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PRELIMINARY STATEMENT

OF THE

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Commission on Municipal Government

Appointed pursuant to Laws of 1948
Joint Resolution No. 1

*Local Self-Government in New Jersey:
A Proposed Optional Charter Plan*

Prepared for the free and open discussion of the citizens of
New Jersey prior to a final report of the Commission

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TRENTON, NEW JERSEY

1948

**STATE OF NEW JERSEY
COMMISSION ON MUNICIPAL GOVERNMENT**

[Laws of 1948, Joint Resolution No. 1]

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(Optional Amendments to the Walsh Act)

This appendix sets forth a supplement to the commission form of government law which would provide an option for the commission government municipalities that are unable or unwilling to adopt one of the standard optional forms. The purpose is to use the basic philosophy of commission government—that is, the election of commissioners who are at the same time a legislative body and administrative heads—but to add the advantage of centralized executive responsibility in the mayor

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STATE OF NEW JERSEY

Joint Resolution No. 1

Laws of 1948

A Joint Resolution creating a commission to study the forms of municipal government in New Jersey, prescribing its powers and duties and making an appropriation therefor.

WHEREAS, A major part of the tasks of government under the Constitution and laws of this State which most directly and intimately affect the lives of the people are performed by or with the co-operation of the municipalities; and

WHEREAS, It is generally recognized that responsible and effective municipal governments are vital to the strength of our whole democratic system of self-government in State and nation; and

WHEREAS, The new Constitution of New Jersey calls for a liberal construction and extension of the right of the people to local self-government; and

WHEREAS, There is a widespread belief that the laws of the State do not permit our communities to avail themselves of the most efficient and economical forms of local government; and

WHEREAS, The recent Constitutional Convention set an outstanding example of intelligent, high-minded and non-partisan effort to improve the structure of State government, and in the same spirit it is desirable that the structure and form of municipal government be carefully studied, that a report be made thereon, and that considered recommendations for improvement be formulated; therefore

Be it resolved by the Senate and General Assembly of the State of New Jersey:

1. There is hereby created a *Commission* of nine members to be appointed as follows:

Two members to be appointed by the President of the Senate;

Two members to be appointed by the Speaker of the House of Assembly; and

Five members to be appointed by the Governor, who shall also designate the chairman.

2. Within fifteen days after the effective date of this joint resolution, the President of the Senate, the Speaker of the House of Assembly and the Governor shall make their respective appointments under this joint resolution. These appointments shall be made without regard to partisan affiliation and they shall be made as to constitute a *Commission* composed of persons qualified to inquire into and to form sound, unbiased judgments concerning the effectiveness of existing forms of local government in this State and their possible improvement.

3. All members of the *Commission* shall serve without compensation but they shall be entitled to be reimbursed for their necessary expenses incurred in the performance of their duties.

4. The *Commission* shall be charged with the duty of inquiring into the structure of local government in this State; of examining the laws governing the various forms and essential procedures of municipal government presently in operation or available and the terms and conditions on which each such form may be adopted by the people of any community, to investigate and evaluate the actual operation of each of the several forms now in use and to obtain information concerning approved forms and practices of local government in other States, all with the view to suggesting in what respects the laws of New Jersey might be changed to provide the fullest opportunity for local self-government consistent with the interests of the State as a whole.

5. The *Commission* is authorized to hold hearings in different parts of the State, call witnesses and obtain necessary legal, clerical and other assistance from such State and municipal departments as may be required. It shall also have authority to engage such competent and expert advisors, investigators and secretarial, clerical and stenographic assistants as it may deem necessary to the accomplishment of the purpose of this joint resolution; *provided*, that the compensation to be paid such assistance shall at all times be within the limits of the appropriation hereby made.

6. The *Commission* may publish tentative reports of recommendations and hold public hearings thereon.

7. The *Commission* is directed to have printed a report or reports containing its recommendations and the reasons therefor and to draft or to have drafted bills for introduction in the Legislature to carry out its recommendations. It shall report its findings and recommendations to the regular session of the Legislature in January, one thousand nine hundred and forty-nine, and to the Governor on or before January first, one thousand nine hundred and forty-nine.

8. For the purpose of carrying into effect this joint resolution there is hereby appropriated the sum of twenty-five thousand dollars (\$25,000.00) or so much thereof as may be necessary.

9. This joint resolution shall take effect immediately.

Approved and effective February 18, 1948.

LOCAL SELF-GOVERNMENT IN NEW JERSEY: A Proposed Optional Charter Plan

PART I

Looking Ahead in Local Government

The *Commission on Municipal Government*, pursuant to *Laws of 1948*, Joint Resolution No. 1, was charged by the Legislature with the duty of inquiring into the structure of municipal government in New Jersey, with the following purposes (Sec. 4) in mind:

First, To examine the laws governing the various forms and procedures of municipal government as at present operating or available;

Second, To determine the terms and conditions upon which each such form may be adopted by the people of any community;

Third, To investigate and evaluate the actual operation of each of the several forms now in use;

Fourth, To obtain information concerning approved forms and practices of municipal government in other States.

All with the view of suggesting in what respects the laws of New Jersey might be changed to provide the fullest opportunity for local self-government consistent with the interests of the State as a whole.

Confusion of Present Plans

The *Commission* would first emphasize the extreme confusion that exists in the municipal law and government of New Jersey today. The earliest structures of municipal government were provided by special charters adopted by the Legislature, incorporating the inhabitants of a special area as a body politic and corporate. These special charters still exist and are in effect in many municipalities to the extent that they are not in conflict with subsequent charters adopted by the municipality or with

general laws. The *Commission* has made a diligent search for such charters; but even direct correspondence with each municipality failed to locate many of them, and all of them are so infiltrated with general law as to have long ago lost their identity. Special charters applying to the State's 253 boroughs no longer exist, since the borough law of 1897 superseded all special charters for this type of municipality. Any city, town, township, borough or village that has adopted any of the twenty municipal forms available under the law today, other than the borough form, is under the greatest uncertainty as to its full powers and duties for there is great confusion as to how far their former charters would be superseded.

In addition to the chaotic effect of special charter provisions, there are a great variety of general laws establishing various types of municipal government which can be adopted by referendum set forth in the acts. These acts attempt to provide municipalities with the forms of government that are generally recognized throughout the United States; which are, broadly speaking, as follows—

The weak-mayor council plan of municipal government—identified by an elected mayor, an elected council, a "long ballot" of elected administrative officers, and some separation of executive and legislative powers.

The strong-mayor council plan—identified by a "strong" mayor, an elected council, a "short ballot" permitting wide appointment of administrative officers by the mayor, and a separation of executive and legislative powers.

The commission plan—a titular mayor, designated by an elected commission from among its members, a "short ballot" of elected commissioners, with both legislative and administrative powers in the elected commission.

The council-manager plan—a titular mayor, designated by an elected council from among its members, the employment by council of an experienced public administrator (a manager) to have full charge of municipal operations, a "short ballot" permitting the election of council members only, all administrative officers to be appointed by the manager.

The rural government plans—these plans, commonly known in New Jersey as the town, township, or borough plans, are similar in form and structure to either the commission plan or the weak-mayor council plan, but in actual operation they all resemble a loose commission plan.

While variations of these plans are available to the municipalities of New Jersey under present laws, they are so confused by duplication, overlapping and specialized requirements that the *Commission* has actually identified twenty different types of municipal government (exclusive of special charters) at present operating in the State. The township plan, for example, is very close to the commission plan. The borough plan is similar to the mayor-council plan on paper but operates more like the commission plan. Three villages still operate under special charters or in combination with other plans. A multitude of municipal classifications for special purposes still further confuses the picture; and mandatory and permissive laws have grown to such a point that their mere enumeration required a 503-page report in 1941. While it is, therefore, almost impossible to generalize, the following statement is as near as the *Commission* could come to an identification of present municipal forms and structures—

Of our 52 cities, 22 operate under the commission plan, 3 under the council-manager plan, and 27 use some form of the mayor-council plan. Of 253 boroughs 22 have adopted the commission plan, and 3 the manager plan. The remainder of the boroughs operate under a borough plan—similar in operation to the commission plan. Of 23 towns, 7 use the commission plan, all others, the established town plan. Of 236 townships, 8 operate under the commission plan (two of which are classed as villages and operate under modified special charters), one under the manager plan and the remainder are under the township plan. There is one village.

It is, however, not so much the sheer diversity of form and structure that troubled the *Commission* as it was the chaotic condition that marked the whole body of municipal law of the State. Its first purpose, therefore, was to bring some semblance

of consistency in form, structure and powers to the present legal requirements, and to lay the groundwork upon which a known and defensible structure of municipal government could be erected.

The New Constitution

There are two provisions of the new Constitution that controlled the *Commission* from the beginning of its work. The first of these (Art. IV, Sec. VII, par. 11) reads as follows:

The provisions of this Constitution and of any law concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, *or essential thereto*, and not inconsistent with or prohibited by this Constitution or by law [italics added].

This clause states the accepted rule of construction of municipal powers but with the addition of the words *or essential thereto*. It is evident that the Constitutional Convention attempted to broaden the scope of these powers. Not only did it attempt to reverse the usual presumption against the existence of municipal powers by providing for a liberal construction of the law in favor of municipalities, but also seems to have introduced a new theory of "implied powers"—powers that are "essential" to the powers expressly conferred. The *Commission* suggests, however, that in practice this paragraph may be less effective than its provisions seem to indicate. It still leaves the matter of construing municipal powers to the courts, and until a substantial body of judicial opinions is developed, many municipalities will probably be unwilling to proceed without prior legislative approval of proposed action in an effort to avoid adverse judicial decisions.

The Commission concludes, therefore, that it is doubtful if this paragraph alone will add greatly to "the fullest opportunity for local self-government" that the Legislature had in mind in Joint Resolution No. 1.

A second paragraph in the new Constitution which was of controlling importance to the *Commission* is contained in Art. IV, Sec. VII, par. 10, and reads as follows:

Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

This is the so-called "home-rule" section of the new Constitution. Its general purpose was to permit diversity of legislative treatment according to local needs (formerly classed as "special legislation"), without resorting to the familiar sham of laws *general* in form but flagrantly *special* in effect. The section is not, however, in any real sense a full "home-rule" provision. Full "home-rule" requires that a municipality (acting through a locally elected charter commission and supported by a popular referendum), may, on its own initiative and *without recourse to legislative action*, adopt charter provisions best suited to its local needs. It is an attempt to express legally the political principle of local self-government; to overcome the constitutional rule that local charter making is a legislative function and not, therefore, subject to delegation; and to confine legislative action relating to local government in such a way that responsibility for local affairs will rest at the local level, unless the Legislature acts by general laws applicable to all municipalities alike.¹

¹ The so-called "home rule" States are: Arizona, California, Colorado, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Utah, Washington, West Virginia, Wisconsin.

The "home rule" section of the new Constitution hardly approaches these requirements. The initiative petition must *first* come from the governing body "authorized in a manner to be prescribed by general law"; *second*, the petition must be approved by a two-thirds vote of the Legislature; and, *third*, be adopted by the governing body or by the legally qualified voters of the municipality. The 1948 Legislature passed an enabling act (*Laws of 1948*, ch. 199) under this section. It provides for two methods of initiating changes in municipal government: (1) the governing body on its own initiative *may* petition the Legislature for a special law; or (2) the governing body *must* petition the Legislature for a special law if such law is initiated by a petition of the local electorate. The signatures required for the petition of the electorate are 20 per cent or 15,000 of the registered voters, whichever ever is the less. Upon receiving certification of the sufficiency of the petition, the governing body shall thereupon adopt a resolution (1) either authorizing the filing of the petition with the Legislature, or (2) authorizing the submission of the proposal to file, to the voters of the municipality at the next general election. In either case, following an affirmative action, the executive officer of the municipality will prepare and cause to be introduced into the Legislature a bill to carry out the purposes of the petition. Upon an affirmative vote (two-thirds) by the Legislature, the law passed pursuant to the petition is submitted to the electorate at a general or municipal election unless otherwise prescribed in such law; and if decided in the affirmative, becomes operative in the municipality.

The *Commission* would respectfully point out that this procedure does not encourage a prompt response to a well-defined local need. The signatures of 20 per cent or 15,000 of the *registered voters* may represent 10 per cent or more of the population—a large number as compared to more usual petition requirements. The support of the governing body is necessary to avoid undue delay; the electorate may have to vote twice upon substantially the same proposal; and the Legislature (restricted by a two-thirds vote) will have difficulty accepting any proposal without substantial alterations which, if adopted, will further complicate local action. In short, the *Commission*

feels that, under present legal provisions, the municipalities of the State have little more home rule under the new Constitution than they had under the old, and its first decision, therefore, was—

That it is the purpose of this Commission to provide the means for as much home rule for the municipalities of this State as the provisions of the new Constitution will permit.

Charters for Home Rule

This decision involved two others; namely—

That municipalities should as far as possible be permitted to select their own charter forms and exercise a broad range of discretionary powers;

That such charter forms should embody the best thinking in the field of municipal form and structure; and that the broad range of discretionary powers should rest, wherever possible, upon accepted standards of performance.

