

**OPINION NO. 2009-051****Syllabus:**

2009-051

1. Under the Charter of Cuyahoga County, art. XII, § 12.01, the effective date of the Charter is January 1, 2010; however, the Charter will be implemented with respect to particular officers, offices, and functions on other dates, as provided in the Charter.
  2. Under the Charter of Cuyahoga County, art. II, § 2.01; art. III, §§ 3.01, 3.02; and art. XIII, § 13.01, persons who are elected and qualified to serve as County Executive and members of the County Council assume their offices on January 1, 2011, and as of that date the elective office of county commissioner is abolished and the terms of the incumbents are terminated.
  3. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.02, and art. XIII, § 13.01, the elective offices of county auditor and county recorder are abolished, and the terms of the incumbents are termi-
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nated, as of the date when the Fiscal Officer appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

4. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.02, 5.04, and art. XIII, § 13.01, the elective office of clerk of the court of common pleas is abolished, and the term of the incumbent is terminated, as of the date when both the Clerk of Courts appointed by the County Executive and the Fiscal Officer appointed by the County Executive have assumed office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
5. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.07, and art. XIII, § 13.01, the elective office of county treasurer is abolished, and the term of the incumbent is terminated, as of the date when the County Treasurer appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
6. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.08, and art. XIII, § 13.01, the elective office of sheriff is abolished, and the term of the incumbent is terminated, as of the date when the Sheriff appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
7. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.03, and art. XIII, § 13.01, the elective office of coroner is abolished, and the term of the incumbent is terminated, as of the date when the Medical Examiner appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
8. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.05, and art. XIII, § 13.01, the elective office of county engineer is abolished, and the term of the incumbent is terminated, as of the date when the Director of Public Works appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
9. Under the Charter of Cuyahoga County, art. IV, § 4.01, and R.C. 309.01, the prosecuting attorney continues to be elected as provided by general law. The term of the incumbent prosecuting attorney begins on the first Monday of January, 2009 and extends for four

years. The successor prosecuting attorney is elected in November of 2012 to a four-year term beginning on the first Monday of January, 2013.

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**To: William D. Mason, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio**

**By: Richard Cordray, Ohio Attorney General, December 17, 2009**

We have received your request for an opinion concerning the Charter of Cuyahoga County (“Charter”), which was approved by the voters of Cuyahoga County at the General Election on November 3, 2009. You have asked the following questions:

1. What is the effective date of the Charter?
2. When are the terms of office of the current incumbent elected officials abolished?
3. Under the Charter, when does the term of office of the current, incumbent county prosecuting attorney end, and when does the term of office of a successor prosecuting attorney commence?

The Charter of Cuyahoga County does not address the terms or functions of judges, and we do not include any judges among the elected officials considered in this opinion. *See* 2001 Op. Att’y Gen. No. 2001-020, at 2-115 (a charter county’s home rule powers are limited by Ohio Const. art. IV, § 1 with respect to the creation and regulation of courts).

#### **Adoption of the Charter of Cuyahoga County**

The Ohio Constitution directs the General Assembly to provide by general law for the organization and government of counties and also authorizes counties to adopt and amend charters. Ohio Const. art. X, §§ 1, 3. A county without a charter is governed by general law and has only those powers granted by the General Assembly. Adoption of a charter enables a county to vary the system established by general law and to exercise the home rule powers that are granted to municipalities, subject to certain limitations. Ohio Const. art. X, § 3; *Geauga County Bd. of Comm’rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 582-83, 621 N.E.2d 696 (1993); *State ex rel. O’Connor v. Davis*, 139 Ohio App. 3d 701, 704-05, 745 N.E.2d 494 (Summit County 2000); 2007 Op. Att’y Gen. No. 2007-035; 2001 Op. Att’y Gen. No. 2001-020, at 2-112 to 2-113; 1989 Op. Att’y Gen. No. 89-106, at 2-517 (powers and duties statutorily delegated to counties and county officers in their capacity as administrative arms of the state are not affected by the adoption of municipal powers, including municipal home rule powers under Ohio Const. art. XVIII, § 3).

