

6809

MUNICIPAL CORPORATIONS—PROPOSAL TO ADOPT STATUTORY FORM OF GOVERNMENT — SECTIONS 705.41 TO 705.86, INCLUSIVE, RC—BOARD OF ELECTIONS MAILS COPY OF PROPOSED PLAN—SECTION 705.03, RC—WHERE ISSUE OF ADOPTING CHARTER UNDER SECTION 7, ART. XVIII, OHIO CONSTITUTION SUBMITTED TO ELECTORS—NOTICE GIVEN AS PROVIDED IN SECTION 8, ART. XVIII, OHIO CONSTITUTION.

## SYLLABUS:

The provisions of Section 705.03, Revised Code, relative to the mailing by the board of elections of a copy of a proposed plan of government to the electors have application only in those instances where a proposal is submitted to the electors to adopt one of the statutory plans of government provided in Sections 705.41 to 705.86, inclusive, Revised Code; and where the issue of adopting a proposed charter, under authority of Section 7, Article XVIII, Ohio Constitution, is submitted to the electors the notice thereof should be given the electors in the manner provided in Section 8, Article XVIII, Ohio Constitution.

Columbus, Ohio, July 7, 1956

Hon. Robert L. Perdue, Prosecuting Attorney  
Ross County, Chillicothe, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have received the following written request from the Board of Elections, Ross County, Ohio.

“At a meeting of this Board today, a motion was made, seconded and approved that you, as Prosecuting Attorney, be requested to secure an opinion from the Attorney General as to whether it is mandatory upon the Board of Elections, or if it is mandatory upon the Clerk of the municipality, or if it is mandatory upon both to mail copies of the proposed charter which will be submitted to the electors of the City of Chillicothe this fall.

“Article XVIII, Section 8, of the Constitution of the State of Ohio, states, in part, “Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein . . . .”

“Section 705.03, Revised Code, states, in part, “At least thirty days prior to any such election, the board (elections) shall mail a copy of the proposed plan of government and the supplementary propositions to each elector of the municipal corporation whose name appears on the pollbooks or registration books of the last general election. \* \* \* .”

“Your opinion on the three questions presented by this communication is respectfully requested.”

It will be noted, in that portion of Section 705.03, Revised Code, which is quoted in your inquiry, that reference is made to “such election.” This reference is made meaningful by the following language in the initial paragraph in that section:

“In submitting to the electors of any municipal corporation the question of organizing under any one of the plans of government provided in sections 705.41 to 705.86, inclusive, of the Revised Code, the board of elections shall have printed on the ballots the following question:

“‘Shall the (name the plan) plan of government, as provided in chapter . . . . ., section . . . . . of the Revised Code be adopted?’ \* \* \*”

The “plans” for which provision is made in Sections 705.41 to 705.86, inclusive, of the Revised Code, are (1) the commission plan, (2) the city manager plan, and (3) the federal plan.

This act was formerly set out in Sections 3515-1, et seq., General Code, and was the subject of consideration in *Switzer v. State ex rel. Silvey*, 103 Ohio St., 306. The issue in that case is made apparent by

the following language in the opinion by Judge Wanamaker (pp. 307, 308) :

“The main question in this case is not whether the people of a municipality under the Constitution of 1912 have the right of referendum vote to adopt their own form of government and to amend the same from time to time, agreeable to the constitution. All parties concede the soundness of that general proposition. The question is whether a municipality that has adopted a charter, agreeable to the Constitution of 1912, can amend that charter by any other method than the one appointed in the Constitution of Ohio in Article XVIII, relating to municipal corporations, and particularly whether or not said charter may be amended, as claimed by the relators, pursuant to an *act* passed by the *general assembly* of the state of Ohio, as set forth in the petition filed in the court of appeals, which act is referred to in the court of appeals as Exhibit A and adopted as a part of the petition. This act (Section 3515-1 *et seq.*, General Code) was passed April 28, 1913, and is found in 103 Ohio Laws, pages 767 to 786, inclusive, the ‘Federal Plan’ being provided for in Sections 1 to 16, Article V of the act. \* \* \*”

The reasoning of the court on the point here pertinent is set out in the opinion, pp. 309, 310 as follows :

“2. The act itself in its title contains this language :

“ ‘To provide optional plans of government for municipalities and permitting the adoption thereof by popular vote in accordance with article XVIII, *Section 2*, of the constitution of Ohio.’