Following extensive analysis of the problem, the *Commission* concluded that there were two methods available whereby these purposes could be attained. The *first* was to seek ways of providing the municipalities of the State with "home rule" charter provisions in the full meaning of the term. The *second* was to adopt the so-called "optional charter plan" whereby municipalities would, at their option, be given a choice of several charters previously prepared by the Legislature—a "modified" home rule. The choice between these two methods was fundamental. On the one hand (for full "home rule") the *Commission* faced the necessity of at least two constitutional amendments—one authorizing home rule charters for municipalities, the other, forbidding the Legislature to classify municipalities for the purpose of special treatment. On the other hand, the optional charter plan ("modified" home rule) promised difficulties. No set of optional charters can prevent a Legislature (under present constitutional provisions) from exercising control over purely local policies; and the matter of "mandatory laws"—laws of which there are hundreds, requiring municipalities to undertake certain services and to assume certain expenditures—cannot be effectively reached by an optional charter law.

It became plain to the *Commission*, however, that the idea of full home rule had two equally important implications—one concerned with form and structure and the other with municipal powers. In one respect (form and structure), full home rule would take from the Legislature the functions of making and amending municipal charters, and vest them in the local electorate specially organized for this purpose. In another respect (municipal powers), full home rule would exclude the Legislature from acting on matters deemed to be of a local character *except by general law*—general in effect as well as in expression. Following careful consideration of these two factors, the *Commission* abandoned the full home rule theory as unsuitable to New Jersey at this time for the following reasons:

First, The *Commission* did not wish to propose amendments to a new Constitution that was still in the process of legislative adjustment and not yet well established in popular thinking.

Second, It did not think that *general* laws alone could meet, satisfactorily, the diverse needs of local government in New Jersey.

Third, It thought that improvements in municipal form, structure and powers could best be developed under substantial legislative guidance supported (but not solely determined) by local choice.

The *Commission* thereupon turned to the second alternative—the optional charter plan. This title describes what may be considered as a modified home rule. It permits the municipalities of a state to select, on their own initiative and without subsequent legislative approval, any one of several forms of municipal government previously approved by the Legislature. Some fifteen states can probably be classified as optional charter states, although the classification is at best a loose one. Some of these states approach very closely to full home rule; others confine the optional charter privileges to certain classes of municipalities; and there is considerable variation in the number of charter choices and still more in the treatment of municipal powers (as opposed to form and structure) under the various charter forms.¹

¹ The so-called "optional charter" states are (*Municipal Year Book* (1945), 90-123) Idaho, Iowa, Kansas, Massachusetts, Montana, *Nebraska*, New Jersey, New Mexico, *New York*, North Carolina, North Dakota, *Ohio*, South Dakota, Virginia and *Wisconsin*. The italicized states are also classed as "home rule" states.

In considering the optional charter plan as suitable to New Jersey, the *Commission* had five fundamental questions to resolve:

First, *Could the optional charter plan be satisfactorily fitted to the new Constitution?*

Although there has never been an optional charter plan in New Jersey as a complete program for municipal government, it has been the practice for many years for the Legislature to offer municipalities, through a great variety of general laws, various forms of municipal government which could be adopted by a prescribed referendum procedure, as the charter of a municipality. Since it is well established that such procedure is constitutional, and the new Constitution in no way altered the rule, the *Commission*, following the advice of counsel, concluded, that, in general, an optional charter plan could be fitted to the new Constitution.

There was only one question which raised some initial doubt. The *Commission* wished to place the choice of the optional form before the voters following the recommendation of a charter commission elected for the purpose of prior study and recommendation. While it is well established that the Legislature can enact a general law which may be adopted in a particular municipality, the rule is restricted as follows: *No will may intervene between the legislative act and the exercise of the option by the people*. The *Commission*, therefore, faced the question: "Does the selection of a particular optional plan by a charter commission for submission to a vote of the people, constitute an intervening will?" Following a thorough study by counsel, the *Commission* believes a specially elected charter commission, chosen for the purpose of making a preliminary choice from among several charters, and of providing for the submission of a recommended charter to the people, does not constitute an intervening act (as between the Legislature and the will of the people) within the meaning of the rule.

Second, Could optional charter plans be provided that, without the use of sub-options (that is, options within options), would offer an adequate but flexible choice to local charter commissions?¹

In an effort to give as much local choice as possible in matters of municipal form and structure, the *Commission* considered the use of sub-options within each optional plan. The *Commission* is advised that while there are no New Jersey cases directly on the use of sub-options (the issue never having squarely arisen), it is of course a well established rule of law that the Legislature may not delegate its law making power. The *Commission* therefore abandoned the use of sub-options and resolved the problem as follows:

Wherever an optional choice might have been indicated in the interest of home rule, the *Commission* selected the procedure that, in its judgment, best met the requirements of good government;

The optional charters themselves offer a wide range of choice; and the local grant of general powers (contained in all charters) is sufficient to meet most diverse requirements;

To give further flexibility to local choice, the *Commission's* plan would make available through separate referenda, certain alternative proposals which may be adopted where local circumstances require them.

Third, Could inducements be devised that would make the optional charter plan sufficiently attractive to the voters of a municipality to encourage adoption?

The *Commission* is aware that in all municipalities there is a strong apathy on the part of the people to change materially the forms of government to which they have been long accustomed. Theoretical criticism of defects in structure and organization are not usually persuasive in the face of routine accomplishments. While rising to no heights and sinking to no depths, local government may reach a level of service which,

¹ By sub-options is meant a choice of procedures within the optional plans themselves. For example, the optional plans provide for the election of council members at large; a sub-option might give a choice of election by wards. The optional plans provide for non-partisan election; a sub-option might give a choice of partisan elections. For legal reasons, as stated above, sub-options were dropped from the proposed plans.

while lacking standards for comparison or stimulation for improvement, brings a certain amount of passive satisfaction to a community.

The appeal for better municipal government must, however, rest upon benefits of its citizens. It must carry assurance of new opportunities associated with the home rule principle, which will lead to a readier responsiveness to popular control, to prompter responsibility for official action and to a freer choice of public policy. The assumption of the *Commission* is that there are citizens in every municipality (both in and out of public office) who would welcome the opportunity to improve their local government; but that they often lack clear-cut and known ways of procedure, and are uncertain as to possible objectives as well as to the best means of attaining them.

The *Commission* feels that its optional charter proposals not only meet these difficulties, but will place any community that adopts an optional charter in a far stronger position than that offered by any of the present statutory choices, for the following reasons—

Local action in the adoption of a charter (initiated either by petition or by the local governing body) is reduced to a popular procedure easily undertaken and promptly completed.

The optional charters themselves are based on the best thinking in the field of municipal government; and offer every promise that form and structure can offer, that the community will be well governed.

The optional charters offer far more "home rule" than has heretofore been available in New Jersey. While still having the over-all guidance that general laws permit, the optional charter community has broad service authority which permits municipal adjustments to local needs without recourse to legislative action and without the present requirements of many mandatory laws.

For these reasons, the likelihood of a sustained and enlightened civic interest seems more firmly assured under the proposed optional charter plans, than under any of the present statutory provisions.

Fourth, Could the general laws now in force—particularly those relating to the establishment of municipal boards and commissions—be fitted to optional charter provisions?

The proposed optional charter plans would release the local communities which adopted them from the multitude of boards and commissions which are now authorized by various statutes. The idea of a special board or commission for every new function of local government has grown piecemeal over the years and has resulted in unnecessary division of responsibility, and poor coordination among the various boards.

The *Commission* has sought to provide sufficient flexibility in the several plans so that each municipality could decide for itself how it wished to organize its local administration, within the general principle that each administrative department should be headed by a single executive. This would not permit the past practice of quasi-independent boards in many fields where they have been common, but the plans make specific exception for the field in which boards or commissions are essential to carry out particular functions or discharge special trusts. These exceptions include boards of education, library boards, sinking funds and pension funds where they exist, planning boards and boards of zoning adjustment. In all cases the local governing body is authorized to establish advisory boards so as to have the advantage of the broadest possible citizen consultation and participation in the affairs of local government.

In addition to the over-all principles set forth above, there are other basic decisions that guided the *Commission* in providing a proposed optional charter law. As has been pointed out above, certain general laws long in effect and of broad application would remain in force until further study indicated necessary adjustments. These include the important fields of education, local budgeting and borrowing, unemployment relief, tax assessment, collection and custody of public moneys, civil service, police and fire administration, municipal courts, and probably with modification, the municipal powers act. These fields are an example of the successful treatment of problems of local government by general laws or by laws of broad classification.

Fifth, Should the adoption of optional charters be left solely to the initiative of the municipality?

Any commission seeking to improve municipal government is certain to be plagued with two opposing purposes: *first*, a strong desire to see the results of its work incorporated in the municipal government of the State; and *second*, an equally strong desire to avoid proposals requiring mandatory action. There is, accordingly, nothing in the optional charter proposals to force action on the part of a municipality to change its charter or to extend or retract its powers; but the *Commission* has felt justified in providing that before 1955 (six years following the adoption of the proposed plan), every municipality which has not adopted a new charter form subsequent to the effective date of the proposed plan, shall submit the following question to the voters: "Shall a charter Commission be elected to study the charter of and to recommend a new charter or improvements in the present charter?"

The purpose of this provision is not to compel change but rather to stimulate interest. It seems to the *Commission* to be most desirable that, within the next six years, the people of every municipality in this State, examine their own local government and pass upon its adequacy at the polls. It is in part an educational provision, in part a matter of prudent government, and in part an effort to urge citizen interest in local affairs.

* * * * *

There is another point that is of importance in this matter. The purpose of the proposed optional charter plan is to present the best possible opportunities for sound government that form and structure can provide. It is hoped that in the years to come they will supersede most of the imperfect plans now in use. For this reason, the *Commission* has provided that once a municipality has adopted an optional plan, subsequent changes must be confined within the new optional plans themselves—in other words, it will not be possible to revert to the old forms now in use. And even somewhat further than this, future changes of form and structure, while wholly optional, must be selected from the proposed options; for the forms now provided under the old law—except through special charter adoptions—will no longer be available.

Commission Plan and Weak-Mayor Council Plan

A careful examination of municipal structure caused the *Commission* to adopt an adverse view towards the commission plan of municipal government. While it is true that the plan is in operation in 59 municipalities of the State, and finds support from some of the larger communities, it has inherent weaknesses, which, in the judgment of the *Commission*, are responsible for many of the municipal difficulties in commission governed cities that we face today. These weaknesses include the placing of both legislative authority and administrative authority in the same hands—namely, in the elected commission. This condition fosters “log-rolling,” delay and “personal politics” within the governing body. The commission plan offers no opportunity for sound budgeting practices—there is no practical way to coordinate a planned expenditure program as among five independent administrative authorities. There is no single responsible executive in the commission plan—this makes impossible a unified public policy as well as a known and effective responsibility.

For these reasons, the *Commission* has not included the commission plan among its proposed optional charters, but has offered instead optional amendments to the Walsh Act (the statutory commission plan) which it hopes will encourage commission-governed cities to remedy the major defects in their municipal forms and structures. These amendments are, however, no more than transitional provisions, and it is hoped that the commission plan, itself, will gradually be displaced in favor of the optional forms. It has, indeed, been in marked decline throughout the country, and few New Jersey municipalities have considered it in recent years.

The *Commission* has likewise dropped the weak-mayor council plan from its optional charter forms. The characteristics of this plan—the “long ballot” of elected administrative officers, and the futile position that the mayor must occupy as the responsible head of the municipality—has long been outmoded in municipal thinking and is wholly inadequate to modern municipal requirements. The strong mayor-council plan and the council-manager plan have been retained and perfected.

While these plans—identifying as they do the vital requirement of administrative responsibility—are the ones to which modern thinking looks most hopefully, the laws at present available are marred by provisions so serious as to impair their usefulness.

Incentives to Change

In offering incentives to municipal governments in the adoption of the optional plans, the *Commission* has stressed the increased home rule opportunities that accompany the plans through a broad authorization to each optional charter municipality to *organize its own departments, compensate its own officers and employees and determine the range and character of its services.* Section 2-5, chapter 2, of the proposed plan reads:

The general grant of municipal power contained in this chapter is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of functions, powers or duties contained in this act or in any other general or special law shall not be construed in any way to limit the general description of power contained in this chapter, and any such specifically enumerated functions, powers and duties shall be construed as in addition and supplementary to the powers conferred in general terms by this chapter. All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality.

To some, this may seem an undue relaxation of legislative guidance. The *Commission*, however, believes that the municipalities of New Jersey have shown themselves capable of a high degree of *self-government*; and if given the proper facilities to exercise this capacity, they will have *good government*. There is nothing, moreover, incompatible with home rule on the one hand, and sound structure and service standards established by general laws, on the other. But the *Commission* feels strongly that a maximum of local discretion under a form and structure that is both responsive and responsible to the electorate, is essential to sound public policy and to effective service standards.

The Optional Charter Plan

With these principles in mind, the *Commission* prepared a proposed optional charter plan which is contained in this preliminary statement of its deliberations: It is presented in six chapters—

Chapter 1: Procedure for Adoption of Optional Charter Plans—The purpose of this chapter is to provide for an orderly and systematic consideration of local charter needs by a local charter commission of five members; and to define the procedure by which charter changes may be made under various alternative proposals.

Chapter 2: Incorporation and Powers—This chapter is a key chapter in the proposed new system of optional charter plans. It establishes practical inducements to charter improvement, by offering municipalities extensive powers of local self-government, freedom from many mandatory laws and relief from the need for specific legislative approval to undertake new or different municipal services.