Under Ohio Const. art. X, § 3, a county 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.” The charter must provide for the exercise of all

powers vested in, and the performance of all duties imposed upon, counties and county officers by law, but it may assign those powers and duties to different officers. Thus, a county charter may abolish existing elective offices and replace them with appointive offices, or transfer duties among public officials. *See* 2007 Op. Att’y Gen. No. 2007-035, at 2-360 (a charter county may establish the position of fiscal officer and give that officer responsibility for certain duties imposed upon elective county officials by general law); 1985 Op. Att’y Gen. No. 85-039 (syllabus, paragraph 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”).

The Charter of Cuyahoga County was submitted to voters in November of 2009 and received the necessary approval. *See* Ohio Const. art. X, § 3; R.C. 307.96. Under R.C. 307.96, the Charter “shall become effective” in accordance with Ohio Const. art. X, § 3 and R.C. 307.96.

#### **Effective Date of the Charter of Cuyahoga County**

R.C. 307.96 states that a county charter or amendment approved by the voters “shall take effect on the thirtieth day after approval unless another date is fixed in the charter or amendment.” Article XII of the Charter of Cuyahoga County contains the following provision:

#### **SECTION 12.01 EFFECTIVE DATE OF CHARTER.**

The effective date of this Charter shall be January 1, 2010 except as otherwise provided herein with respect to particular officers, offices or functions.

Section 12.01 plainly fixes January 1, 2010 as the effective date of the Charter, except as otherwise provided in the Charter with respect to particular officers, offices, or functions.

In accordance with Section 12.01 and R.C. 307.96, the Charter will take effect on January 1, 2010. However, certain officers, offices, or functions named in the Charter will take effect on other dates, as specified in the Charter. The dates on which the terms of office of incumbent elected officials will terminate and successors will assume office are discussed later in this opinion.

There is apparently some concern that the Charter cannot take effect until the officers named in the Charter are elected and take office, which, as discussed below, will not occur before January 1, 2011. However, the Charter takes legal effect on the date prescribed in the Charter, even though it will be implemented on various dates in accordance with its provisions. This process is similar to legislation enacted by the General Assembly in which the act takes effect on a given date (that is, becomes a law) but certain enacted provisions of the Revised Code or uncodified law do not take effect until a later date. *See, e.g.*, Am. Sub. H.B. 1, 128th Gen. A.

(2009) (act eff. July 17, 2009, with various provisions effective on other dates) (secs. 110.12, 110.22, 640.24, 812.10 to 812.50).

We conclude, therefore, that under the Charter of Cuyahoga County, art. XII, § 12.01, the effective date of the Charter is January 1, 2010; however, the Charter will be implemented with respect to particular officers, offices, and functions on other dates, as provided in the Charter.

### **Abolishing the Terms of Incumbent Elected Officials of Cuyahoga County**

You have explained that, since its establishment as a county, Cuyahoga County has operated under the general statutory system of government set forth in Title III of the Ohio Revised Code. The incumbent elective officers of Cuyahoga County (excluding judges, who are not affected by the Charter) consist of the auditor, recorder, treasurer, clerk of courts, sheriff,<sup>1</sup> coroner, engineer, prosecuting attorney, and three members of the board of county commissioners. Elections for these county officers are held on the first Tuesday after the first Monday in November in even-numbered years, and statutory provisions establish four-year terms. Ohio Const. art. XVII, § 1; R.C. 305.01 (county commissioners); R.C. 309.01 (prosecuting attorney); R.C. 311.01 (sheriff); R.C. 313.01 (coroner); R.C. 315.01 (county engineer); R.C. 317.01 (county recorder); R.C. 319.01 (county auditor); R.C. 321.01 (county treasurer); R.C. 2303.01 (clerk of the court of common pleas); R.C. 3501.01(A), .02 (elections).

Under the Charter, the county prosecuting attorney will continue to be elected in the manner provided by general law, as discussed more fully below. Charter, art. IV, § 4.01. The other elected officials will be a County Executive and an eleven-member County Council. Charter, art. II, § 2.01; art. III, §§ 3.01, 3.02. The other officers of the county (excluding judges), who will perform the duties previously entrusted to county elective officials, “shall be appointed by the County Executive, subject to confirmation by Council, and shall serve at the pleasure of the County Executive.” Charter, art. V, § 5.01.