“Now, the city of Dayton never proceeded or attempted to proceed under *Section 2* or the statute enacted pursuant thereto. It did proceed, however, according to *Sections 7 and 8* of Article XVIII of the Constitution. *Section 7*, Article XVIII, reads :

“ ‘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.’

“*Section 8* immediately follows with the provisions as to choosing a commission and framing and adopting a charter.

“The very fact that the title of the act itself shows that it was enacted pursuant to *Section 2*, Article XVIII of the Constitution, excludes any application of this act or any of its parts to any other section of Article XVIII, upon the principle that the expression of one section is the exclusion of all others, unless the contrary clearly appears.

“Clearly, then, the statute can have no reference or appli-

cation to the amendment of any city charter adopted pursuant to Section 8, Article XVIII of the Constitution.”

The court’s conclusion, of interest here, is stated in the syllabus as follows :

“3. The act of the general assembly passed April 28, 1913 (103 O. L., 767), purporting to provide optional forms of municipal government, expressly pursuant to Section 2, Article XVIII of the Constitution, and providing for the adoption of any one of them by referendum vote, has no application to the municipalities of Ohio that have adopted a charter form of government under Sections 7 and 8, Article XVIII of the Constitution of Ohio.”

Although Judge Wanamaker, in *additional* support of the courts conclusion, cited the ruling in *State ex rel. Toledo v. Lynch*, 88 Ohio St., 71, that only charter cities possess home rule powers under the Constitution, a view which was flatly rejected by the court in *Perrysburg v. Ridgeway*, 108 Ohio St., 245, it is not believed that his reasoning, above quoted, on the limited application of Section 3515-1, et seq., General Code, can seriously be questioned. Indeed, in view of the manifest legislative purpose, clearly expressed in the title of the act involved, to provide optional *statutory* plans of government, the court’s conclusion on the point here in question seems unassailable.

The distinction between these special statutory plans, and the general statutory plan of municipal government, on the one hand, and a charter form of government on the other, is readily apparent when it is considered that charter plans provide a means of “a new delegation or distribution of the powers” of municipal home rule, see *Perrysburg case*, *supra*, and are subject to almost infinite variation, whereas such statutory plans, in each instance, provide a fixed and rigid distribution of powers among the officers and agencies therein designated. Moreover, in the case of such statutory plans, although the electors select the one to be adopted, it is the legislature which has prescribed the plan in detail. Charter plans, on the other hand, are prescribed entirely by the charter framers.

It would seem that the distinction between (1) proceedings to frame a charter, and (2) those to adopt a statutory plan of government, is clearly recognized by the legislature in the following language in Section 705.02, Revised Code.

*“The proposition to adopt a plan of government provided in sections 705.41 to 705.86, inclusive, of the Revised Code, shall not be submitted to the electors of any municipal corporation less than ninety days before a regular municipal election. If, in any municipal corporation, a sufficient petition is filed, requiring that the question of choosing a commission to frame a charter be submitted to the electors thereof, the proposition to adopt a plan of government provided in such sections shall not be submitted in that municipal corporation as long as the question of choosing such commission or of adopting a charter framed by such commission is pending therein. \* \* \*”* (Emphasis added.)

Because Section 8, Article XVIII, prescribes how a municipal charter is to be adopted, and because Section 705.03, Revised Code, does not purport to be applicable in proceedings to adopt a charter, it follows that only the constitutional procedure relative to notice to the electors on the issue proposed should be followed where a proposed charter is to be submitted to the electors.

Accordingly, in specific answer to your inquiry, it is my opinion that the provisions of Section 705.03, Revised Code, relative to the mailing by the board of elections of a copy of a proposed plan of government to the electors have application only in those instances where a proposal is submitted to the electors to adopt one of the statutory plans of government provided in Sections 705.41 to 705.86, inclusive, Revised Code; and where the issue of adopting a proposed charter, under authority of Section 7, Article XVIII, Ohio Constitution, is submitted to the electors the notice thereof should be given the electors in the manner provided in Section 8, Article XVIII, Ohio Constitution.

Respectfully,  
**C. WILLIAM O'NEILL**  
Attorney General