

September 16, 2015

The Honorable Brigham M. Anderson  
Lawrence County Prosecuting Attorney  
Lawrence County Courthouse  
111 South 4th Street  
Ironton, Ohio 45638

SYLLABUS:

2015-028

1. Section 3.03 of the Ironton City Charter, rather than R.C. 3501.01(D), governs the date on which a runoff special election shall be held for the office of mayor in the event such an election is necessary.
2. Where no provision of the Ironton City Charter addresses the same subject matter, the recount provision set forth in R.C. 3515.02 applies to the election of the office of mayor.



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OPINION NO. 2015-028

The Honorable Brigham M. Anderson  
Lawrence County Prosecuting Attorney  
Lawrence County Courthouse  
111 South 4th Street  
Ironton, Ohio 45638

Dear Prosecutor Anderson:

You have requested an opinion about the authority of the City of Ironton to hold a runoff special election for the office of mayor pursuant to the Ironton City Charter. You have informed us that R.C. 3501.01(D) and Section 3.03 of the Ironton City Charter establish conflicting dates on which a special election may be held. You also indicate that Section 3.03 of the Ironton City Charter may create problems or conflicts with various other provisions of R.C. Title 35, which governs the conduct of elections in Ohio. In light of this, you ask whether the City of Ironton is authorized to hold a runoff special election for the office of mayor on the date set forth in the Ironton City Charter. If the City of Ironton is so authorized, you also ask whether the recount provision of R.C. 3515.02 applies to the runoff special election.<sup>1</sup> R.C. 3515.02 declares, in pertinent part, that a candidate shall file an application for a recount “within five days after the day upon which the board of elections of [the] county declares the results of [the] election.” *See also* R.C. 3515.01.

You explain that the City of Ironton has adopted and operates under a municipal charter pursuant to Article XVIII, § 7 of the Ohio Constitution.<sup>2</sup> In the event that no candidate receives at

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<sup>1</sup> You also ask several questions about the practical effects our answers to these two questions will have on the election. These are not questions of law and therefore are beyond the scope of this opinion. *See* 2007 Op. Att’y Gen. No. 2007-012, at 2-104 n.3 (questions that are not legal questions, but instead are administrative or auditing questions, not addressed in formal opinion); 1992 Op. Att’y Gen. No. 92-050, at 2-206 n.2 (it is beyond the scope of a formal opinion to determine appropriate steps necessary to comply with statutes). And your final question requires us to interpret the meaning of the language of the Ironton City Charter. The interpretation of a municipal charter’s language is not within the opinion rendering function of the Attorney General. 2007 Op. Att’y Gen. No. 2007-035, at 2-356.

<sup>2</sup> Article XVIII, § 3 of the Ohio Constitution authorizes municipal corporations to “exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary

least forty percent of the total votes cast for the office of mayor, Section 3.03 of the Ironton City Charter requires a runoff special election. The runoff special election is to be held two weeks after the date of the general election for the office of mayor. Ironton City Charter, § 3.03. R.C. 3501.01(D) also establishes various dates on which a special election may be held.<sup>3</sup> The date set forth in the city's charter for the runoff special election for the office of mayor is not one of the dates identified in R.C. 3501.01(D) for holding a special election. The Ironton City Charter and R.C. 3501.01(D) thus both prescribe the dates on which a runoff special election for the office of mayor shall be held, and those dates are different. Consequently, there is a conflict between Section 3.03 of the Ironton City Charter and R.C. 3501.01(D).

Several other Revised Code provisions are also pertinent to your questions. R.C. 3505.32(A) requires a county board of elections to canvass election returns between specific days—not earlier than the eleventh day or later than the fifteenth day after an election. The results of an election are determined and declared by the board of elections after the board has completed the canvass of the election returns. R.C. 3505.33. R.C. 3515.01 and R.C. 3515.02 authorize a candidate for election to apply for a recount of the votes cast at the election by filing an application with the board of elections. An application for a recount may be filed within five days after the board of elections declares the election results. R.C. 3515.02.

It is important to consider the timing imposed by the Ironton City Charter and the statutes referred to above. If a runoff special election for the office of mayor is required, the charter requires that it be held two weeks (*i.e.*, fourteen days) after the general election. Ironton City Charter, § 3.03. R.C. 3505.32(A) requires the board of elections to begin its canvass of returns eleven to fifteen days after the date of the election. This means that the board of elections may begin the canvass of returns

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and other similar regulations, as are not in conflict with general laws.” Article XVIII, § 7 of the Ohio Constitution provides that a city or village “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.” These amendments are commonly known as the “home rule amendments,” and the powers of local self-government granted by these provisions are commonly referred to as “home rule powers.” 1981 Op. Att’y Gen. No. 81-011, at 2-39.