The procedure for changing from the current form of government to the system established by the Charter is addressed in Article XIII of the Charter, entitled “Transition to Charter Government.” With regard to the tenure of incumbent officials, the Charter states:

#### **SECTION 13.01 OFFICES ABOLISHED.**

As of the date when any officer elected or appointed pursuant to this Charter assumes an office that succeeds to the powers and duties of a predecessor office, the corresponding predecessor office is abolished, and the duties of those officers shall be assumed by the respective officers as provided herein.

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<sup>1</sup> As discussed more fully later in this opinion, the elective office of sheriff of Cuyahoga County is currently held by an individual who was appointed to fill a vacancy. *See* R.C. 305.02.

Charter, art. XIII, § 13.01. Thus, an incumbent elected officer retains the authority of office until the appropriate successor assumes the powers and duties of that office.

Section 13.03 of the Charter provides for the continuity of officers and employees except as otherwise specified, stating in part:

**SECTION 13.03 OFFICERS AND EMPLOYEES.**

(1) **Rights and Privileges Preserved.** Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are County officers or employees at the time of its adoption.

(2) **Continuance of Office or Employment.** Except as specifically provided by this Charter, if at the time this Charter takes effect a County administrative officer or employee holds any office or position that is or can be abolished by or under this Charter, he or she shall continue in such position until the taking effect of some specific provision under this Charter directing that he or she vacate the office or position.

Charter, art. XIII, § 13.03. Under division (2), an administrative officer or employee who works for the county continues in the same office or position until the taking effect of a specific provision directing vacation of the office or position. Under division (1), the elective officers addressed in this opinion retain their rights and privileges except as specifically provided in the Charter. Specific provisions are discussed below.

**Incumbent County Commissioners, Elected County Executive, and Elected County Council**

The Charter provides for an elected County Executive to serve as the chief executive officer of the county, and for an elected County Council to serve as the legislative authority and taxing authority of the county. Charter, art. II, §§ 2.01, 2.03; art. III, §§ 3.01, 3.09. These officers will assume the duties of the board of county commissioners. Under Section 13.01 of the Charter, the offices of the incumbent county commissioners will be abolished when officers appointed or elected under the Charter assume offices that succeed to the powers and duties of the county commissioners. *See generally City of Elyria v. Vandemark*, 100 Ohio St. 365, 126 N.E. 314 (1919) (syllabus, paragraph 1) (“[w]hen a public office is abolished by duly constituted authority, the incumbent thereof ceases to be an officer, for he cannot be a *de facto* officer of an office no longer in existence”).

The Charter states that the County Executive “shall first be elected at the 2010 general election and shall hold office for a term of four years commencing on the first day of January 2011.” Charter, art. II, § 2.01. Similarly, the eleven members of the County Council will be elected at the general election in 2010 for terms of two or four years, beginning on January 1, 2011, with subsequent terms extending for four years. Charter, art. III, § 3.02. Thus, the Charter provides for both the executive and legislative duties of the county commissioners to be assumed on January

1, 2011 by officers who are elected under the Charter and qualified to assume their offices. Accordingly, under Section 13.01, the office of county commissioner of Cuyahoga County is abolished as of that date.<sup>2</sup>

This result is confirmed by the following provision of the Charter:

**SECTION 13.02 INITIAL ELECTION OF COUNTY OFFICERS.**

*No primary election shall be held in 2010 for any elected office that is abolished pursuant to this Charter.* The primary election for the nomination of County officials to be elected at the November 2010 general election shall be held on the first Tuesday after the first Monday in September 2010. That primary election shall be conducted in the manner provided by general law for primary elections for the nomination of county elected officials, provided that filing deadlines and other matters of time relating to a primary election, including those relating to declarations of candidacy for nonpartisan candidates, shall be adjusted as necessary relative to the primary date provided for in this section. The initial terms of the six members elected from Council Districts 1, 3, 5, 7, 9, and 11 shall be for four years, and the initial terms for the members elected from Districts 2, 4, 6, 8, and 10 shall be for two years. (Emphasis added.)

Charter, art. XIII, § 13.02. Elective offices that will be replaced by appointed offices are abolished pursuant to the Charter, as provided in Section 13.01. Under Section 13.02, no primary election or general election will be held for those offices in 2010, and no elected officer will succeed to a term beginning in 2011. The office of county commissioner is covered by this provision.

