which the court is located, the court’s clerk may exercise his authority only within the geographical boundaries of the municipal corporation. However, if the territorial jurisdiction of a municipal court extends beyond the geographical boundaries of the municipal corporation in which the court is located, the authority of the court’s clerk is extended beyond the geographical boundaries of the municipal corporation. As the territorial jurisdiction of the Toledo Municipal Court extends beyond the corporate limits of the City of Toledo, the clerk of the court may exercise his authority outside the geographic boundaries of the city.

The extension of the territorial jurisdiction of the Toledo Municipal Court beyond the geographic boundaries of the City of Toledo also affects who is eligible to vote in municipal court elections. The judges and clerk of the Toledo Municipal Court are elected by the qualified electors of the *entire* territory of the court. *See* R.C. 1901.06; R.C. 1901.08; R.C. 1901.31(A). Consequently, qualified electors within the corporate boundaries of the City of Toledo and territory outside of the city may participate in the election of the clerk of the Toledo Municipal Court. For example, pursuant to R.C. 1901.02(B) and R.C. 1901.31(A), qualified electors “within the municipal corporation of Ottawa Hills, in Lucas county,” while not qualified electors within the City of Toledo, may participate in the election of the clerk of the Toledo Municipal Court.

Given that the election of the clerk of the Toledo Municipal Court affects a public office that exercises authority outside the City of Toledo and qualified electors from territory outside the City of Toledo may participate in the election of the clerk, the election of the clerk is not a matter that is limited to the City of Toledo. Rather, the election affects territory that is outside of the corporate limits of the City of Toledo. For this reason, the local self-government power of the City of Toledo does not extend to providing procedures in its charter for nominating a candidate for the office of clerk of the Toledo Municipal Court, as a charter provision may not have extraterritorial effect. Instead, the procedures set forth in R.C. 1901.31(A)(1)(h) apply. *See State ex rel. Automatic Registering Mach. Co. v. Green*, 121 Ohio St. at 311 (“county and state elections are not a matter of municipal concern. The Home Rule Amendment to the Constitution does not give a municipality authority to provide how elections for county and state officers shall be conducted. The mere

fact that as a matter of convenience these elections are at times united does not enhance the jurisdiction of the municipality nor extend its power beyond its own territorial limits’); 1982 Op. Att’y Gen. No. 82-057 at 2-167 (non-municipal elections, 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”). Accordingly, R.C. 1901.31(A)(1)(h), rather than Chapter III, §§ 16 and 25 of the Toledo Municipal Charter, governs the manner in which a person may be nominated as a candidate for the office of clerk of the Toledo Municipal Court.

Conclusion

On the basis of the foregoing, it is my opinion, and you are hereby advised that R.C. 1901.31(A)(1)(h), rather than Chapter III, §§ 16 and 25 of the Toledo Municipal Charter, governs the manner in which a person may be nominated as a candidate for the office of clerk of the Toledo Municipal Court.