Chapter 3: Strong Mayor Plan—This chapter presents the features of the first of the optional forms—the “strong mayor” plan. This plan provides for a concentration of administrative authority in the elected mayor, who is also given a veto power over ordinances and resolutions. A significant feature of the plan is the provision for a business administrator who, under the direction of the mayor, shall have considerable responsibility in the budget, personnel, and purchasing processes. The legislative power is exercised by an elected council, which selects the municipal clerk and which retains adequate checks on the executive. The mayor, however, is given power commensurate with his administrative responsibilities.

Chapter 4: Council-Manager Plan—This chapter provides for the second optional form—a revised version of the council-manager form currently available to New Jersey municipalities. The new plan provides for a council of five members, prevents improper council influences in administration, and modifies the tenure provision for the manager in accordance with the *Model City Charter* of the National Municipal League. Throughout,

the plan adheres to the basic theory of the manager form—that there should be a distinct separation of policy determination and administration.

Chapter 5: Small Municipality Plan—The purpose of this chapter is to meet the need for an improved form of government in New Jersey's hundreds of small communities which does not depart too radically from long-established traditions in borough and township government. Basically, this optional form combines the best elements of the present borough and township plans with modern standards of administration.

Chapter 6: Provisions Common to All Plans—The purpose of this chapter is to bring together certain standard provisions which are in effect made part of each optional plan. These standard sections cover the subjects of elections, initiative and referendum, local legislation, officers and employees, and transitional matters upon the adoption of a new plan.

Appendix: Commission Government Supplement (Optional Amendments to the Walsh Act)—This appendix sets forth a supplement to the commission form of government law which would provide an option for the commission government municipalities that are unable or unwilling to adopt one of the standard optional forms. The purpose is to use the basic philosophy of commission government—that is, the election of commissioners who are at the same time a legislative body and administrative heads—but to add the advantage of centralized executive responsibility in the mayor.

The Task Ahead

In conclusion, the *Commission* would like to emphasize two additional points. In commencing its study of municipal government in New Jersey, it was felt that the first need was to lay a sound base in form and structure for the future development of municipal government in New Jersey. This in itself has been a large task; but it is in reality only the groundwork for the still larger task which lies ahead. In his last annual message to the Legislature (January 13, 1948), Governor Driscoll said—

... we do not now have a truly effective system of optional forms of local government which either the Legislature, which is ultimately responsible or the local

people who are immediately responsible for their selection, can accept with any confidence that they may serve as an adequate structure of local government.

In the judgment of the *Commission*, the fulfillment of this basic need is provided in the proposed optional charter program accompanying this statement. But in the same message, the Governor indicated a far wider horizon—

It may well be that one of the reasons why so much dissatisfaction has been experienced by the operation of local government in our State is that we expect municipal governments to perform services which would better be performed by larger units, either the counties or the State itself. Much work has already been done on the need to readjust the service responsibilities and the areas of local government, and to relate them to local capacity to raise taxes. Adjustments such as these are closely related to achievement of an effective framework of local government. I would accordingly recommend that the entire subject be explored in all its implications by a specially constituted commission authorized and equipped to recommend the best way in which to bring up to date the structure and functions of our local government, in the same spirit of high-minded public service that has marked the outstanding accomplishments of our Constitutional Convention.

“Effective framework” is truly an essential to good government; but the current problems—what might be called the great problems—lie in the fields of *intergovernmental relations, service and area adaptations, and local government finance*. To leave these great fields untouched is to build a foundation without a structure. The *Commission* will urge the establishment of a continuing citizen commission to engage in the further study of local government in New Jersey; to act as a service agency to the local subdivisions of the State in meeting the many problems that perplex them; and to conduct a steady program of information and guidance to the end that every opportunity to foster both good government and self-government may be fulfilled.

BAYARD H. FAULKNER,
*Chairman, Commission on
Municipal Government.*

November 1, 1948.

Part II

Proposed Optional Charter Plans

CHAPTER 1
PROCEDURE FOR ADOPTION OF OPTIONAL CHARTER
PLANS

SUMMARY

The purpose of this chapter is to provide for an orderly and systematic consideration of local charter needs by a local charter commission of five members; and to define the procedure by which charter changes may be made under various alternatives.

Article 1 provides:

Charter Commission: The question of electing a five-member charter commission, and the election itself may be submitted to the voters, at a regular municipal or general election, in either of two ways:

- a) upon resolution of the local governing body, or
- b) upon petition of 5 per cent of the registered voters.

Nomination and Election: Members of the charter commission are to be nominated solely by petition (requiring signatures equal in number to 2 per cent of the registered voters or 2,000, whichever is less); election on a non-partisan ballot; and the five receiving the greatest number of votes are elected provided the charter commission question carries by a majority of those voting on it.

Powers and Duties of the Commission: The charter commission is required to make a study of the local governmental needs, and to recommend one of five possible courses of action. The recommendations of the commission are given positive effect by requiring the holding of a referendum where one is needed, etc.

Article 2 provides:

Petition and Referendum: The older method of adoption of an optional plan of government by petition and referendum is authorized. A petition of 10 per cent of the registered voters is required to submit the question of adopting an optional form to the people.

Article 3 provides:

Vote Required: A new plan may go into effect upon affirmative vote of a majority of those voting on the question.

Limit on Resubmission: Once a municipality has adopted a new plan of government, another plan may not be submitted until five years have elapsed.

Automatic Submission by 1955: Each municipality is required to consider the question of having a charter commission at least once by 1955 if it has not meanwhile considered charter revision in any other manner provided by law.

Adoption of Old Plans Barred: The new laws would provide that no municipality may adopt or revert to any of the old plans now on the statute books.

PART II

Proposed Optional Charter Plans

CHAPTER 1

PROCEDURE FOR ADOPTION OF OPTIONAL CHARTER PLANS

ARTICLE 1

Charter Commission

1-1. Whenever authorized by resolution of the governing body or upon petition of 5 per cent of the registered voters of any municipality, an election shall be held in the municipality upon the question: "Shall a charter commission be elected to study the charter of and to consider a new charter or improvements in the present charter and to make recommendations thereon?" In either event, the municipal clerk shall call an election for the submission of the question and for the election of a charter commission. The election shall be held together with the next general or regular municipal election, occurring not less than sixty days after the filing of the resolution or petition with the clerk. At the election the question above stated shall be submitted as other public questions are submitted to the voters.

Comment:

The device of a charter commission is conventionally used to carry out the municipal home rule power of making and adopting new charters in those states having constitutional home rule. While New Jersey does not have constitutional home rule, it is well established that the Legislature can set forth a general law which may be adopted and become applicable in particular municipalities by vote of the inhabitants of a municipality. A principal restriction upon this general rule is that no will may intervene between the legislative act and the exercise of the option by the people. [Wilson, Attorney General Ex Rel. Booth vs. McGuinness, 78 N. J. L. 346, 1910.] The effect of this limitation on referendum statutes, as declared in the case last

cited, is thus to prevent either the governing body or the charter commission from adopting an optional plan. The initiation of the proceedings either by petition for a charter commission or by a resolution to establish a charter commission, which shall in turn select among the various alternative plans for the submission of one of them to the people, admittedly raises a possible issue of unconstitutionality. It would seem, however, that the charter commission being specially elected by the people for the purpose of making this preliminary choice and providing for the submission of the question of ultimate adoption, does not in any sense constitute an act which intervenes between the will of the people and the will of the Legislature, but is rather a means of expressing the will of the people by preliminary referendum.

The charter commission device thus provides, within the limits of the present constitution, for an orderly study of local needs by specially elected local people, and for the acceptance or rejection by the voters themselves of the recommendations of the commission. In order to minimize expense, there is no provision for a charter commission election at any time other than together with a general or regular municipal election.

1-2. A charter commission of five members shall be elected by the qualified voters at the same time as the public question is submitted. Duly nominated candidates for the office of charter commissioner shall be placed upon the ballot containing the public question in the same manner as is provided by law for candidates nominated by petition for other offices elective by the people of a single municipality, except that they shall be listed without any designation or slogan. Each voter shall be instructed to vote on the question and, regardless of the manner of his vote on the question, to vote for five members of a charter commission who shall serve if the question is determined in the affirmative.

1-3. Candidates for the charter commission shall be qualified voters of the municipality. They may be nominated in a petition authorizing the submission of the question. They may also be nominated by separate petition signed by not less than 2 per cent of the legally qualified voters or by 2,000 qualified voters, whichever is less, and filed with the municipal clerk not less than twenty days prior to the date of the election.

Comment:

The final draft bill would include provisions governing the form of the petition, etc., its verification, etc. The device of voting on the question, and also for members of the commission if the question carries, was successfully used at the June 3, 1947, referendum on the Constitutional Convention. The above text does not contemplate the use of slogans or the device of bracketing. These devices are associated with partisanship whereas the whole purpose of the charter commission is to provide an orderly and fresh approach to the local charter by a non-partisan group. The members of such a commission must necessarily be chosen without regard to political affiliation and without being bound to any preconceived notions of charter reform.

1-4. The result of the votes cast for and against the adoption of the public question shall be returned by the election officers, and a canvass of such election had, as is provided by law in the case of other public questions to the voters of a single municipality. The votes cast for members of the charter commission shall be counted, and the result thereof returned by the election officers, and a canvass of such election had as is provided by law in the case of the election of members of the local governing body. The five candidates receiving the greatest number of votes shall be elected and shall constitute the charter commission, provided that if a majority of those voting on the public question shall vote against the election of a charter commission, none of the candidates shall be elected.

1-5. As soon as possible after its election the charter commission shall organize and elect one of its members as chairman, fix its hours and place of meeting, appoint a suitably qualified person to keep accurate minutes of its proceedings and adopt such rules for conduct of its business as it may deem advisable. A majority of the whole number of members of said commission shall constitute a quorum for the transaction of business but no recommendation of said commission shall have any legal effect pursuant to section 1-13, 1-14 and 1-15 of this act, unless adopted by a majority of the whole commission.

1-6. Vacancies occurring in the charter commission shall be filled by the unsuccessful candidate receiving the greatest number of votes in the charter commission election who shall be

available to fill such vacancy. In the event that the vacancy cannot be filled in the above manner, the charter commission shall appoint some other properly qualified citizen.

1-7. Members of the charter commission shall serve without compensation but may, when authorized by ordinance, be reimbursed for necessary expenses in the performance of their duties.

1-8. It shall be the function and duty of the charter commission to study the form of government of the municipality, to compare it with other available forms under the laws of this State, to determine whether or not in its judgment the government of the municipality could be strengthened, made more clearly responsive or accountable to the people or whether its operation could be more economical or efficient, under a changed form of government.

1-9. A charter commission appointed pursuant to this chapter shall hold public hearings, may hold private hearings and sponsor public forums and shall provide for the widest possible public information and discussion respecting the purposes and progress of its work, within the limits of such appropriations and privately contributed funds and services as may be available to it.

1-10. The charter commission shall report its findings and recommendations to the citizens of the municipality within nine calendar months from the date of its election. It shall publish or cause to be published sufficient copies of its report for public study and information and shall deliver to the municipal clerk sufficient copies of the report to supply it to any interested citizen upon request.

1-11. The charter commission shall be discharged upon the filing of its report; *provided, however*, that if the commission's recommendations require further procedure on the part of the governing body or the people of the municipality pursuant to sections 1-13, 1-14 and 1-15 of this act, the said commission shall not be discharged until the procedure required under the above sections has been finally concluded.

1-12. The charter commission may report and recommend that:

a. a referendum shall be held to submit to the qualified voters of the municipality the question of adopting one of the optional forms of government pursuant to this chapter;

b. the governing body shall petition the Legislature for the enactment of a special charter, the text of which shall be appended to the charter commission's report, pursuant to Article IV, Sec. VII, Par. 10, of the Constitution of 1947 and to the enabling legislation enacted thereunder to the extent that such legislation is not inconsistent herewith; or

c. the governing body shall petition the Legislature for one or more specific amendments of the charter of the municipality, the text of which shall be appended to the charter commission's report, pursuant to said constitutional provision and enabling legislation; or

d. the question of adopting "the Commission Government Supplement," where the municipality is already governed under the commission form of government law shall be submitted to the qualified voters as provided in that supplement; or

e. that the form of government of the municipality should remain unchanged.

Comment:

The foregoing alternatives present the broadest possible exercise of local choice permitted by the Constitution of 1947. It is contemplated, however, that the use of the special law procedure would not be necessary in the average municipality with the optional forms available. To the extent that local problems may require some adaptation in the organization and structure of local government, the broad grant of local legislative power in general terms, and the relative freedom from mandatory offices of the optional charter forms, would permit a municipality to adapt its organization and procedures to its needs without specific special legislation.

1-13. If the charter commission shall recommend that the question of adopting one of the optional forms of government authorized by this act shall be submitted to the voters of the municipality, it shall be the duty of the municipal clerk to cause the question of adoption or rejection to be placed upon the ballot at such time as the commission shall in its report specify.

The commission may cause the question to be submitted to the people at the next general or regular municipal election, to be held not less than sixty days following the filing of a copy of the commission's report with the clerk, or at a special election to be held not less than 60 days or more than 120 days after the filing of the report, at such time as the commission's report shall direct. At such election the question of adopting that form of government recommended by the charter commission shall be submitted to the qualified voters of the municipality as a public question. The charter commission shall frame the question to be placed upon the ballot and, if it deems appropriate, an interpretative statement to accompany such question.

Comment:

This section provides for submission of the question at either a general or regular municipal election or at a special election. The scheduling of the referendum is placed within the discretion of the charter commission to give it the power to select a time for the referendum which could best fit local conditions. In effect a similar power is given to petitioners at present, under the commission government and council manager laws, who may chose the time for filing a petition.