In Cuyahoga County, one of the incumbent county commissioners was elected in November of 2006 to a four-year term that began on January 1, 2007, with the succeeding term beginning on January 1, 2011. R.C. 305.01(A). However,

<sup>2</sup> For purposes of this opinion, we assume that the County Executive and members of the County Council will be elected in November of 2010, will qualify for their offices, and will assume their offices on January 1, 2011. In the event that there is an unforeseen delay in the election and qualification process, the incumbent county commissioners may continue to hold office past the four-year terms established under R.C. 305.01 and until the newly-elected officers assume office. See R.C. 305.01(C) (county commissioners “shall hold office for the term of four years and until their successors are elected and qualified”). This holding over is an accommodation to permit the continued operation of the county and does not change the statutory term of office. See, e.g., *State ex rel. Glander v. Ferguson*, 148 Ohio St. 581, 76 N.E.2d 373 (1947) (distinguishing between the period constituting the statutory term of office and the period during which an officer actually serves); 2007 Op. Att’y Gen. No. 2007-014, at 2-141 to 2-142; 2005 Op. Att’y Gen. No. 2005-004, at 2-34 to 2-35 (an individual must qualify for an office before undertaking the duties of the office); 1946 Op. Att’y Gen. No. 749, p. 80.

the Charter precludes an election for a successor to this county commissioner. Under Section 13.02, no one is permitted to run for or be elected to this office, which will be abolished when the County Executive and County Council take office on January 1, 2011.

Two of the incumbent county commissioners were elected in November of 2008 to four-year terms that began, respectively, on January 2, 2009, and January 3, 2009. R.C. 305.01(B). The statute contemplates that successors will take office, respectively, on January 2 and January 3 of 2013. However, under the Charter, no successors will be elected to these offices. Rather, the offices will be abolished when the County Executive and County Council take office on January 1, 2011.

We conclude, therefore, that under the Charter of Cuyahoga County, art. II, § 2.01; art. III, §§ 3.01, 3.02; and art. XIII, § 13.01, persons who are elected and qualified to serve as County Executive and members of the County Council assume their offices on January 1, 2011, and as of that date the elective office of county commissioner is abolished and the terms of the incumbents are terminated.

#### **Incumbent County Auditor, Incumbent County Recorder, and Fiscal Officer Appointed Under the Charter**

The Charter provides for the County Executive to appoint a Fiscal Officer, subject to confirmation by the County Council. Charter, art. V, §§ 5.01, 5.02. The Fiscal Officer is authorized to “exercise all powers and perform all duties now or hereafter vested in or imposed by general law upon county auditors and county recorders and the powers and duties of clerks of the court of common pleas other than those powers and duties related to serving the operation of the courts, and such other powers and duties not inconsistent therewith as provided herein or by ordinance.” Charter, art. V, § 5.02(1).

Under the general law applicable to noncharter counties, the incumbent county auditor was elected in November of 2006 to a term that commenced on the second Monday in March, 2007 and extends for four years, with the succeeding term beginning on the second Monday in March, 2011. R.C. 319.01. Under Section 13.01 of the Charter, the office of the county auditor is abolished as of the date when an officer elected or appointed pursuant to the Charter assumes an office that succeeds to the powers and duties of the county auditor. Thus, when the Fiscal Officer appointed under the Charter assumes office, the office of county auditor is abolished pursuant to the Charter. The office of county auditor thus comes within the provisions of Section 13.02 applicable to “any elected office that is abolished pursuant to this Charter,” and no primary election will be held in 2010 for the office of auditor of Cuyahoga County.

As provided in general law, the incumbent county recorder was elected in November of 2008 to a four-year term that commenced on the first Monday in January, 2009, with the succeeding term beginning on the first Monday in January, 2013. R.C. 317.01. Under Section 13.01 of the Charter, the office of county recorder is abolished as of the date when an officer elected or appointed pursuant to the Charter assumes an office that succeeds to the powers and duties of the county



recorder. This will occur when the Fiscal Officer assumes office, after having been appointed by the County Executive and confirmed by the County Council. Charter, art. V, §§ 5.01, 5.02(1).

