

86.

CHARTER CITY—AMENDMENT OF CHARTER HOW—SECTION 9, ARTICLE XVIII; OF THE CONSTITUTION OF OHIO, PROVIDES THE ONLY WAY.

*SYLLABUS:*

*Section 9 of Article XVIII of the Constitution of Ohio is the only provision by means of which a charter city can amend its charter.*

COLUMBUS, OHIO, February 4, 1937.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: I acknowledge receipt of your inquiry of recent date together with inclosures Nos. 1 and 2.

You state that George P. Congwer, Director of Law, City of Ashland, Ohio, requests an opinion as to the proper procedure in making changes in the local home rule charter of that city and he particularly wishes to know whether the Commission should proceed under Section 9 of Article XVIII of the Constitution of Ohio or under Section 8 of such Article.

I note from Mr. Congwer's letter inclosure No. 1 that the City of Ashland duly adopted a charter on June 18, 1914, and on December 15, 1936, proper petitions were presented to the council of the city requesting that body to place upon the ballot the question, "Shall a commission be chosen to frame a charter" and that this group has since been informed that the proper way to bring about a change in the charter is by the provisions of section 9 of Article XVIII of the Constitution of Ohio and not by Section 8 of such Article.

In inclosure No. 2 an inquiry is made of the City Law Director by C. V. Topper and six other individuals to the following effect:

"Can a charter be legally drawn for a municipality that is now operating under a charter?"

If so, must the new charter be entirely different in every respect from the old one?"

Will the new charter be held invalid if it contains any of the provisions of the old charter?"

If new charter is held invalid by reason of containing provisions of the old charter will provisions in new charter be considered as amendments to old charter and held valid and in full effect?"

Section 8 of Article XVIII of the Constitution of Ohio makes provision for the original adoption of a city charter. Section 9 of Article XVIII of the Constitution of Ohio provides for the amendment of a city charter. These sections are so clear that I do not deem it necessary to set them out in this opinion. The Law Director states that the City of Ashland adopted its charter on June 18, 1914. I assume it proceeded under virtue of Section 8 of Article XVIII of the Constitution of Ohio. If so, such procedure was correct and the city thereby adopted a charter form of government. On December 15, 1936, proper petitions were presented to the council of the city requesting that body to place upon the ballot the question, "Shall a Commission be chosen to frame a charter?" This procedure was incorrect inasmuch as the city had been operating under a charter since 1914. The evident purpose of the last procedure was to amend the existing charter. This could only be done by following the provisions of Section 9 of Article XVIII of the Constitution of Ohio. The answer to the first question submitted by Topper and others to the City Law Director answers all questions so submitted. I again quote the first question:

"Can a charter be legally drawn for a municipality that is now operating under a charter?"

Strictly speaking, "No." A city has no use for two charters. There is a stronger and more cogent reason, namely, there is no warrant of law therefor. By the process of amendment, a city can practically emasculate an existing charter. From the inquiry, I take it that the city desires to revamp its old charter. This it can readily do by adopting the legal machinery set up in Section 9 of Article XVIII of the Constitution of Ohio. The legal effect of such amendments after adoption is to be determined by applying the law of statutory construction.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*