1-14. If the charter commission shall propose a special charter or specific amendment or amendments of the existing charter of the municipality, it shall be the duty of the governing body of the municipality to forthwith petition the Legislature for a special law or laws, pursuant to the Constitution of 1947 and in the manner provided by general enabling legislation thereunder, to carry out the recommendations of the charter commission.

Comment:

Laws of 1948, Ch. 199, provides in general for petitions for special charter laws. It may be desirable to amend that law to require charter amendments to follow the charter commission procedure provided by this act.

1-15. If the charter commission shall recommend the submission of the question of adoption of the Commission Government Supplement, where the municipality is governed under the

commission form of government law, the municipal clerk shall submit the question to referendum in accordance with the provisions of the supplement.

1-16. When a resolution or petition for the election of a charter commission has been duly filed with the municipal clerk, no other such resolution or petition may be so filed for a period of two years, nor shall any such resolution or petition be filed while proceedings are pending pursuant to a petition filed for the adoption of an optional form of government pursuant to this act.

Comment:

The purpose of this section is to prevent a conflict between the alternative methods of adopting an optional form, and to avoid confusion in the minds of the voters by a too frequent submission of the question for change in form of government. Another section which follows precludes the filing of any petition for a change in the form of government for five years once a new form has been adopted as a result of any of the procedures available.

ARTICLE 2

Procedure by Petition and Referendum

1-17. The legally qualified voters of any municipality may adopt any of the optional plans of this act upon petition and referendum, without a charter commission, as hereinafter provided.

1-18. Upon petition signed by 10 per cent of the qualified voters of a municipality, the municipal clerk shall call a special election on the question of adoption of such optional plan under this chapter as the petition may designate.

Comment:

The present city manager law requires a petition of 15 per cent of those voting at the last general election, whereas the commission government law requires a petition of 20 per cent of the qualified voters. Excessive petition requirements tend to defeat the purpose of optional plans, and seem to be unnecessary in view of

the required submission of the question directly to the people. By way of comparison, the petition requirements would be as follows:

- 5 per cent of registered voters to submit the charter commission question
- 10 per cent of registered voters to submit an optional plan directly
- 20 per cent of registered voters to initiate proceedings for application to the Legislature for a special charter.

The effect of using a percentage of those who voted as compared with a percentage of the qualified voters would vary from year to year depending upon whether or not the last preceding general election was in a presidential year. For example, the mid-term vote as a percentage of the vote in a presidential year was 59.8 per cent in 1942. In 1940, the last preceding presidential year at that time, only 76 per cent of the citizens of voting age actually voted in New Jersey. This was better than average for the Northern States of 73 per cent.

Since the only purpose of the petition is to assure a sufficiently broad popular interest in having the question submitted, without allowing undue license for the filing of the petition or, on the other hand, imposing an undue burden on the interested groups in the community, the use of the fixed base of qualified voters rather than the variable base of those who voted is preferable.

1-19. The municipal clerk shall call such special election to be held at the same time and place as the next general or regular municipal election if one is to be held not less than 60 nor more than 120 days after the filing of the petition, and if a general or regular municipal election is not to be held within that time, at a special election within such time. The question of adoption of an optional plan of government shall be submitted to the voters in the same manner as other public questions to be voted upon by the voters of a single municipality.

Comment:

The above section permits a special election to be held on the question of adoption. The above provision conforms to the provisions for submitting an actual charter under the charter commission procedure.

1-20. No petition for submission of the question of adopting an optional plan of government pursuant to this act may be filed within two years after any other such petition has been filed nor within two years after a resolution or petition for election of a charter commission has been duly filed.

Comment:

Chapter 199, *Laws of 1948* should also be restricted pending the use of either the charter commissions or direct petition method.

ARTICLE 3

Election Provisions Applicable to All Referenda on Charter Changes

1-21. Whenever the legally qualified voters of any municipality by a majority of those voting on the question, vote in favor of adopting a change in their form of government pursuant to this act, either by the charter commission method or by direct petition and referendum, the proposed charter or charter amendment or amendments shall take effect according to their respective terms.

Comment:

The present practice in New Jersey, in the commission form of government law and in the municipal manager form of government law, is to require the vote for adoption to meet two standards:

- (a) a majority of the votes cast must be in favor, and
- (b) the number of favorable votes must equal at least 30 per cent of the total number of legal ballots cast in the municipality at the last preceding general election (R. S. 40:71-6 and R. S. 40:80-8).

This practice is at variance with the general practice under the city referendum charter acts, and under the referenda establishing new municipalities, where a majority of the votes cast at the special election is sufficient to carry the election. It would seem that a change of charter to commission plan or to council manager plan should not require a greater vote than a change to one of the existing charter referendum acts.

While the *Commission* recognizes the desirability of avoiding charter changes which have little popular support, it believes that the probable use of a charter commission, and its facilities for public education and information, represents a new and sufficient safeguard against change of the charter by a too narrow segment of the electorate.

1-22. Ballot; conduct of election, certification of results.

1-23. The voters of any municipality which has adopted a special charter or an optional form of government pursuant to this act may not vote on the question of adopting another form of government until five years thereafter. On and after the effective date of this act no municipality shall adopt, or revert to, any form of government other than one of those provided by this act, by the Commission Government Supplement, or by special charter pursuant to the Constitution of this State.

Comment:

The Walsh Act and the municipal manager act provide for abandonment of these forms of government, after six years in the case of commission government and after four years in the case of the manager plan and for reversion to the form of government under which the municipality was being governed when either of these acts was adopted. This could mean an old special charter, one of the city referendum charter acts, or a commission government if the manager plan is being abandoned, or manager plan where the commissioner plan is being abandoned. To conform to the above provision which would bar any such reversions, parallel amendments to these other acts would be required.

The old plans would then still be available by special charter from the Legislature. None of the new optional plans have an automatic reversion provision, and change from these could be accomplished only by affirmatively adopting a new form.

1-24. Wherever the voters of a municipality have not adopted a new charter form and have not voted on the question of electing a charter commission, subsequent to the effective date of this act and prior to the year 1955, the municipal clerk shall place the charter commission question upon the ballot in

the general or regular municipal election in the year 1955. The question shall be submitted to the voters in the same manner as if a petition of qualified voters for submission of the question had been duly filed pursuant to this chapter. If a majority of those voting thereon vote in favor of a charter commission, members of the commission shall be nominated and elected at the next general or regular municipal election, in the manner otherwise provided by this chapter for the election of charter commissioners.

Comment:

This provision is designed to overcome civic inertia—a condition which the *Commission* believes to be the major weakness of American local government. In many state constitutions provision for automatic submission of the constitutional convention question has a similar state-wide purpose. While the Commission on Municipal Government does not believe it is either necessary or desirable to force change in local government upon a population which is unprepared or unwilling to accept it, the *Commission* is convinced that inertia rather than lack of interest is to blame for the neglect of opportunities for improvement. From this point of view, the *Commission* concludes that orderly reexamination of local government by local people is one of the soundest “mandatory” standards of local democracy that a legislature might sponsor.

If no action is taken by local initiative within the next six years, this section would merely require the question, not of change but only of review, to be submitted to the people.

CHAPTER 2 INCORPORATION AND POWERS

SUMMARY

This chapter is a key chapter in the proposed new system of optional charter plans. It establishes practical inducements to charter improvement, by offering municipalities extensive powers of local self-government, freedom from many mandatory laws and relief from the need for specific legislative approval to undertake new or different municipal services.

Sections 1 and 2 provide:

Incorporation: For the incorporation of the inhabitants of a municipality adopting one of the optional forms, for their retention of an old municipal name or selection of a new one and for their government under an optional plan, together with provisions here and elsewhere in the act common to all plans.

Section 3 provides:

Classification: For elimination of classification, so far as possible, in general laws applying to municipalities which adopt an optional plan. The powers of municipalities adopting these plans are made sufficiently broad so as to eliminate the need for classified legislative treatment so far as possible.

Sections 4 and 5 provide:

New Powers: The act would grant broad new powers to municipalities governed by any of the optional forms:

- (1) The new powers are stated in general terms rather than by specific enumeration, so as to provide the maximum home rule under the new Constitution.
- (2) The provisions of the new Constitution intended to broaden the legal powers of local government are given legislative effect.
- (3) Although municipal government still remains subject to the control of the Legislature as required by the new Constitution, legislative control is expressed in a broad and complete authorization which leaves the widest possible discretion with each municipality to determine the organization of its departments, the compensation of its officers and employees, the range and character of its services, etc.

CHAPTER 2

INCORPORATION AND POWERS

2-1. Upon the adoption by the qualified voters of any municipality of any of the optional forms of government set forth in this chapter, the municipality shall thereafter be governed by the plan adopted and by the provisions of this act common to all plans until another plan may be adopted, subject to the transitional provisions of Chapter 6 of this act.

2-2. Upon such adoption of a plan under this act, the inhabitants of any municipality or municipalities within the corporate limits as now or hereafter established shall be and remain a body corporate and politic with perpetual succession, and with such corporate name as it has heretofore adopted or may hereafter adopt.

2-3. For the purposes of this act, a "general law" shall be deemed to be any law or provision of law, not inconsistent with this act, heretofore or hereafter enacted which is by its terms applicable or available to all municipalities, and the following additional laws: legislation relating to taxation, local courts, education, health, public authorities serving more than one municipality, and municipalities in unsound financial condition.

Comment:

This definition of general law would apply to the optional plans such standard laws as the "Local Bond Law" (R. S. 40:1-1 et seq.); the "Local Budget Law" (R. S. 40:2-1 et seq.); fire and police (R. S. 40:47-1 et seq.); ordinances and resolutions (R. S. 40:49-1 et seq.); planning, building laws, zoning (R. S. 40:55-1 et seq.). Further study may require an expansion of the "additional laws" category. The problem of classification is one which is basic to any new system of municipal government, but it is unlikely to be solved by any generalization. The *Commission* has experimented with various "standard classifications" intended to replace the present hodge-podge of classifications, but has not yet determined upon any suitable basis which would be germane to all of the various purposes of legislation. With the large degree of local self-government provided by the powers clause of this chapter, however, the *Commission* believes that the need for legislative classification has been substantially reduced.

2-4. Each municipality governed by an optional form of government pursuant to this act shall, subject to the provisions of this act or other general laws, have full power to:

(a) organize and regulate its internal affairs, and to establish, alter, and abolish offices, positions and employments and to define the functions, powers and duties thereof and fix their term, tenure and compensation;

(b) adopt and enforce local police ordinances of all kinds and impose penalties of fine or imprisonment or both for the violation thereof; to construct, acquire, operate or maintain any and all public improvements, projects or enterprises for any public purpose, subject to referendum requirements otherwise imposed by law, and to exercise all powers of local government in such manner as its governing body may determine;

(c) sue and be sued, to have a corporate sale, to contract and be contracted with, to buy, sell, lease, hold and dispose of real and personal property, and to adopt, amend and repeal such ordinances and resolutions as may be required for the good government thereof;

(d) exercise powers of condemnation, borrowing and taxation as provided by general law.

2-5. The general grant of municipal power contained in this chapter is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of functions, powers or duties contained in this act or in any other general or special law shall not be construed in any way to limit the general description of power contained in this chapter, and any such specifically enumerated functions, powers and duties shall be construed as in addition and supplementary to the powers conferred in general terms by this chapter. All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality.

Comment:

It is the law everywhere that municipal governments have only such powers as have been delegated to them by the Legislature or directly by the State Constitution. As governments of delegated powers they are

generally subject to the rule of construction that in the event a particular power has not been clearly delegated, it shall be deemed to have been withheld.

There are two methods or styles of delegating powers of local government to municipalities: (1) the method of specific enumeration, which is the method at present used in New Jersey and many other states; and (2) the method of general grant, which is a method successfully used in a number of states. The method of specific enumeration tends to lessen the degree of local self-government by requiring municipalities to look to the Legislature for each and every specific authority they may require.

The method of general grant, which is used in the sections above, thus overcomes the effects of the general practices of the past without departing from the constitutional authority of the Legislature. Instead of enumerating the various powers of local government, such as those set forth in the "Home Rule Act" of 1917 and elsewhere in the statutes, the four principal classes of municipal power are set forth in the broadest general terms.

Municipalities adopting one of these optional forms would have the advantage of being able to organize their local government with such offices and departments as they may find most effective, subject only to laws of general applicability; their substantive powers are broadly stated in a manner to include every foreseeable area of municipal activity; their auxiliary powers of local legislation, of contracting, of condemnation, and of holding and disposing of property are likewise stated in general terms without confining legislative restrictions. The new provisions of the Constitution of 1947 which reverse the usual rule of construction of municipal power is also incorporated in the new powers clause above.

Municipal government still remains the creature of and subject to the control of the Legislature, as required by the Constitution of 1947. The advantage of adopting an optional form, including the foregoing powers clause, is that legislative control would be expressed in a broad and complete authorization to do the job of local government rather than in the present restrictive, specified and limited manner. If the new system were not to operate satisfactorily, the Legislature would, of course, be free to alter it at any time by appropriate general laws.