Clearly, the County Executive cannot appoint the Fiscal Officer and the County Council cannot confirm the appointment of the Fiscal Officer until the County Executive and County Council have assumed their offices. Further, it is impossible to predict with certainty how quickly the appointment and confirmation process will progress. *See, e.g.*, Charter, art. II, § 2.03(2) (granting the County Executive power to appoint county officers, subject to confirmation by the Council, and stating: "If the Council shall fail to act on the question of such an appointment by the County Executive within thirty days of the date that the County Executive submits such appointment to the Council for its consideration, that appointment shall be deemed confirmed without further action by the Council"); *see also* Charter, art. III, § 3.10.

Therefore, the date on which the offices of county auditor and county recorder will be abolished is uncertain, though it is clear that the Fiscal Officer cannot assume office prior to January 1, 2011. The incumbent county auditor and county recorder are subject to the provisions of R.C. 3.01 stating that "[a] person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state." Accordingly, the county auditor and county recorder are authorized to maintain their offices until a successor is appointed and qualified.<sup>3</sup>

We conclude, therefore, that under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.02, and art. XIII, § 13.01, the elective offices of county auditor and county recorder are abolished, and the terms of the incumbents are terminated, as of the date when the Fiscal Officer appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

**Incumbent Clerk of the Court of Common Pleas, Clerk of Courts Appointed Under the Charter, and Fiscal Officer Appointed Under the Charter**

Under the general law, the officer elected as clerk of the court of common pleas also serves as clerk of the court of appeals of the county. R.C. 2303.01, .03. In Cuyahoga County, the incumbent clerk of the court of common pleas took office under R.C. 2303.01 for a four-year term that commenced on the first Monday of January, 2009, with the succeeding term beginning on the first Monday of January, 2013.

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<sup>3</sup> It is assumed that the appointed Fiscal Officer will take office well before the four-year term of the elected county recorder ends in January of 2013. However, the incumbent county recorder and other elected county officers are authorized by R.C. 3.01 to continue in office until a successor is elected or appointed and qualified, absent provisions to the contrary, and R.C. 3.01 will apply as necessary. *See also* note 1, *supra*.

The Charter provides for the County Executive to appoint a Clerk of Courts, subject to confirmation by the County Council. Charter, art. V, §§ 5.01, 5.04. Under Section 5.04, the appointed Clerk of Courts shall exercise and carry out “[a]ll powers and duties now or hereafter vested in or imposed by general law upon the office of clerk of the court of common pleas relating to serving the operation of the courts.” The other duties of the incumbent elected clerk of the court of common pleas are devolved upon the appointed Fiscal Officer under Section 5.02 of the Charter, which states that the Fiscal Officer shall exercise “the powers and duties of clerks of the court of common pleas other than those powers and duties related to serving the operation of the courts.” Charter, art. V, § 5.02(1).

Under the Charter, the powers and duties imposed upon the incumbent clerk of the court of common pleas by general law thus will be assumed by the appointed Clerk of Courts and the appointed Fiscal Officer. Charter, art. V, §§ 5.01, 5.02, 5.04. When the appointed Clerk of Courts takes office, the powers and duties of the incumbent clerk of the court of common pleas relating to serving the operation of the courts will be transferred to the appointed Clerk of Courts, who will succeed to those powers and duties. When the appointed Fiscal Officer takes office, the powers and duties of the incumbent clerk of the court of common pleas other than those related to serving the operation of the courts will be transferred to the appointed Fiscal Officer, who will succeed to those powers and duties. Depending upon when the Clerk of Courts and Fiscal Officer take office, the incumbent clerk of the court of common pleas may continue to hold office for a time with responsibility for only a portion of the clerk’s statutory powers and duties, either those relating to the operation of the courts or those not related to the operation of the courts. Thus, the powers and duties of the incumbent clerk of the court of common pleas may be transferred to successor officers at different times, but the office of clerk of the court of common pleas will not be abolished until all powers and duties of the clerk have been transferred to the appropriate successor.

Therefore, the elective office of clerk of the court of common pleas will be abolished as of the date when both the Clerk of Courts appointed by the County Executive and the Fiscal Officer appointed by the County Executive have assumed office, after having been confirmed by the County Council. Charter, art. V, § 5.01; art. XIII, § 13.01. The date on which this process will be complete is not known, but it cannot occur until the County Executive and County Council have assumed office. Thus, although the date on which the office of clerk of the court of common pleas will be abolished is uncertain, it cannot occur prior to January 1, 2011. *See* note 2, *supra*.

