

OPINION NO. 85-039**Syllabus:**

1. A county charter may provide for the appointment of county officers who are, under the general law of the state, elected to office.
2. A county charter may provide for the transfer of the duties, which are imposed upon an elected county officer by general law, to another county officer, regardless of whether such officer is elected or appointed under the charter, so long as the charter provides for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law.

To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985

I have before me your request for my opinion on the following questions:

1. Does Article X, Section 3 of the Ohio Constitution give Chartered County governments the power to appoint presently elected County officials? i.e., Auditor, Prosecutor, Treasurer, Clerk of Courts, Recorder, Coroner, and Engineer?
2. Can a County Charter provide for the transfer of Statutory duties from one elected official to another (i.e., eliminate Treasurer and have his duties performed by the Auditor), or from an elected official to an appointed officer (i.e., transfer Auditor's Budget Commission functions to a County finance director appointed under a County Charter)?

Ohio Const. art. X, §3 empowers the people of any county to adopt a charter and thereby increase the power of their county government. Article X, §3 reads in pertinent part as follows:

The people of any county may frame and adopt or amend a charter as provided in this article but the right of the initiative and referendum is reserved to the people of each county on all matters which such county may now or hereafter be authorized to control by legislative action. Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It 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; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. Any charter or amendment which alters the form and offices of county government or which provides for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio, or both, shall become effective if approved by a majority of the electors voting thereon. In case of conflict between the exercise of powers granted by such charter and the exercise of powers by municipalities or townships, granted by the constitution or general law, whether or not such powers are being exercised at the time of the adoption of the charter, the exercise of power by the municipality or township shall prevail. (Emphasis added.)

Summit County has adopted a charter, which provides that:

The County is responsible for the exercise within its boundaries of all powers vested in and the performance of all duties imposed upon counties and county officers by law. In addition, the County may exercise all powers specifically conferred by this Charter or incidental to powers specifically conferred by this Charter and all other powers which the Constitution and laws of Ohio now or hereafter grant to counties to exercise or do not prohibit counties from exercising, including the concurrent exercise by the County of all or any powers vested in municipalities by the Ohio Constitution or by general law. (Emphasis added.)

Summit County charter art. I, §1.0i. The Summit County charter has empowered the county to prescribe its form of government, to exercise those powers and duties granted to counties, and to exercise those powers of local self-government and police and sanitary powers granted to municipalities. See Ohio Const. art. XVIII, §3.

The charter currently provides that: "The Auditor, Treasurer, Clerk of the Court of Common Pleas, Coroner, County Engineer, Prosecuting Attorney, Recorder and Sheriff of the County shall be elected and their salaries and duties shall continue to be determined in the manner provided by general law, and they shall also perform such other duties as may be provided by ordinance or resolution of the County Council." Summit County charter art. IV, §4.0i. You wish to know whether the charter may be amended to provide that one or more of the county officers specified in art. IV, §4.0i shall be appointed or to provide for the transfer of duties from one elected officer to another or from an elected officer to an appointed officer.

As noted above, Ohio Const. art. X, §3 requires that every county charter must "provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election." Article X, §3 further requires a charter to "provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law." Article X, §3 clearly indicates that a county charter may provide whatever form of

government the people so choose. The charter shall set forth which of the county's officers shall be elected, and thus by implication, which shall be appointed or otherwise selected. Article X, §3 imposes no requirement that those county officers who are elected under the general law of the state must be elected in a charter county. Indeed the language of art. X, §3 indicates that the people of the county may choose, through their charter, which of the county officers are to be elected and which are to be appointed or otherwise selected, so long as the charter provides for the exercise of all powers and duties which are imposed upon counties and county officers by law. The manner of selecting county officers is within the discretion of the people of the county, and such discretion is not limited by the fact that the general law has provided for the election of county officers. See State ex rel. Lentz v. Edwards, 90 Ohio St. 305, 310, 107 N.E. 768, 769 (1914) ("[t]hat provisions adopted by a city [in its charter] might differ from the general laws within the limits defined was not only expected but the very purpose of the [home rule] amendment was to permit such differences and make them effective").