CHAPTER 3 STRONG-MAYOR PLAN SUMMARY

This chapter presents the features of the first of the optional forms—the "strong-mayor" plan. In essence, this plan provides for a concentration of administrative authority in the elected mayor, who is also given a veto power over ordinances and resolutions. A significant feature of the plan is the provision for a business administrator who, under the direction of the mayor, shall have considerable responsibility in the budget, personnel, and purchasing processes. The legislative power is exercised by an elected council, which selects the municipal clerk, and which retains adequate checks on the executive. The mayor, however, is given power commensurate with his administrative responsibilities.

Article 1 provides:

Governing Body: Any municipality adopting this plan shall be governed by an elected council and an elected mayor. The council shall consist of five members who shall serve for a term of three years.

Powers of Council: The legislative power shall be exercised by the council, including with some exceptions the powers of local boards and commissions. Additional powers of council include passing on appointments, the investigation of departments, and the removal of municipal officers for cause.

Municipal Clerk: The office of municipal clerk is established and is to be filled by appointment of the council.

Article 2 provides:

Office of Mayor: The executive power shall be exercised by a mayor elected for a three-year term. Supervisory powers of the mayor include the enforcement of laws, supervision of departments, and the power to make recommendations to the council. General powers of the mayor include nomination and appointment and removal of appointive officers and a veto over ordinances and resolutions that can be overridden only by an extraordinary majority.

Departments: Departments shall include a Department of Administration and shall not exceed ten in number. Department heads serve at the pleasure of the mayor. The Department of Administration shall be headed by a business administrator, serving under the mayor, with a responsible role in the budget process, and in the administration of a sound personnel system. Selected standards of municipal administration are prescribed.

Article 3 provides:

Budget: The municipal budget shall be prepared by the mayor with the assistance of the business administrator. Provision is made for a schedule of preparation and for public hearings. Reductions in budget items may be made by majority vote of the council; an increase in any item or items may become effective upon an affirmative vote of two-thirds of the council.

CHAPTER 3

STRONG-MAYOR PLAN

ARTICLE 1

Form of Government; Council

3-1. The form of government provided in this chapter shall be known as the "strong-mayor plan" and shall govern any municipality the voters of which have adopted it pursuant to this act.

3-2. Each municipality hereunder shall be governed by an elected council, and an elected mayor and by such other officers and employees as may be duly appointed pursuant to this chapter, general law or ordinance.

3-3. The council shall consist of five members, who shall be elected at large by the voters of the municipality, at a regular municipal election; *provided, however,* that councilmen may be elected from wards where provision is made by general law for the division of consolidating municipalities into wards and for the election of councilmen therefrom.

3-4. Members of the council shall serve for a term of three years, beginning on the first Tuesday of July next following their election. Vacancies shall be filled by the remaining members of the council for the remainder of the unexpired term, provided that if the remaining members fail to fill a vacancy within thirty days after it occurs the vacancy shall be filled by the candidate, if any, who failed of election at the next preceding regular municipal election, and who shall not have been appointed to fill a vacancy, in the order of the greatest number of votes cast for such candidates respectively.

Comment:

In five of the city referendum acts the term of councilmen is three years; in three the term is four years; in two other acts one-half of the council or the majority, as the case may be, are elected for three years, the other half, a minority, for two years. In one act the term is for one year. In both the commission and manager plans, the term of commissioners and councilmen is four years. Among the cities throughout the Nation, the form of government and terms of office are as follows:

TERMS OF OFFICE FOR 2,031 CITY COUNCILS BY FORMS OF GOVERNMENT AND POPULATION GROUPS¹

	Total Number of Cities	Number of Cities Reporting	Terms of Office of Council					
			One Year	Two Years	Three Years	Four Years	Five Years	Six Years
<i>Forms of Government:</i>								
Mayor-Council	1,215	1,215	0.4	52.5	6.6	40.1	0.1	0.1
Commission	308	307	0.0	24.4	10.4	61.9	1.6	1.6
Council-Manager	433	432	0.2	41.9	11.3	44.2	0.9	1.4
Rep. Town-Meeting	26	26	30.8	0.0	69.2	0.0	0.0	0.0
Town-Meeting	51	51	41.2	3.9	52.9	2.0	0.0	0.0
<i>Population Groups:</i>								
Over 500,000	13	13	0.0	38.5	0.0	61.5	0.0	0.0
250,000 to 500,000	23	23	0.0	39.2	0.0	60.9	0.0	0.0
100,000 to 250,000	55	55	0.0	49.0	3.6	47.3	0.0	0.0
50,000 to 100,000	106	106	0.0	39.6	0.9	59.4	0.0	0.0
25,000 to 50,000	212	212	0.5	45.3	4.2	48.0	0.5	1.4
10,000 to 25,000	662	660	3.2	43.6	11.8	40.3	0.4	0.7
5,000 to 10,000	962	962	1.2	40.5	12.3	40.4	0.6	0.5
All Cities Over 5,000	2,033	2,031	1.8	44.1	10.2	42.7	0.5	0.6

¹ Municipal Year Book, 1948, p. 46, Table 7.

3-5. The legislative power of the municipality shall be exercised by the municipal council, except as may be otherwise provided by general law. The council shall itself be, and shall exercise the powers of all local municipal boards and commissions authorized by general law other than those of the board of education, sinking fund commission, insurance fund commission and trustees of the public library, planning board and zoning board of adjustment. The council may, however, create temporary commissions with advisory powers.

3-6. Additional powers of council. The council, in addition to such other powers and duties as may be conferred upon it by this charter or otherwise by general law, may:

(a) Consider and approve or decline to approve nominations for appointments to be made by the mayor;

(b) Require any municipal officer, in its discretion, to prepare and submit sworn statements regarding his official duties in the performance thereof, and otherwise to investigate the conduct of any department, office or agency of the municipal government;

(c) Remove any municipal officer, other than the mayor or a member of council, for cause, upon notice and an opportunity to be heard.

Comment:

Removal for cause, by council, is common practice under city charter acts in New Jersey. The confirmation of executive appointments is not conventional in strong mayor plans, but the *Commission* believes that this provision is for the time being better fitted to the traditions and experience of local government in New Jersey.

3-7. Municipal clerk. The council shall appoint a municipal clerk, who shall serve as clerk of the council, keep its minutes and records of its proceedings, maintain and keep the ordinances and resolutions as this act requires and perform such functions as may be required by law for municipal clerks generally. The municipal clerk shall, prior to his appointment, have been qualified by training or experience to perform the duties of the office.

ARTICLE 2

Mayor and Administration

3-8. The mayor. The executive power of the municipality shall be exercised by the mayor. The mayor shall be elected by the voters of the municipality at a regular municipal election, and shall serve for a term of three years beginning on the first Tuesday of July next following his election. Vacancies in the office of mayor shall be filled in the same manner as vacancies in the council.

3-9. Supervisory powers of the mayor. The mayor shall enforce the charter and ordinances of the municipality and all general laws applicable thereto. He shall annually address the council on the condition and requirements of the municipal government and shall from time to time make such recommendations for action by the council as he may deem in the public interest. He shall supervise all of the departments of the municipal government and shall require each department to make an annual and such other reports of its work as he may deem desirable.

3-10. General powers of the mayor.

(a) The mayor shall nominate and appoint, with the advice and consent of the council, department heads of the municipality other than the municipal clerk, and may remove such officers subject to the provisions of the Revised Statutes, Title 11, Civil Service, where that title is in effect in the municipality.

(b) Ordinances and resolutions adopted by the council shall be submitted to the mayor, and he shall within ten days after receiving any ordinance or resolution, either approve the ordinance or resolution by affixing his signature thereto or return it to the council together with a statement setting forth his objections thereto or to any item or part thereof. No ordinance or resolution or any item or part thereof shall take effect without the mayor's approval, unless the mayor fails to return an ordinance or resolution to the council within ten days after it has been presented to him, or unless council upon reconsideration thereof on or after the third day following its return by the mayor shall resolve to override the mayor's veto and such resolution shall be adopted by a vote of four members of the council.

(c) He may attend meetings of council and may take part in discussions of council but shall have no vote except in the case of tie on the question of filling a vacancy in the council, in which case he may cast the deciding vote.

3-11. Deputy Mayor. The mayor shall designate the business administrator or other administrative municipal official to act as mayor whenever the mayor shall be prevented by absence from the municipality, disability or other cause from attending to the duties of his office. During such time the person so designated by the mayor shall possess all the rights, powers, and duties of mayor.

3-12. Municipal Departments. The municipality shall have a Department of Administration and such other departments not exceeding nine in number as council may establish by ordinance and as may be required by general law. All of the administrative functions, powers, and duties of the municipality shall be allocated and assigned among and within such departments. Each department shall be headed by a director appointed by the mayor with the advice and consent of the council. Department heads shall serve at the pleasure of the mayor.

3-13. Department of Business Administration. The Department of Administration shall be headed by a director who shall be known and designated as business administrator. The business administrator shall be appointed as other department heads are appointed, and shall be chosen solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter set forth. At the time of his appointment, he need not be a resident of the municipality or State, but during his tenure of office he shall reside within the municipality. He shall have, exercise and discharge the functions, powers and duties of the department. The department, under the direction and supervision of the mayor shall:

- (a) Assist in the preparation of the budget;
- (b) Administer a centralized purchasing system;
- (c) Be responsible for the development and administration of a sound personnel system; and
- (d) Perform such other duties as council may prescribe.

3-14. Council shall provide by ordinance for a municipal engineer who shall be qualified at least as a licensed professional engineer prior to his appointment, and shall serve either full or part time, or on a consulting basis.

3-15. The municipal engineer shall supervise all work by or for the municipality of a technical or engineering nature. He shall compile and compute unit costs of all work and services of an engineering or technical nature paid for by the municipality whether charged to force account or by contract, and shall report thereon to council annually and at such other times as council may require.

3-16. Council shall provide by ordinance for a building inspector who shall have, perform and exercise all the functions, powers and duties of a building inspector under general law and under ordinances of the municipality.

3-17. Council shall provide by ordinance for a municipal assessor who shall prior to his appointment have had training and experience in real and personal property appraisal or assessment and a thorough knowledge of the laws and ordinances governing the assessment and collection of property taxes. It shall be his duty to assess all taxable property in the municipality in accordance with general law and such administrative regulations as may be promulgated pursuant thereto, and to maintain a standard system of assessment records.

ARTICLE 3

Budget and Control

3-18. The municipal budget. The municipal budget shall be prepared by the mayor with the assistance of the business administrator. During the month of November, the mayor shall require all department heads to submit requests for appropriations for the ensuing budget year, and to appear before the mayor or the business administrator at public hearings, which shall be held during that month, on the various requests.

3-19. On or before the fifteenth day of January the mayor shall submit to council his recommended budget together with such explanatory comment or statement as he may deem desir-

able. The budget shall be in such form as is required by law for municipal budgets; and shall in addition have appended thereto a detailed analysis of the various items of expenditure and revenue. Council may reduce any item or items in the mayor's budget by a vote of a majority of the council, but an increase in any item or items therein shall become effective only upon an affirmative vote of two-thirds of the members of council.

3-20. The council shall provide by ordinance for the maintenance of a system of work programs and quarterly allotments, for operation of the budget. It shall be the duty of the officer or department administering any such program to develop and report appropriate unit costs on all the various items of municipal expenditure.

3-21. The council shall provide by ordinance for the exercise of a control function, in the management of the finances of the municipality, by some officer other than the business administrator. The control function shall include provision for an encumbrance system of budget operation, for expenditures only upon written requisition, for the pre-audit of all claims and demands against the municipality prior to payment, and for the control of all payments out of any public funds by individual warrants for each payment to the official having custody of the municipal treasury.

ARTICLE 4

Land Use Regulation

3-22. The council shall by ordinance provide that all the functions, powers and duties of a municipal planning board and zoning board of adjustment pursuant to general law be performed and exercised.

3-23. Council shall make or cause to be made and adopt an official map of the municipality, which it may from time to time extend, add to or modify as conditions may require, pursuant to general law.

3-24. Council shall by ordinance adopt regulations governing the subdivision of land within the municipality, and shall enforce such regulations in the manner provided by general law.

CHAPTER 4 COUNCIL-MANAGER PLAN SUMMARY

This chapter provides for the second optional form—a revised version of the council-manager form currently available to New Jersey municipalities. The new plan alters the composition of the council, prevents improper council influence in administration, and modifies the tenure provision for the manager in accordance with the **Model City Charter** of the National Municipal League. Throughout, the plan adheres to the basic theory of the manager form—that there should be a distinct separation of policy determination and administration.

Article 1 provides:

Council: A municipality adopting this plan shall be governed essentially by an elected council and by its appointed manager. The council shall be a five-member body. Members shall be elected at large for a term of three years.

Mayor: Council shall select one of its members as mayor. He shall have a voice and vote in the proceedings of council, but shall have no veto.

Article 2 provides:

Powers of Council: The legislative power shall be exercised by the council, which shall also appoint the municipal manager. It shall have the power to create and abolish boards and departments and to appoint advisory boards. Section 4-13 specifically prohibits and provides penalty for any councilman interfering with administrative officers.

Article 3 provides:

Municipal Manager: Provision is made for the appointment of a fully qualified manager and the fixing of his salary by the council. The manager shall serve at the pleasure of the council. The duties of the manager shall include acting as chief executive official, preparation of the annual budget, appointing all department heads, negotiating contracts, making recommendations to the council, and investigating the affairs of any officer or department.

Municipal Budget: The budget shall be prepared by the manager in accordance with a time schedule and with the provisions of general law.

Appointing Power: The mayor is not permitted to have any appointing power, except in cases involving the appointment of members of the board of education and of the trustees of the public library.