We conclude, therefore, that under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.02, 5.04, and art. XIII, § 13.01, the elective office of clerk of the court of common pleas is abolished, and the term of the incumbent is terminated, as of the date when both the Clerk of Courts appointed by the County Executive and the Fiscal Officer appointed by the County Executive have assumed office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

### **Incumbent County Treasurer and County Treasurer Appointed Under the Charter**

Under the general law applicable to noncharter counties, the incumbent treasurer of Cuyahoga County was elected in November of 2008 to a four-year term that commenced on the first Monday of September, 2009, with the succeeding term beginning on the first Monday of September, 2013. R.C. 321.01. The Charter provides for the County Executive to appoint a County Treasurer, subject to confirmation by the County Council. Charter, art. V, §§ 5.01, 5.07. The appointed County Treasurer is given the responsibility of carrying out “[a]ll powers and duties now or hereafter vested in or imposed upon county treasurers by general law.” Charter, art. V, § 5.07.

Thus, the appointed County Treasurer will assume the powers and duties of the incumbent treasurer. Under Section 13.01, the elective office of county treasurer will be abolished as of the date when the County Treasurer appointed by the County Executive assumes office, after having been confirmed by the County Council. Because the length of this process is unknown, the date on which the office of county treasurer will be abolished is uncertain, except that it cannot occur prior to January 1, 2011. *See note 2, supra.*

We conclude, therefore, that under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.07, and art. XIII, § 13.01, the elective office of county treasurer is abolished, and the term of the incumbent is terminated, as of the date when the County Treasurer appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

### **Incumbent Sheriff and Sheriff Appointed Under the Charter**

The current term of the sheriff of Cuyahoga County began on the first Monday of January, 2009 when the prior sheriff took office, having been elected to a four-year term in the General Election in November of 2008. R.C. 311.01(A). The succeeding term begins on the first Monday of January, 2013. The prior sheriff resigned from office effective April 1, 2009, and a successor sheriff was appointed as provided in R.C. 305.02. Therefore, the person currently holding the elective office of sheriff of Cuyahoga County is an appointee.

R.C. 305.02 provides that if a vacancy occurs in the office of county sheriff more than forty days before the next general election for state and county officers (November of each even-numbered year, *see* Ohio Const. art. XVII, § 1) and the term extends for at least a year past the date of that general election, a successor shall be elected at that election “for the unexpired term.” The appointed sheriff will serve until a successor is elected and qualified. R.C. 305.02(A).

The next general election for county officers is in November of 2010. Under R.C. 305.02, a successor sheriff is to be elected in November of 2010 to serve the remainder of the statutory term that ends in January of 2013. However, Section 13.02 of the Charter eliminates the need for the election of a sheriff in 2010, stating

that no primary election shall be held in 2010 for any elected office that is abolished pursuant to the Charter.

The Charter provides for the County Executive to appoint a Sheriff, subject to confirmation by the County Council. Charter, art. V, §§ 5.01, 5.08. Under the Charter, “[a]ll powers and duties now or hereafter vested in or imposed upon county sheriffs by general law shall be carried out by the appointed Sheriff.” Charter, art. V, § 5.08. Thus, the Sheriff appointed under the Charter will assume the powers and duties of the incumbent sheriff. In accordance with Section 13.01, the elective office of sheriff will be abolished as of the date when the Sheriff appointed by the County Executive assumes office, after having been confirmed by the Council. The date on which appointment, confirmation, and assumption of office will be completed is unknown, but it cannot occur before the County Executive and County Council take office. Thus, the date on which the elective office of sheriff will be abolished is uncertain, except that it cannot occur prior to January 1, 2011. *See* note 2, *supra*.

We conclude, therefore, that under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.08, and art. XIII, § 13.01, the elective office of sheriff is abolished, and the term of the incumbent is terminated, as of the date when the Sheriff appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

#### **Incumbent Coroner and Medical Examiner Appointed Under the Charter**

The incumbent coroner of Cuyahoga County was elected in November of 2008 and took office under R.C. 313.01 for a four-year term that commenced on the first Monday of January, 2009, with the succeeding term beginning on the first Monday of January, 2013. R.C. 313.01. The Charter provides for the County Executive to appoint a Medical Examiner, subject to confirmation by the County Council. Charter, art. V, §§ 5.01, 5.03. Under the Charter, the Medical Examiner is entrusted with “[a]ll powers now or hereafter vested in or imposed upon county coroners by general law.” Charter, art. V, § 5.03.