<sup>3</sup> A “special election” is “any election other than those elections defined in other divisions of this section.” R.C. 3501.01(D). A special election

may be held only on the first Tuesday after the first Monday in February, May, August, or November, or on the day authorized by a particular municipal or county charter for the holding of a primary election, except that in any year in which a presidential primary election is held, no special election shall be held in February or May, except as authorized by a municipal or county charter, but may be held on the second Tuesday after the first Monday in March.

*Id.*

no earlier than three days before the city charter's required date for the runoff special election and no later than one day *after* the runoff special election. *See* R.C. 3505.32(A); Ironton City Charter, § 3.03. The board of elections declares the election results after the board completes the canvass of returns. *See* R.C. 3505.33. A candidate for election has five days from the date the board of elections declares the results to apply for a recount. R.C. 3515.02. If the board of elections begins and completes the canvass at the earliest day permitted by statute, each candidate is permitted to apply for a recount no later than two days *after* the runoff special election. *See* R.C. 3515.02; Ironton City Charter, § 3.03.

### **City Charter Provision Establishing Date for Runoff Special Election Prevails**

Your first question asks whether the City of Ironton is authorized to hold a runoff special election for the office of mayor on the date set forth in the Ironton City Charter despite the dates set forth in R.C. 3501.01(D) for holding a special election. We conclude that the city is so authorized.

A municipal corporation that has adopted a charter is constitutionally empowered to regulate matters of local self-government. Ohio Const. art. XVIII, §§ 3 and 7; *see also, e.g., State ex rel. Taylor v. French*, 96 Ohio St. 172, 117 N.E. 173 (1917) (syllabus); *Fitzgerald v. City of Cleveland*, 88 Ohio St. 338, 103 N.E. 512 (1913) (syllabus); 1982 Op. Att'y Gen. No. 82-057, at 2-166 to 2-167. A municipal corporation that has adopted a charter may "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 to 2-167; *see also* 2008 Op. Att'y Gen. No. 2008-037, at 2-379 to 2-380; 2008 Op. Att'y Gen. No. 2008-032, at 2-330. *See generally City of Dayton v. Horstman*, 77 Ohio Law Abs. 570, 573, 143 N.E.2d 879 (C.P. Montgomery County 1957) ("[s]ince the charter contains the fundamental law, equivalent in rank to that of the constitution, it is entitled to a liberal construction to effect its purpose and it is not subject to strict interpretation nor may its provisions suffer by comparison or conflict with existing statutes that are applicable elsewhere in the State").

It was contemplated by the framers of the [home rule amendment] to the Constitution that the provisions in a charter adopted by a city would differ from the general laws of the state, within the limits defined by the Constitution. The object of the amendment was to permit such differences and to make them effective.

*Billings v. Cleveland Ry. Co.*, 92 Ohio St. 478, 484, 111 N.E. 155 (1915); *accord State ex rel. Lentz v. Edwards*, 90 Ohio St. 305, 310, 107 N.E. 768 (1914).

It is well established that the regulation and supervision of municipal elections are matters of procedural self-government "over which a charter municipality has full authority and control."<sup>4</sup> 1982

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<sup>4</sup> We note that the power of local self-government with regard to elections pertains only to elections in municipalities. "County and state elections are not a matter of municipal self-government, and municipalities have no power to prescribe regulations for the control of such elections." 1982 Op. Att'y Gen. No. 82-057, at 2-167; *accord State ex rel. Automatic Registering Mach. Co. v. Green*, 121

Op. Att’y Gen. No. 82-057, at 2-167. A municipal charter may establish the method, manner, and procedure for conducting municipal elections. *State ex rel. Rose v. Ryan*, 119 Ohio App. 363, 370, 200 N.E.2d 668 (Franklin County 1963); *see also State ex rel. Toledo v. Lucas Cnty. Bd. of Elections*, 95 Ohio St. 3d 73, 76-77, 765 N.E.2d 854 (2002); *State ex rel. Hackley v. Edmonds*, 150 Ohio St. 203, 215, 80 N.E.2d 769 (1948); *State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. 339, 344-45, 126 N.E. 309 (1919); *Fitzgerald v. City of Cleveland*, 88 Ohio St. at 344, 348 (method of electing municipal officers “would seem to be a matter peculiarly belonging to the municipality itself”). Where a state law conflicts with a municipal charter provision governing municipal elections, Ohio courts consistently have held that municipal charter provisions are controlling of municipal elections over conflicting state law provisions. *State ex rel. Sherrill v. Brown*, 155 Ohio St. 607, 608, 99 N.E.2d 779 (1951); *State ex rel. Hackley v. Edmonds*, 150 Ohio St. at 211-16; *State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. at 345-46; *State ex rel. Taylor v. French*, 96 Ohio St. at 181-82; *State ex rel. Rose v. Ryan*, 119 Ohio App. at 369 (“by virtue of Article XVIII of the Constitution a charter municipality has full authority to provide for and control its municipal elections. Such a charter provision is paramount and superior to a state election statute and is subject only to applicable constitutional limitations”); 2013 Op. Att’y Gen. No. 2013-009, at 2-85; 1982 Op. Att’y Gen. No. 82-057, at 2-167; *see also* 1985 Op. Att’y Gen. No. 85-039, at 2-140. As explained by the Ohio Supreme Court, “[w]hatever difficulty this court may have encountered in accurately designating the subjects comprehended in ‘local self-government’ ... it has had no difficulty in arriving at the conclusion that the qualification, duties, and manner of selection of officers purely municipal come within the purview of the provision granting a city ‘local self-government.’” *State ex rel. Frankenstein v. Hillenbrand*, 100 Ohio St. at 343.