CHAPTER 4
COUNCIL-MANAGER PLAN

ARTICLE 1

Form of Government; Council

4-1. The form of government provided in this chapter shall be known as the "council-manager plan" and shall govern any municipality, the voters of which have adopted this plan pursuant to this act.

4-2. Each municipality under this chapter shall be governed by an elected council and by an appointed municipal manager, and by such other officers and employees as may be duly appointed pursuant to this chapter, general law or ordinance.

4-3. The municipal council shall consist of five members. Each councilman shall have been a citizen and resident of the municipality for at least two years immediately preceding his election.

Comment:

The *Model City Charter* provides for a five-member council. In a publication by the International City Managers Association, *Governmental Data for Small Council-Manager Cities*, it is reported that in 126 cities of less than 5,000 population the "median number of councilmen . . . is 5, with a range of 3 to 9. Fifty-nine cities have five councilmen, 29 have three, 29 have seven, five have six councilmen, and four cities have nine members of their local governing body."

4-4. Members of the municipal council shall be elected at large by the voters of the municipality, at a regular municipal election; *provided, however*, that councilmen may be elected from wards where provision is made by general law for the division of consolidating municipalities into wards and for the election of councilmen therefrom.

4-5. Members of the council shall serve for a term of three years, beginning on the first Tuesday of July next following their election. Vacancies shall be filled by the remaining members of the council for the remainder of the unexpired term, provided that if the remaining members fail to fill a vacancy within thirty

days after it occurs the vacancy shall be filled by the candidate, if any, who failed of election at the next preceding regular municipal election, and who shall not have been appointed to fill a vacancy, in the order of the greatest number of votes cast for such candidates respectively.

4-6. On the first Tuesday of July following their election, the members elect of the municipal council shall assemble at the usual place of meeting of the governing body of the municipality and organize and elect one of their number as mayor. The mayor shall be chosen by ballot by majority vote of all members of the municipal council. If the members shall be unable, within five ballots to be taken within two days of said organization meeting, to elect a mayor, then the member who in the election for members of the municipal council received the greatest number of votes shall be the mayor. Should such person decline to accept the office, then the person receiving the next highest vote shall be the mayor, and so on, until the office is filled.

4-7. The mayor shall preside at all meetings of the municipal council and shall have a voice and vote in its proceedings. He shall fill vacancies occurring in the board of education and trustees of the public library for such terms of office as are provided by law. All bonds, notes, contracts and written obligations of the municipality shall be executed on its behalf by the mayor or, in the event of his inability to act, by such councilman as the municipal council shall designate to act as mayor during his absence or disability. The powers and duties of the mayor shall be only such as are expressly conferred upon him by this chapter.

Comment:

Under the standard manager plan, the *Model City Charter*, the council elects one of its members as mayor, who serves as presiding officer of the council and is recognized as the ceremonial head of the city government, but who has no regular administrative duties. He has no veto power and no appointive power. It is sometimes argued that the mayor should be separately elected so as to give him a position of leadership. The authors of *City Manager Government in the United States*, Stone, Price and Stone, in considering this argu-

ment concluded from a thorough study of manager government in forty-eight cities that as far as the method of the election of the mayor is concerned, neither system of election had much effect on the course of developments and that the relationship between the mayor and council, the city manager and the voters, developed in each municipality in response to local traditions and local politics.

ARTICLE 2

Powers of Council

4-8. The legislative power of the municipality shall be exercised by the municipal council.

4-9. The municipal council shall appoint a municipal manager and a municipal clerk. Both such offices may be held by the same person. The council may provide for the manner of appointment of any planning commission, zoning board of adjustment or personnel board which may be established in the municipality, and may create temporary commissioners with advisory powers.

4-10. The municipal council shall make or cause to be made and adopt an official map of the municipality, which it may from time to time extend, add to or modify as conditions may require, pursuant to general law.

4-11. The municipal council shall by ordinance adopt regulations governing the subdivision of land within the municipality, and shall enforce such regulations in the manner provided by general law.

Comment:

The above amendment of 40:81-11 of the Revised Statutes follows the Model City Charter. The Model also provides that the council shall appoint members of the personnel board, the planning commission and the zoning board of appeals.

4-12. The municipal council shall continue or create, and determine and define the powers and duties of such executive and administrative departments, boards and offices, in addition to those provided for herein, as it may deem necessary for the

proper and efficient conduct of the affairs of the municipality. Any department, board or office so continued or created may at any time be abolished by the municipal council.

4-13. It is the intention of this chapter that the municipal council shall act in all matters as a body, and it is contrary to the spirit of this chapter for any of its members to seek individually to influence the official acts of the municipal manager, or any other officer, or to direct or request the appointment of any person to, or his removal from, office; or to interfere in any way with the performance by such officers or their duties. The council and its members shall deal with the administrative service solely through the manager and shall not give orders to any subordinates of the manager, either publicly or privately. Nothing herein contained shall prevent the municipal council from appointing committees or commissioners of its own members or of citizens to conduct investigations into the conduct of any officer or department, or any matter relating to the welfare of the municipality, and delegating to such committees or commissions such powers of inquiry as the municipal council may deem necessary. Any councilman violating the provisions of this section shall upon conviction thereof in a court of competent jurisdiction be disqualified as councilman.

Comment:

One of the basic features of the manager plan is the distinct separation of policy determination and administration. The fundamental purpose of the plan is destroyed if the council, which appoints the manager, can dictate to or influence him in the operation of his duties.

ARTICLE 3

Municipal Manager

4-14. The municipal council shall as soon as possible after its organization appoint, by a vote of a majority of all its members, a municipal manager at such salary and under such conditions as the municipal council by a majority vote may decide.

4-15. During the absence or disability of the municipal manager a properly qualified person shall be appointed by the mu-

municipal council to exercise the powers and perform the duties of the office.

4-16. The municipal manager shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as hereinafter set forth. At the time of his appointment, he need not be a resident of the municipality or State, but during his tenure of office he may reside outside the municipality only with the approval of council.

4-17. The municipal manager shall hold office for an indefinite term and may be removed by a majority vote of the council. At least thirty days before such removal shall become effective, the council shall by a majority vote of its members adopt a preliminary resolution stating the reasons for his removal. The manager may reply in writing and may request a public hearing, which shall be held not earlier than twenty days nor later than thirty days after the filing of such request. After such public hearing, if one be requested, and after full consideration, the council by majority vote of its members may adopt a final resolution of removal. By the preliminary resolution the council may suspend the manager from duty, but shall in any case cause to be paid him forthwith any unpaid balance of his salary and his salary for the next three calendar months following adoption of the preliminary resolution.

Comment:

Authorities have long been opposed to any special tenure provisions for managers on the grounds that a good manager does not need the protection of tenure and that any manager who has lost the support and confidence of the elected representatives of the people cannot be effective. The present tenure provision in the New Jersey manager law permits summary removal of municipal managers during the first three calendar years of his employment and removal thereafter only for cause.

4-18. The municipal manager shall:

a. Be the chief executive and administrative official of the municipality;

- b. Execute all laws and ordinances of the municipality;
- c. Appoint and remove all department heads and all other officers, subordinates, and assistants for whose selection or removal no other method is provided in this chapter, supervise and control his appointees, and report all appointments or removals at the next meeting thereafter of the municipal council;
- d. Negotiate contracts for the municipality subject to the approval of the municipal council, make recommendations concerning the nature and location of municipal improvements, and execute municipal improvements as determined by the municipal council;
- e. See that all terms and conditions imposed in favor of the municipality or its inhabitants in any statute, public utility franchise or other contract are faithfully kept and performed, and upon knowledge of any violation call the same to the attention of the municipal council;
- f. Attend all meetings of the municipal council with the right to take part in the discussions, but without the right to vote;
- g. Recommend to the municipal council for adoption such measures as he may deem necessary or expedient, and make reports to the council as requested by it, and at least once a year make an annual report of his work for the benefit of the council and the public;
- h. Investigate at any time the affairs of any officer or department of the municipality;
- i. Perform such other duties as may be required of the municipal manager by ordinance or resolution of the municipal council.

The municipal manager shall in all matters act under the direction and supervision of the municipal council.

4-19. The municipal budget shall be prepared by the municipal manager. During the month of November in each year, the municipal manager shall require all department heads to submit requests for appropriations for the ensuing budget year, and to appear before him at public hearings, which shall be held during that month, on the various requests.

4-20. On or before the fifteenth day of January the municipal manager shall submit to council his recommended budget to-

gether with such explanatory comment or statement as he may deem desirable. The budget shall be in such form as is required by law for municipal budgets, and shall in addition have appended thereto detailed analysis of the various items of expenditure and revenue.

The council shall provide by ordinance for the operation of a system of work programs and quarterly allotments for operation of the budget, and for development and reporting of appropriate unit costs of all the various items of municipal expenditure.

4-21. In any act or ordinance a provision conferring the appointing power or other power upon the mayor or other executive head of the municipality shall be construed as meaning the municipal manager in a municipality governed under this chapter, and the appointments or the power exercised by the municipal manager in accordance with such provision shall be classified and given the same force and effect as if executed by the official named therein, except that members of the board of education and of the trustees of the public library, whenever required to be appointed by any such provision by any board or official of the municipality, shall be appointed under this chapter by the mayor.

ARTICLE 4

Other Officers.

4-22. A municipal engineer shall supervise all work by or for the municipality of a technical or engineering nature. He shall compile and compute unit costs of all work and services of an engineering or technical nature paid for by the municipality, whether charged to force account or by contract, and shall report thereon to council annually and at such other times as council may require.

4-23. A building inspector shall be appointed and shall have, perform and exercise all the functions, powers and duties of a building inspector under general law and under ordinances of the municipality.

4-24. The municipal assessor shall prior to his appointment have had training and experience in real and personal property appraisal or assessment and a thorough knowledge of the laws and ordinances governing the assessment and collection of property taxes. It shall be his duty to assess all taxable property in the municipality in accordance with general law and such administrative regulations as may be promulgated pursuant thereto, and to maintain a standard system of assessment records.

CHAPTER 5
SMALL MUNICIPALITY PLAN

SUMMARY

The purpose of this chapter is to meet the need for an improved form of government in New Jersey's hundreds of small communities which does not depart too radically from long-established traditions in borough and township government. Basically, this optional form combines the best elements of the present borough and township plans with modern standards of administration.

Article 1 provides:

Small Communities: Small communities are limited to those of less than 12,000 population. The government shall be an elective mayor and either two councilmen in places of less than 5,000 population or four councilmen in places of 5,000 population or more. No other local officials are to be elected.

Article 2 provides:

Mayor and Council: The governing body shall consist of the mayor and council, and the mayor participates and votes as other council members. The mayor has no veto power but is given separate executive power.

Article 3 provides:

Appointing Power: The mayor is to appoint all municipal officers and employees with the advice and consent of council. The principal officers will be the municipal clerk, treasurer, assessor, tax collector, engineer, and attorney. One person may be appointed to hold two or more of these offices, except for prescribed incompatible offices.

Article 4 provides:

Administration: Council is required to centralize administration under the direction and supervision of the mayor. A simple system of financial management by the treasurer and tax collector is set forth. Engineering functions are required to be under the supervision of a licensed professional engineer on either a full or a part-time basis.

Property Taxation and Regulation: A reasonably qualified assessor is required, and is given tenure during good behavior. The council itself is authorized to act as a planning board and zoning board of adjustment if it does not establish separate boards under general law. Provision is also made for reasonable land subdivision regulation, so as to protect the municipality against unnecessary expense and against the loss of ratables through un-economic practices.

CHAPTER 5
SMALL MUNICIPALITY PLAN

ARTICLE 1

Form and Organization

5-1. The form of government provided in this article shall be known as the "small municipality plan" and shall govern any municipality having a population of less than 12,000 inhabitants, the voters of which have adopted the plan pursuant to this chapter.

5-2. Each municipality shall be governed by an elected mayor and councilmen and such other officers as shall be appointed pursuant to this chapter, general law or ordinance.

Comment:

The present borough law calls for the election of a mayor, six councilmen, a collector, one or more Justices of the Peace and an assessor. The office of assessor may be abolished and a board of assessors appointed. The three members of the board of assessors are appointed by the mayor with the consent of the council. R. S. 40:87-1; 40:87-17, et seq.

In townships, the township committee, township clerk, collector of taxes, pound keepers, an assessor, and a road supervisor may be elected.

The election of assessors and of tax collectors is one of the weakest parts of small town government. These are the main omissions from the elected officers above.

5-3. The council shall consist of the mayor and two councilmen in municipalities of 5,000 inhabitants or less and of the mayor and four councilmen in municipalities having more than 5,000 but less than 12,000 inhabitants. Each councilman shall be elected at large for a term of three years.

Comment:

Borough councilmen and township committeemen now have a three-year term. Both the borough law and the township law provide for overlapping terms, whereas the above draft does not in view of a provision for separate municipal elections in the Spring. Since both borough and township elections are now held at

the general election, expense is not a factor in overlapping terms. With Spring elections, it seems desirable to avoid the necessity for setting up the whole local election machinery only to elect one or two councilmen. The degree of continuity that is claimed for overlapping terms can well be expected without this provision in practically every small municipality.

5-4. The mayor shall be elected for a term of three years.

5-5. The mayor and council shall be elected at a regular municipal election, in which the candidates for mayor and for councilman, two or four as the case may be, receiving the greatest number of votes shall be elected. They shall take office on the first Tuesday in July next after their election. Vacancies in the council shall be filled by the mayor with the advice and consent of the council, and vacancies in the office of mayor shall be filled by the council, each for the remainder of the unexpired term.