Thus, the appointed Medical Examiner will assume the powers and duties of the incumbent coroner. Under Section 13.01 of the Charter, the elective office of coroner will be abolished when the Medical Examiner appointed by the County Executive assumes office, after having been confirmed by the County Council. The appointment and confirmation process cannot occur until the County Executive and County Council have assumed office, and it is not known how long the process will take. Accordingly, the date on which the Medical Examiner will assume office and the elective office of coroner will be abolished is uncertain, but it cannot occur prior to January 1, 2011. *See* note 2, *supra*.

We conclude, therefore, that under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.03, and art. XIII, § 13.01, the elective office of coroner is abolished, and the term of the incumbent is terminated, as of the date when the Medical Examiner appointed by the County Executive assumes office, after having been confirmed by

the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

#### **Incumbent County Engineer and Appointed Director of Public Works**

The incumbent county engineer of Cuyahoga County was elected in 2008 to a four-year term that commenced on the first Monday in January, 2009, with the succeeding term beginning on the first Monday in January, 2013. R.C. 315.01. The Charter provides for the County Executive to appoint a Director of Public Works, subject to confirmation by the County Council. Charter, art. V, §§ 5.01, 5.05. Under the Charter, “[a]ll powers now or hereafter vested in or imposed upon county engineers and county sanitary engineers by general law shall be exercised and carried out by or at the direction of the Director of Public Works.” Charter, art. V, § 5.05.

The appointed Director of Public Works thus will assume the powers and duties of the incumbent county engineer. Under Section 13.01 of the Charter, the elective office of county engineer will be abolished as of the date when the Director of Public Works appointed by the County Executive assumes office, after having been confirmed by the County Council. This cannot occur until the County Executive and County Council have taken office. Thus, the date on which the Director of Public Works will assume office and the elective office of county engineer will be abolished is uncertain, except that it cannot occur prior to January 1, 2011. *See note 2, supra.*

We conclude, therefore, that under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.05, and art. XIII, § 13.01, the elective office of county engineer is abolished, and the term of the incumbent is terminated, as of the date when the Director of Public Works appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

#### **Incumbent Prosecuting Attorney and Successor Prosecuting Attorney**

The Charter of Cuyahoga County provides for the prosecuting attorney to be elected and serve as provided in the general law of Ohio, stating simply:

The Prosecuting Attorney shall be elected, and the duties of that office, and the compensation therefor, including provision for the employment of outside counsel, shall continue to be determined in the manner provided by general law.

Charter, art. IV, § 4.01. Thus, the Charter does not in any regard change the provisions of general law applicable to the election or term of office of the county prosecuting attorney.

Therefore, the Cuyahoga County Prosecuting Attorney will continue to be elected and serve as provided in R.C. Chapter 309. Under R.C. 309.01, the prosecuting attorney is elected quadrennially and holds office for four years, beginning on the first Monday of January following the election. The incumbent prosecuting

attorney was elected in November of 2008 to a four-year term that commenced in January of 2009 and will terminate in January of 2013. Because the Charter of Cuyahoga County does not abolish the office of prosecuting attorney or modify the term of that office, the election for the succeeding four-year term as prosecuting attorney will be held in November of 2012, and the term of that successor prosecuting attorney will commence on the first Monday of January, 2013, in accordance with R.C. 309.01. Because the elective office of county prosecutor is not abolished, Section 13.01 of the Charter has no effect.

We conclude, therefore, that under the Charter of Cuyahoga County, art. IV, § 4.01, and R.C. 309.01, the prosecuting attorney continues to be elected as provided by general law. The term of the incumbent prosecuting attorney begins on the first Monday of January, 2009 and extends for four years. The successor prosecuting attorney is elected in November of 2012 to a four-year term beginning on the first Monday of January, 2013.