The proposition that a municipality organized pursuant to article XVIII of the Ohio Constitution may, through its charter, provide the manner of selecting its officers has long been established. In Fitzgerald v. City of Cleveland, 88 Ohio St. 338, 103 N.E. 512 (1913), the court upheld a charter which provided for the appointment of city officers, who under the general law were elected. The court concluded: "Under Sections 3 and 7, Article XVIII. . .municipalities are authorized to determine what officers shall administer their government, which shall be appointed and which elected," id. (syllabus, paragraph two), elaborating:

It will not be disputed that one of the powers of government is that of determining what officers shall administer the government, which ones shall be appointed and which elected, and the method of their appointment and election. These are essentials which are confronted at the very inception of any undertaking, to prepare the structure or constitution for any government. Obviously such power would be included among "all powers of local self-government," which any municipality has authority to exercise under Section 3 of Article XVIII as to any officers of such municipality, unless the election of such officers is not a matter of municipal concern, or unless such power has been excepted in some manner from those granted.

Id., 88 Ohio St. at 344-45, 103 N.E. at 514. Accord State ex rel. Hackley v. Edmonds, 150 Ohio St. 203, 215, 80 N.E.2d 769, 774 (1948) ("the selection of municipal officers is a matter of purely local concern, and. . .the method of their selection and the tenure of their office may legally be limited or circumscribed by the provisions of a municipal charter"); State ex rel. Frankenstein v. Hillenbrand, 100 Ohio St. 339, 126 N.E. 309 (1919) ("[s]ection 7 of Article XVIII of the Constitution of Ohio vests in cities adopting a charter the power to prescribe the manner of the selection of their own purely municipal officers") (syllabus, paragraph one).

In response to your first question, I conclude that a county charter may provide for the appointment of county officers who are, under the general law of the state, elected to office.

I turn now to your second question, whether a county charter may transfer the duties imposed upon a particular elected county officer under general law to another county officer who may be either elected or appointed under the charter. Again, art. X, §3 empowers a charter county to "provide the form of government of

¹ Section 3 of article XVIII of the Ohio Constitution reads: "Municipalities 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." Section 7 of article XVIII provides: "Any 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."

the county" and places no restrictions on a charter county as to which county officer is to perform a particular duty, so long as the charter provides for "the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law." See Summit County charter art. I, §1.01. A charter "distributes [municipal] power to the different agencies of government." Village of Perrysburg v. Ridgway, 108 Ohio St. 245, 253, 140 N.E. 595, 597 (1923). See Northern Ohio Patrolmen's Benevolent Association v. City of Parma, 61 Ohio St. 2d 375, 402 N.E.2d 519 (1980). Thus, a charter permits a county to distribute among the different county officers the county's power. A county charter may vest in a county officer whatever powers and duties it so chooses. Again, it is well established that a municipality organized pursuant to article XVIII of the Ohio Constitution may prescribe in its charter the duties of each municipal officer. See State ex rel. Hackley v. Edmonds, 150 Ohio St. at 216, 80 N.E.2d at 775; Fitzgerald v. City of Cleveland (syllabus, paragraph one).

As noted above, art. X, §3 requires a county charter, in its distribution of the county's power, to provide for the exercise of all powers vested in and duties imposed upon counties and county officers by law. As was stated by the 1970-77 Ohio Constitution Revision Commission in its Final Report at 292:

The intention of this provision seems to be to make it clear that even counties having charters continue to be administrative arms of the state for purposes of carrying out certain functions throughout the state. While, therefore, a county could by charter change its form of government and expand the powers which it may exercise and be less inhibited by statutory provisions in the manner of the exercise of those powers, those duties required by general law of counties and county officers would still have to be carried out.

A county is not restricted in its method of distributing, in its charter, the county's power. It must provide, however, for the exercise of all of the county's and county officers' powers and duties. So long as this limitation is observed, I conclude that the county charter may, in distributing the county's power, provide for the transfer of the duties imposed upon an elected county officer by general law to another county officer, regardless of whether such officer is elected or appointed under the charter.

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

1. A county charter may provide for the appointment of county officers who are, under the general law of the state, elected to office.
2. A county charter may provide for the transfer of the duties, which are imposed upon an elected county officer by general law, to another county officer, regardless of whether such officer is elected or appointed under the charter, so long as the charter provides for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers by law.