5-6. An assessor, a tax collector, an engineer, an attorney, a clerk, a treasurer and such other officers as may be provided by ordinance shall be appointed by the mayor with the advice and consent of the council. One person may be appointed to two or more such offices, except that one person shall not be the assessor and treasurer, or collector and treasurer or assessor and collector.

ARTICLE 2

Mayor and Council

5-7. The governing body of the municipality shall consist of the mayor and council. A majority of the whole number of the governing body shall constitute a quorum for the transaction of business but a smaller number may meet and adjourn from time to time. The mayor shall preside over all meetings of the governing body. The council shall select from among its members a president of the council who shall serve in place of the mayor in the event of his absence, disability or refusal to act.

5-8. The mayor and council shall meet regularly at least once a month at such time as shall be provided by resolution and shall meet at such other times upon special call of the mayor, as he may deem necessary. The mayor shall call a special meeting of the council at any time upon request of a majority

of the councilmen. Reasonable notice of special meetings shall be given to all members of the council or shall be delivered to their respective places of residence.

5-9. The local legislative power of the municipality shall be exercised by the mayor and council. The mayor shall participate and vote as other council members.

ARTICLE 3

Officers and Employees

5-10. The executive power of the municipality shall be exercised by the mayor. It shall be his duty to see that all laws and ordinances in force and effect within the municipality are observed. He shall address the council and report to the residents annually, and at such other times as he may deem desirable, on the condition of the municipality and upon its problems of government.

5-11. The mayor shall appoint all appointive officers of the municipality with the advice and consent of the council. He shall also appoint a finance committee of council which may consist of one or more councilmen and may appoint and designate other committees of council of similar composition.

Comment:

The veto power of borough plan has been omitted.

5-12. All employees whose appointment or election is not otherwise provided for in this chapter or by general law shall be appointed by the mayor. If the municipality has not adopted the provisions of Title 11 of the Revised Statutes (Civil Service), it shall be the duty of the mayor to recruit, select and appoint employees qualified by training and experience for their respective offices, positions and employments.

5-13. Appointive officers and employees need not be residents of the municipality unless council shall so require by ordinance.

Comment:

Personnel has frequently been a real but insoluble problem in small towns. Existing residence requirements have in most cases made it impossible to apply any competitive test for appointive positions. In the professional services such as the borough engineer and borough attorney, and in the services that might well be established on a professional basis such as the borough assessor, a residence requirement would prevent two or more small towns from engaging the same individual. The present borough law requires all officers other than the borough attorney and borough engineer to be residents of the borough. There is considerable professional opinion that the formal civil service merit system is not suitable for small towns especially where a residence requirement is retained. Some provision for a merit basis of appointment seems desirable, however, to encourage the appointing officials to seek the best talent the community offers.

5-14. A municipal clerk shall be appointed by the mayor with the advice and consent of council. The municipal clerk shall be qualified by previous training or experience to perform the duties of his office. He shall serve at the pleasure of the council, except as otherwise provided by this act.

Comment:

The municipal clerk is a key officer in the government of municipalities, and it would be desirable for the position to be placed on a full-time basis. The difficulty is that conditions vary so greatly among small municipalities that it seems impractical to require by statute that the clerk's office be full time. To some extent the functioning of local government in small communities may be improved by increasing the authority of the municipal clerk. In that way it may be possible to assure the availability of someone locally at all times with reasonable authority to furnish information and to make ministerial decisions.

5-15. The municipal clerk shall serve as clerk of the governing body of the municipality and shall have such other duties as council may prescribe. He shall maintain the records and minutes of the governing body and shall preserve, record, and compile all ordinances and resolutions of the municipality.

ARTICLE 4

Administration and Finance

5-16. The municipality shall have such powers of appropriation, expenditure, indebtedness and taxation as are provided by general law.

5-17. Council shall provide by ordinance for centralized administration of the affairs of the municipal government, under the direction and supervision of the mayor.

5-18. The mayor shall prepare the annual budget with the assistance of the treasurer.

5-19. The treasurer shall be the chief financial officer of the municipality and shall keep and maintain books and records of all financial transactions of the municipality in accordance with the standards and requirements of the State Division of Local Government. The treasurer shall have custody of all public monies of the municipality. He shall make monthly reports to council of all receipts, expenditures, commitments and unencumbered appropriation balances.

Comment:

The present borough law provides for the office of collector-treasurer (R. S. 40:87-46). The effect of this arrangement is to reduce internal checks on the receipt and disbursement of public monies. An effort to bring the clerk into the process of handling municipal funds was made in Chapter 257 of the *Laws of 1940*. This section has two advantages: It separates the functions of receipt of tax money from the function of custody and disbursement so as to provide inter-office check upon accounts, and it also enables the treasurer to maintain an encumbrance system of budget operation, using essentially the same records as he would need for the use of the mayor in preparing the annual budget. The municipal clerk might well be appointed treasurer, but this is not required.

5-20. No municipal funds shall be disbursed except pursuant to and within the limits of appropriations made in accordance with law. All disbursements shall be by bank check or draft

signed by the mayor and counter-signed by the treasurer, upon warrant of the chairman of the Finance Committee of council approved by council.

5-21. The municipal collector shall receive and collect all monies assessed or raised by taxation or assessment for any purpose and all fees, fines, penalties and other monies due and owing to the municipality. The collector shall enter in suitable books or other records to be kept by him the sums received each day together with the account to which each receipt is credited. Within 48 hours after the receipt of any monies of the municipality the collector shall deposit such monies in the authorized public depository of the municipality to the credit of the appropriate account. He shall report to council at least once each month at the same time as the treasurer is required to report, all receipts and deposits and cash on hand belonging to the municipality. Within 60 days after the end of the fiscal year, and at such other times as may be required by council, the collector shall make and furnish a detailed and true list of all delinquent taxpayers for the next preceding year or for such period as council may require.

Comment:

The above section redefines the duties of the collector in contemplation of a separate treasurer. It is anticipated that detailed financial procedures will remain subject to administrative control by the Division of Local Government.

5-22. The treasurer and the collector shall each give bond, at the expense of the municipality, in accordance with general law.

5-23. The municipal engineer shall be qualified at least as a licensed professional engineer prior to his appointment, and shall serve either full or part time, or on a consulting basis.

5-24. The municipal engineer shall supervise all work by or for the municipality of a technical or engineering nature. He shall compile and compute unit costs of all work and services of an engineering or technical nature paid for by the municipality whether charged to force account or by contract, and shall report thereon to council annually and at such other times as council may require.

5-25. Council shall provide by ordinance for a building inspector who shall have, perform and exercise all the functions, powers and duties of a building inspector under general law and under ordinances of the municipality.

5-26. The municipal assessor shall prior to his appointment have had training and experience in real and personal property appraisal or assessment and a thorough knowledge of the laws and ordinances governing the assessment and collection of property taxes. It shall be his duty to assess all taxable property in the municipality in accordance with general law and such administrative regulations as may be promulgated pursuant thereto, and to maintain a standard system of assessment records.

ARTICLE 5

Land Use Regulation

5-27. The council shall have, perform and exercise all the functions, powers and duties of a municipal planning board and zoning board of adjustment pursuant to general law; provided that council may by ordinance establish and constitute a separate planning board, and zoning board of adjustment or either of them as provided by general law.

5-28. Council shall make or cause to be made and adopt an official map of the municipality, which it may from time to time extend, add to or modify as conditions may require, pursuant to general law.

5-29. Council shall by ordinance adopt regulations governing the sub-division of land within the municipality, and shall enforce such regulations in the manner provided by general law.

CHAPTER 6

ADDITIONAL PROVISIONS COMMON TO ALL PLANS

SUMMARY

The purpose of this chapter is to bring together certain standard provisions which are in effect made part of each optional plan. These standard sections cover the subjects of elections, officers and employees, the recall, local legislation, initiative and referendum and succession in government.

Article 1 provides:

Elections: For the election of the mayor and the required number of councilmen at a non-partisan municipal election on the first Tuesday in May and for the holding of a run-off election under the "strong-mayor" and council-manager plans whenever a required number of candidates do not receive a majority of the votes at the regular municipal election.

Articles 2 and 3 provide:

Officers and Employees: Standards of conduct for municipal officers are defined as well as certain prohibited practices such as interest in contract, free service, etc.

Recall: For the removal of any elective officer by recall after one year in office and for the election of a successor if the recall is affected.

Articles 4 and 5 provide:

Local Legislation: The municipal clerk shall publish annually all ordinances and resolutions adopted by council. Any ordinance may incorporate by reference standard technical regulations or codes and the municipality is relieved from publishing such ordinance as required by law whenever a sufficient number of copies are available for public inspection in appropriate places. Provision is made for remonstrance against ordinances and initiative and referendum.

Article 6 provides:

Succession in Government: An optional charter adopted pursuant to this act shall take effect on the last Tuesday of the third month next following the month in which the plan is adopted. Provision is made for the repeal of all special charters after the effective date of an optional plan in a municipality, for the continuance of all ordinances and resolutions not inconsistent with the optional charter act, for the termination of offices existing under prior charters, and for protecting the tenure of certain officers such as policemen, firemen, teachers and any other person protected by Title 11 of the Revised Statutes (Civil Service) or by any other tenure of office law.

CHAPTER 6

ADDITIONAL PROVISIONS COMMON TO ALL PLANS

ARTICLE 1

Elections

6-1. On the sixth Tuesday following the adoption by a municipality of any of the optional plans authorized by this act, an election shall be held at which the legally qualified voters of such municipality shall elect those officers required to be elected by the adopted plan. All such officers shall serve from 12 o'clock noon on the day the plan first takes effect until 12 o'clock noon on the first Tuesday of July in the third year following such election and until their successors are elected and qualified.

6-2. Regular municipal elections shall be held in each municipality on the second Tuesday in May in the years in which municipal officers are to be elected.

Comment:

A pilot survey of the comparative turnout at general, primary and spring municipal (commission government) elections seems to indicate that the spring elections for municipal officers consistently attract a larger proportion of the registered voters than either the primary or general elections held during the same years, except in presidential election years. This is based on experiences in seven different communities ranging in size from Trenton, with a 1940 population of 124,697, to Monmouth Beach, with a 1940 population of 584, and extending over a 15-year period (1933-1948). Available figures indicate that of the registered voters among the residents of the seven communities about—

65.8% voted in the general elections
24.9% voted in the primary elections, and
71.4% voted in the municipal elections

6-3. The municipal election shall be held at the same place or places and conducted in the same manner, so far as possible, as the general election, and the polls shall be open from seven o'clock in the forenoon until nine o'clock at night. The election officers conducting such elections shall be those provided for conducting the general election.

6-4. At least 40 days prior to a regular municipal election, and at least twenty days prior to the first election for municipal officers, the names of candidates for all offices shall be filed with the municipal clerk in the manner and form and under the conditions hereinafter set forth.

The petition of nominations shall consist of individual certificates, equal in number to at least one per cent (1%), but in no event less than ten of the legally qualified voters, and shall read substantially as follows:

Form of petition. a. "I, the undersigned, a qualified elector of the municipality of _____, residing at _____, whose residence is at _____ for the office of mayor (or councilman as the case may be) to be voted for at the election to be held in such municipality on the _____, 19____, and I further certify that I know this candidate to be a qualified elector of said municipality and a man of good moral character, and qualified, in my judgment, to perform the duties of said office and I further certify that I have not signed more petitions or certificates of nominations than there are places to be filled for the above office.

(Signed) _____"

Signatures and affidavit. b. The signatures of the petition need not be appended to one paper but each signer shall add to his signature his place of residence, giving the street and number, if any. One of the signers of each such paper shall make an oath before an officer competent to administer oaths that the statements therein made are true to his best knowledge and belief, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

Blank petitions furnished. c. The municipal clerk shall furnish, upon application, a reasonable number of forms of individual certificates of the above character.

Rejection of petition. d. Each certificate shall contain the name of one candidate, and no more. Each signer must not, at the time of signing the certificate, have signed more certificates for candidates for that office than there are places to be filled

for such office, and all certificates of an elector whose certificate or certificates have not complied substantially with the foregoing provisions shall be rejected.

Defective and amended petition. e. When such a petition of nomination is presented for filing to the municipal clerk, he shall forthwith examine the same and ascertain whether it conforms to the provisions of this section, and if not found in conformity thereto, he shall designate the defect and return the petition to the person making the oath. Such petition may again be presented when properly amended if this can be done at least fifteen days before the election.

Comment:

The number of signers of the petitions required under the commission plan and the manager plan is a number equal to $\frac{1}{2}$ of 1% of the entire vote cast at the last preceding general election, but in no event less than 25, except under the manager plan the clause requiring 25 signers is omitted. A direct nominating petition for the general election must be signed by a number equal to at least 2% of the entire vote cast for members of the General Assembly at the last preceding general election in the municipality. The *Commission* believes it is more desirable to use the fixed base of number of registered voters and to adjust the percentage requirement accordingly.

At regular municipal elections name of candidates must be filed with the municipal clerk as follows:

Commission Plan (petition for commissioners)

At least 20 days prior to an election for the first members of the commission and at least 40 days prior to any other municipal election.

Manager Plan (petition for councilmen)

At least 15 days prior to such election, except that for the duration of the present war and six months thereafter the petition shall be filed 75 days prior to such election other than an election for the first members of the municipal council. Amendments of petitions may be filed not later than 75 days before the election. (R. S. 40:84-5).