### **In-Term Changes in Compensation**

You have asked whether the transition process is affected by Ohio Const. art. II, § 20, which states: “The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.” We find that the provisions of Ohio Const. art. II, § 20 provide no impediment to the plan for succession set out in the Charter, as described above. It has been stated that, because a charter is “provided for” in the Ohio Constitution, a county may use its charter to remove itself from the application of Ohio Const. art. II, § 20. *See* 1984 Op. Att’y Gen. No. 84-057. However, regardless of whether an officer serves under a county charter, the constitutional prohibition against changes in compensation for incumbent officers, by its terms, does not apply when an office is abolished.

The Charter of Cuyahoga County, in providing for the elected and appointed officers who will administer the charter form of government as authorized by Ohio Const. art. X, § 3, abolishes county elective offices, other than the offices of judges and the prosecuting attorney. When an office is abolished in accordance with law, the incumbent must cease to serve and to be compensated for service. *See City of Elyria v. Vandemark*, 100 Ohio St. at 369 (“[i]t is well settled in this state that when an office is abolished by duly-constituted authority the incumbents thereof cease to be officers, for there can be no incumbent without an office”); *State ex rel. Lentz v. Edwards*, 90 Ohio St. 305, 107 N.E. 768 (1914); 2005 Op. Att’y Gen. No. 2005-004, at 2-38 (“[i]t is generally accepted that a legislative body that has created an office may abolish the office or change the terms of the office, in order to serve the public interest, even if that action might result in curtailing the unexpired term of an incumbent”); 1946 Op. Att’y Gen. No. 749, p. 80. Thus, the constitutional

prohibition against in-term changes in compensation does not apply to persons holding the offices that are abolished under the Charter.<sup>4</sup>

### Conclusions

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. Under the Charter of Cuyahoga County, art. XII, § 12.01, the effective date of the Charter is January 1, 2010; however, the Charter will be implemented with respect to particular officers, offices, and functions on other dates, as provided in the Charter.
2. Under the Charter of Cuyahoga County, art. II, § 2.01; art. III, §§ 3.01, 3.02; and art. XIII, § 13.01, persons who are elected and qualified to serve as County Executive and members of the County Council assume their offices on January 1, 2011, and as of that date the elective office of county commissioner is abolished and the terms of the incumbents are terminated.
3. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.02, and art. XIII, § 13.01, the elective offices of county auditor and county recorder are abolished, and the terms of the incumbents are terminated, as of the date when the Fiscal Officer appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
4. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.02, 5.04, and art. XIII, § 13.01, the elective office of clerk of the court of common pleas is abolished, and the term of the incumbent is terminated, as of the date when both the Clerk of Courts appointed by the County Executive and the Fiscal Officer appointed by the County Executive have assumed office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
5. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.07, and art. XIII, § 13.01, the elective office of county treasurer is abolished,

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<sup>4</sup> It might be argued that the incumbent elective officers (except for the sheriff, who was appointed to fill a vacancy) were selected by the voters of the county for specified terms and should be allowed to serve out those terms, performing for the citizens of the county the duties of the positions to which they were elected. It should be noted, however, that the electorate that voted for the incumbents subsequently voted to adopt the Charter of Cuyahoga County and, in so doing, provided for the functions of the incumbent elected officers to be assumed by the officers named in the Charter under the terms prescribed in the Charter. Thus, the transition from government under general law to government under the Charter, as described in this opinion, is made at the direction of the voters.

and the term of the incumbent is terminated, as of the date when the County Treasurer appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.

6. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.08, and art. XIII, § 13.01, the elective office of sheriff is abolished, and the term of the incumbent is terminated, as of the date when the Sheriff appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
7. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.03, and art. XIII, § 13.01, the elective office of coroner is abolished, and the term of the incumbent is terminated, as of the date when the Medical Examiner appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
8. Under the Charter of Cuyahoga County, art. V, §§ 5.01, 5.05, and art. XIII, § 13.01, the elective office of county engineer is abolished, and the term of the incumbent is terminated, as of the date when the Director of Public Works appointed by the County Executive assumes office, after having been confirmed by the County Council. The date on which this will occur is uncertain, but it cannot occur prior to January 1, 2011.
9. Under the Charter of Cuyahoga County, art. V, §§ 4.01, and R.C. 309.01, the prosecuting attorney continues to be elected as provided by general law. The term of the incumbent prosecuting attorney begins on the first Monday of January, 2009 and extends for four years. The successor prosecuting attorney is elected in November of 2012 to a four-year term beginning on the first Monday of January, 2013.