The authority to prescribe the date on which a runoff special election will be held for the office of mayor is part of a charter municipality’s authority to establish the method, manner, and procedure for conducting municipal elections. “[A] charter can prescribe the qualifications of electors and candidates, *the time of holding the municipal election*, and the method, manner and procedure for conducting such elections.” *State ex rel. Rose v. Ryan*, 119 Ohio App. at 370; *accord* 2007 Op. Att’y Gen. No. 2007-033, at 2-339 n.1 (a municipal charter may “provide for holding a primary or special election on a day other than one of those days [set forth in R.C. 3501.01(A)-(E)]”). Even if a date for a runoff special election for a municipal office conflicts with the dates set forth for holding special elections under R.C. 3501.01(D), the date established by the municipal charter will control over the state law provision. This is because the date of the runoff special election pertains only to the election of a municipal officer and, therefore, a charter provision prevails over a conflicting state law.

Therefore, we conclude that Section 3.03 of the Ironton City Charter, rather than R.C. 3501.01(D), governs the date on which a runoff special election shall be held for the office of mayor in the event such an election is necessary.

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Ohio St. 301, 311, 168 N.E. 131 (1929); *State ex rel. Taylor v. French*, 96 Ohio St. 172, 184, 117 N.E. 173 (1917); 2013 Op. Att’y Gen. No. 2013-009, at 2-85 to 2-86.

**Where Charter is Silent, the Recount Provision of R.C. 3515.02 Applies**

You also ask, if the City of Ironton is authorized to hold the runoff special election on the date set forth in the city's charter, does the recount provision of R.C. 3515.02 apply? As previously explained, R.C. 3515.02 permits a candidate to apply for a recount within five days after the election results are declared by the board of elections. This means that a candidate for the office of mayor in the City of Ironton is permitted by state law to apply for a recount no later than two days after a runoff special election is held. See R.C. 3505.32(A); R.C. 3505.33; R.C. 3515.02; Ironton City Charter, § 3.03.

We conclude that the recount provision established by R.C. 3515.02 applies, and a candidate for the office of mayor is empowered to request a recount pursuant to this provision. No provision in the Ironton City Charter addresses recounts. Where a charter is silent on a matter, the state statute applies. *Fisher v. Amberley Vill.*, Hamilton App. No. C-140081, 2015-Ohio-2384, 2015 WL 3794518, at ¶34; accord *State ex rel. Robinson v. City of Dayton*, Montgomery App. No. 25245, 984 N.E.2d 353, 2012-Ohio-5800, at ¶31; 2008 Op. Att'y Gen. No. 2008-032, at 2-332 n.7. A charter provision will control over a state statute only where there is an express conflict between the two and not by mere inference. *State ex rel. Lightfield v. Vill. of Indian Hill*, 69 Ohio St. 3d 441, 442-43, 633 N.E.2d 524 (1994); accord *State ex rel. Regetz v. Cleveland Civil Serv. Comm'n*, 72 Ohio St. 3d 167, 170-71, 648 N.E.2d 495 (1995); *State ex rel. Robinson v. City of Dayton*, 2012-Ohio-5800, at ¶¶30-31; 2008 Op. Att'y Gen. No. 2008-032, at 2-331 to 2-332; 2004 Op. Att'y Gen. No. 2004-051, at 2-436 n.6. Because the Ironton City Charter is silent with respect to recounts, the recount provision of R.C. 3515.02 applies.

We understand the practical concerns inherent in this conclusion. Namely, a runoff special election might occur pursuant to the city's charter before a candidate has filed an application for a recount pursuant to R.C. 3515.02. Any potential practical difficulties that may occur as a result of the application of R.C. 3515.02 and Section 3.03 of the Ironton City Charter, however, require a legislative remedy. For example, given the various times imposed by R.C. 3515.02, as well as the timing permitted by R.C. 3505.32(A) and R.C. 3505.33, it may be prudent for the City of Ironton to consider amending the city's charter with respect to the date on which a runoff special election shall occur in order to provide enough time for the board of elections to canvass the returns and declare the results and for candidates to file an application for a recount.

**Conclusions**

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

1. Section 3.03 of the Ironton City Charter, rather than R.C. 3501.01(D), governs the date on which a runoff special election shall be held for the office of mayor in the event such an election is necessary.

2. Where no provision of the Ironton City Charter addresses the same subject matter, the recount provision set forth in R.C. 3515.02 applies to the election of the office of mayor.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE  
Ohio Attorney General