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1. CHARTER COMMISSION — DULY ELECTED — MUNICIPALITY—HAS SOLE RIGHT TO FIX TIME FOR ELECTION—APPROVAL OR DISAPPROVAL OF PROPOSED MUNICIPAL CHARTER—ARTICLE XVIII, SECTION 8, CONSTITUTION OF OHIO.
2. DUTY OF LEGISLATIVE BODY OF MUNICIPALITY TO APPROPRIATE NECESSARY FUNDS TO COVER ALL EXPENSES—PROCEEDINGS TO FRAME AND ADOPT CHARTER—ARTICLE XVIII, SECTIONS 8, 9, CONSTITUTION OF OHIO.

SYLLABUS:

1. Under the provisions of Section 8, Article XVIII of the Ohio Constitution, a duly elected charter commission has the sole right to fix the time for an election for approval or disapproval of a proposed municipal charter.

2. Where proceedings are instituted pursuant to Section 8 of Article XVIII of the Constitution of Ohio, to frame and adopt a charter for a municipality, or pursuant to Section 9 of said Article, to amend such charter, it is the duty of the legislative body of such municipality to appropriate the necessary funds to cover all the expenses incident to such proceedings.

Columbus, Ohio, March 25, 1952

Hon. Charles A. Anderson, Prosecuting Attorney
Trumbull County, Warren, Ohio

Dear Sir :

I have before me your request for my opinion, reading as follows:

“Can a Charter Commission demand a special election at any time they choose, without consent of the City Council, within one year from election of Commission?”

“Must City Council appropriate monies from the General Fund for such election, drawing of charter and mailing of same to each elector?”

The process of preparing and adopting a charter for a city or village, and for amending such charter, is governed entirely by Sections 7, 8 and 9 of Article XVIII of the Ohio Constitution. Section 7 reads as follows:

“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 reads as follows:

“The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, ‘Shall a commission be chosen to frame a charter’. The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at *an election to be held at a time fixed by the charter commission* and within one year from the date of its election, *provision for which shall be made by the legislative*

authority of the municipality in so far as not prescribed by general law. 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. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein."

(Emphasis added.)

Section 9 make substantially the same provisions as to the amendment to the charter, which may be begun either by action of the council or by petition of electors, it being provided that the "submission of proposed amendments shall be governed by the requirements of section 8, as to the submission of the question of choosing a charter commission," and further that copies of the proposed amendment are to be mailed as provided in section 8.

The provisions of Section 8 *supra*, appear to be very clear both as to initial proceedings and the ultimate adoption. The council of a municipality may initiate the matter by passing by a two-thirds vote, an ordinance providing for the submission to the electors of the question, "Shall a commission be chosen to frame a charter." If a petition signed by ten per cent of the electors is filed asking for such action then the council "shall forthwith provide by ordinance" for the submission of that question, and the Constitution fixes the time within which such election must be held.

These preliminary proceedings do not directly bear on the questions which you have submitted, but are referred to as confirming my opinion that the constitution governs the entire proceeding and leaves to the council no discretion whatever except the determination of the date of the first election, and that within the times limited.

After the charter commission has finished its work "any charter so framed shall be submitted to the electors of the municipality at an election to be held *at a time fixed by the charter commission*, and within one year from the date of its election."

These provisions leave no possible doubt as to the answer to your first question *viz.*, that the charter commission has the right to fix the time for a special election on the question of adopting a proposed charter, without the consent of the council.

As to your second question, I call attention again to the language of Section 8, *supra*. The proposed charter is to be submitted at an election, "provision for which *shall be made* by the legislative authority of the municipality, in so far as not prescribed by general law." What provisions might be made by the general law does not appear. I do not find that any general laws have been enacted that have a bearing on such election, except those provisions which relate to the form of the ballot on submission of questions, and the method of marking.

Accordingly, the responsibility and burden rest upon the legislative authority of the municipality to carry out the mandate of the constitution, including as an incident provision for whatever expense is involved in holding the election and preparing and mailing a copy of the proposed charter to each elector.

So far as I can discover, no question has been raised in the courts as to the duties of the council or other legislative body of a municipality in connection with these proceedings. Such duties must necessarily include the appropriation of sufficient funds to pay the expenses of the two elections, the necessary expenses of the charter commission and the printing and mailing of copies of the proposed charter.

There have been holdings to the effect that the constitutional provisions above referred to are self-executing. See Opinion No. 1253, Opinions of the Attorney General for 1914, page 1455; *Switzer v. State*, ex rel. *Silvey*, 103 Ohio St., 307; *State*, ex rel. *Vrooman v. Kauffman*, 22 Ohio App., 282; *Kuertz v. Gas & Electric Company*, 27 Oh. N. P. (N.S.) 221.

In the case of *Switzer v. State*, *supra*, the question before the court was whether a charter adopted pursuant to Section 8 of Article XVIII, of the Constitution, could be amended by submitting to the electors for adoption as a substitute, one of the three special forms of municipal government set up by the General Assembly in Section 3515-1 et seq. General Code. In denying the power of the legislature to provide a process for the amendment of a charter wholly governed by provisions of the constitution, the court said:

"Where constitutions speak, statutes should be silent. This doctrine has been announced and applied in so many cases of constitutional construction that it has become settled as the standard of constitutional power and legislative want of power."

Certainly, if the general assembly is without power to interfere with or provide a substitute for the mandate of the constitution, a municipal council would have no authority in the matter of determining the time of the election on the adoption of a charter prepared for submission as provided in Section 8 of Article XVIII of the constitution.

In the case of *State ex rel. v. Kauffman*, *supra*, a writ of mandamus was sought to compel the clerk to send to the electors copies of a proposed amendment to a charter as required by Section 9 of Article XVIII above referred to. The court refused the writ on the sole ground that the petition was filed too late to permit such mailing, "not less than thirty days prior to such election," as required by the constitution. But the court repeatedly referred to the "duty enjoined by the constitution" upon the clerk to mail such copies.

In the 1914 Opinion of the Attorney General above referred to, it appeared that the clerk, in complying with the requirement of the constitution, had sent copies of the proposed charter of the City of Cincinnati, not only to the male electors, but also to the women who were then permitted by law to vote for members of the board of education but were not qualified electors, generally. It was pointed out in the opinion that the city was required to pay for printing and mailing the copies to the legal electors. The Attorney General made this statement:

"While I have generally characterized section 8 of article XVIII of the constitution as self-executing, in order that its mandate may be complied with, it is necessary for the council of a municipal corporation to appropriate the necessary money."

Specific reference was made to the cost of printing and postage.

In specific answer to the questions submitted, it is my opinion:

1. Under the provision of Section 8, Article XVIII of the Ohio Constitution, a duly elected charter commission has the sole right to fix the time for an election for approval or disapproval of a proposed municipal charter.

2. Where proceedings are instituted pursuant to Section 8 of Article XVIII of the Constitution of Ohio, to frame and adopt a charter for a municipality, or pursuant to Section 9 of said Article, to amend such

charter, it is the duty of the legislative body of such municipality to appropriate the necessary funds to cover all the expenses incident to such proceeding.

Respectfully,

C. WILLIAM O'NEILL
Attorney General