6-5. The municipal clerk shall draw lots to determine the order in which the names of the candidates shall appear upon the ballots. The name of the person first drawn shall occupy first place on the ballot, or voting machine, and the name of the person next drawn shall occupy second place, and so forth. The manner of drawing by lot shall be as follows: Paper cards with the name of each candidate written thereon shall be placed in a covered box with an aperture in the top large enough to allow the cards to be drawn therefrom. The municipal clerk in the presence of any candidate shall draw from the box each card without knowledge on his part as to which card he is drawing. The municipal clerk shall at least two days prior to the drawing notify each candidate by registered mail of the time and place of the drawing. The candidate or his representative shall have the right to examine the cards prior to their being placed in the covered box.

6-6. Immediately after the expiration of the time for filing certificates, statements and petitions for candidates, and the drawing for position, the municipal clerk shall cause the names of the candidates as they are to appear upon the ballots to be published in proper form for three successive days in all the daily newspapers published in the municipality, or if there be no daily newspaper, then in two successive issues of any other newspapers published in the municipality.

6-7. When persons bearing the same name are nominated for the same office, any or either of them can file with the municipal clerk a statement in writing containing not more than six words as a means of identification of such candidate. The statement or designation so filed shall be printed upon the official ballot to be used at the election.

6-8. The municipal clerk shall cause the ballots to be printed and authenticated by his signature. Upon the ballots shall be printed the title of each office to be filled. Under each of the titles of office shall be printed the names of the candidates for each office with a square to the left of each name. Below the names of such candidates for each office the words "vote for one, (two, four or five as the case may be)." The ballot shall

be printed upon plain, substantial white paper, and shall be substantially in the following form:

"Municipal election of (here insert corporate name of municipality), county of (here insert name of county), held (here insert the date of the election). To vote for any person make a cross (X) or (+) mark in the square preceding the name voted for. Vote only for as many persons as there are officers to be elected. If you wrongly mark the ballot, tear or deface same and return it to election officer and obtain new ballot."

Blank spaces equal to the number of offices to be filled shall be left below the printed names of the candidates for each office to be voted for, wherein the voter may write the name or names of any person or persons for whom he may wish to vote.

The municipal clerk shall deliver ballots to the election officials at each polling place equal in number to one and one-tenth times the number of registered voters in each election district.

6-9. In any municipality which has adopted Chapter 3 or Chapter 4 of this act, the candidates receiving the greatest number and a majority of votes cast shall be elected to the respective offices; *provided, however*, that if two or more candidates for the office of councilman receive a majority of the votes cast in the election, the five candidates receiving the greatest number of votes shall be elected.

6-10. If at any election held as herein provided, a sufficient number of candidates do not receive a majority of the votes cast to elect the required number of councilmen, or no candidate for mayor receives a majority of the votes cast for that office, a run-off election shall be held on the second Tuesday next following such uncompleted election. The candidates for council not elected at such first election, equal in number to twice the number of councilmen remaining to be elected, who received the greatest number of votes at such first election, and the two candidates for mayor receiving the greatest number of votes at such first election at which a mayor failed of election, shall be the candidates for the office for which they were nominated at such run-off election.

The candidate or candidates who receive the greatest number of votes at such run-off election shall be elected to the office or offices to be filled. If two or more candidates shall be equal and greatest in votes, for any of the purposes of this section, they shall draw lots to determine which one shall enter the run-off election or be elected therein, as the case may be.

6-11. In any municipality which has adopted Chapter 5 of this act, the candidate for mayor who receives the greatest number of votes shall be elected and the number of candidates for councilmen equal to the number of places to be filled in the council, receiving the greatest number of votes shall be elected.

ARTICLE 2

Officers and Employees

6-12. Every officer in the municipality, before entering upon the duties of his office, shall take and subscribe an oath of office, and give bond as provided by law.

6-13. No person hereafter appointed in a municipality governed under this act, notwithstanding the provisions of any other law, shall acquire a tenure of office beyond that specifically provided in this act or by virtue of the provisions of Title 11 (Civil Service) of the Revised Statutes.

6-14. No member of any governing body of any municipality shall, during the term for which he shall have been elected or appointed such member, be eligible for election or appointment to an office required to be filled by the governing body of which he is a member, unless such office is required by law to be filled by a member of such governing body; *provided*, nothing herein contained shall prohibit a councilman from resigning as councilman and being appointed to a position required to be filled by the governing body of a municipality during the time for which he was elected such councilman; *provided, further*, that said position shall have been in existence and continuously filled for five years or more prior to the passage of this act or was created by statute; *provided*, said position was not created during said term of office; *and provided, further*, that the salary of said office shall not be increased during the term for which said councilman was elected.

6-15. All officers and employees in any municipality governed by this act shall be selected with reference to their qualifications and fitness for the public service required of them and without reference to their political faith or affiliations.

6-16. No officer or employee elected or appointed in any municipality shall be interested directly or indirectly in any contract or job for work or materials, or the profits thereof, or services to be furnished or performed for the municipality, and no such officer or employee shall be interested directly or indirectly in any contract or job for work or materials or the profits thereof, or services to be furnished or performed, for any person operating any interurban railway, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange, or other public utility within the territorial limits of such municipality.

6-17. No officer or employee shall accept or receive, directly or indirectly, from any person operating within the territorial limits of a municipality, any interurban railway, street railway, gas works, waterworks, electric light or power plant, heating plant, telegraph line, telephone exchange or other business using or operating under a public franchise, any frank, free pass, free ticket or free service, or accept or receive, directly or indirectly, from any person, any other service upon terms more favorable than is granted to the public generally, except that such prohibition of free transportation shall not apply to policemen or firemen in uniform. Nor shall any free service to the municipal officials heretofore provided by any franchise or ordinance be affected by this section.

6-18. No candidate for office, appointment or employment, and no officer, appointee, or employee in any municipality shall directly or indirectly give or promise any person any office, position, employment, benefit or anything of value for the purpose of influencing or obtaining the political support, aid or vote of any person, under the penalty of being disqualified to hold the office or employment to which he may be or may have been elected or appointed.

6-19. Any person who shall violate any of the provisions of sections 6-16, 6-17, and 6-18 of this chapter shall upon conviction thereof in a court of competent jurisdiction forfeit his office.

ARTICLE 3

Recall

6-20. Any elective officer after having been in office for at least one year may be removed from office by a recall petition. The procedure to effect the recall of an incumbent in office shall be as follows: A petition signed by voters entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least twenty per cent of the number of persons who voted in such municipality at the last preceding general election, demanding the removal of and the election of a successor to the officer named in the petition, shall be filed with the municipal clerk. The petition shall contain a general statement of the grounds upon which the removal is sought. The signatures to the petition need not all be appended to one paper but each signer shall add to his signature his place of residence giving the street and number, if there be such. One of the signers to each such paper shall take an oath before an officer competent to administer oaths that the statement therein made is true as he believes and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing the petition the municipal clerk shall complete the examination and ascertain whether or not such petition is signed by the requisite number of qualified electors, and shall attach to the petition his certificate showing the result of his examination. If by that certificate the petition is shown to be insufficient it may be amended within ten days from the date of said certificate. The municipal clerk shall, within five days after such amendment, make a similar examination and determination of the amended petition, and if the certificate shall show the same to be insufficient, it shall be returned to the person filing it without prejudice to the filing of a new petition to the same effect.

Comment:

Both the commission form of government law and the council-manager law contain provisions for recall. The above provisions follow the latter law.

6-21. If the petition shall be sufficient the municipal clerk shall notify the mayor, councilman or councilmen whose recall is sought thereby within two days. If such notice cannot be served upon the mayor, councilman or councilmen affected, then service shall be made by leaving the same at his residence with a member of his family or attendant, and if access cannot be had to his residence, then by posting the same at the door thereof. If within five days after the service of the notice by the municipal clerk the mayor, councilman or councilmen sought to be recalled by such petition do not resign, or having tendered their resignation it shall not have been accepted by the municipal council, then the municipal clerk shall order and fix a date for holding a recall election, as herein provided. The election shall not be less than forty nor more than fifty days from the filing of the petition. Notice of the filing of the petition and of the election as fixed shall be posted for public view in the office of the municipal clerk and he shall also insert the notice forthwith in a newspaper published in the municipality, or if there be no such newspaper, then in a newspaper having general circulation in such municipality.

6-22. The ballots at the recall election shall conform to the requirements of this chapter respecting the election of officers at the municipal election, except that for the words "municipal election" there shall be substituted the words "recall election." The recall features of the ballot shall appear at the top thereof and shall be separated from the portion of the ballot for the election of officers by a heavy black line. The proposal for recall shall be placed on the ballot in the following manner:

"Shall _____ (here insert name of mayor or councilman) be removed from office by recall?" This matter shall occupy two lines in bold-face type. Immediately below the above wording shall appear the phrase "for recall," and immediately underneath such phrase the words "against recall." Immediately at the left of each of these two phrases shall be

printed a square, in which the voter may make a cross (X) or plus (+) mark. Immediately below the foregoing shall appear the following:

“Indicate your vote by placing a cross (X) or plus (+) mark in one of the squares above.”

6-23. If the removal of more than one officer is sought the same provisions for submitting to the electors the question and direction hereinbefore described shall be repeated in the case of each officer concerned and their position on the ballot for their recall shall be in the order of the filing of the petition with the municipal clerk.

6-24. The same ballot used for submitting the question or questions of recall shall be used for the election of successors to the mayor, councilman or councilmen sought to be removed, and the provisions of this chapter concerning the nomination, preparation of ballot, election, counting and canvassing of the results of such election of officers shall apply to the election and recall of officers in this case. The names of all persons nominated by petition in the manner provided in this chapter for nomination of candidates for election of officers shall be placed upon the ballot.

6-25. The municipal clerk shall cause to be made due publication of notice of arrangements for holding all recall elections and they shall be conducted as are other municipal elections.

6-26. If a majority of votes in connection with the recall of any officer be in favor of the recall the term of office of such officer shall, upon the certification of the results of election by the municipal clerk, cease and determine.

6-27. If the results of such recall election shall by the certificate of the municipal clerk, be shown to be against the recall of the officer he shall continue in office as if no recall election had been held, and the vote for the election for the successor of such officer taken at the time of such attempted recall shall be void.

ARTICLE 4

Local Legislation

6-28. All ordinances shall be adopted and published as required by general law except that any ordinance may incorporate by reference any standard technical regulations or code, official or unofficial, which need not be so published whenever ten copies of said regulations have been placed on file in the office of the municipal clerk and in the office of the body or department having charge of the enforcement of said ordinance, for the examination of the public so long as said ordinance is in effect.

6-29. It shall be the duty of the municipal clerk to compile and publish all of the ordinances and resolutions of the municipality which remain in force and effect, as soon as practicable following the adoption of an optional plan pursuant to this act.

6-30. No ordinance shall be adopted without a majority vote of the whole number of members of the council. Nor shall any ordinance other than the local budget ordinance take effect less than 30 days after it is adopted unless the council shall adopt a resolution declaring an emergency and at least one more than a majority of the members of council voted in favor of such resolution. The municipal clerk shall publish annually in bound booklet, leaflet or volume form all the ordinances and resolutions adopted by council during the next preceding year; and each ordinance or resolution shall in such publication be numbered or otherwise keyed to its appropriate allocation in the compiled ordinances or code of ordinances of the municipality.

6-31. No rule or regulation made by any department, officer, agency or authority of the municipality, except such as relates to the organization or internal management of the municipal government or a part thereof, shall take effect until it is filed either with the municipal clerk or in such other manner as may be provided by ordinance. The council shall provide for the prompt publication of such rules and regulations.

ARTICLE 5

Initiative and Referendum

6-32. If within twenty days after the final passage of an ordinance, except ordinances authorizing an improvement or the incurring of an indebtedness, other than for current expenses, where other requirements are made by law, a petition signed by electors of the municipality equal in number to at least ten per cent of the registered voters protesting against the passage of such ordinance, be presented to the governing body, it shall thereupon be suspended from going into operation and the governing body may reconsider the ordinance. If the ordinance is not entirely repealed, the board shall submit it, in the manner provided in paragraph "b" of section 6-41 and sections 6-42 to 6-45 of this chapter, to the vote of the electors of the municipality, either at the general election or at a special municipal election to be called for that purpose, and such ordinance shall not become operative unless a majority of the qualified electors voting on the ordinance shall vote in favor thereof.

6-33. The petition shall be in accordance with sections 6-37 to 6-41 of this chapter, except as to the percentage of signers, and be examined and certified to by the clerk in all respects as therein provided.

6-34. Any ordinance or measure that the governing body or the qualified electors of the municipality shall have authority to enact, the governing body may of its own motion submit to the electors for adoption or rejection at a general or special municipal election, in the same manner and with the same effect as is herein provided for ordinances or measures submitted on petition. At any special election called under the provisions of this chapter there shall be no bar to the submission of other questions to a vote of the electors in addition to the ordinances or measures provided for in this section and section 6-32 of this chapter, if the other questions are such as may legally be submitted at such election. If the provisions of two or more measures approved or adopted at the same election conflict, then the measure receiving the highest affirmative vote shall control.

6-35. No petition or submission to the vote of the electors shall be necessary to authorize the undertaking or completion of any work, the purchase or construction of any public utility or improvement which any municipality may be authorized by law to undertake, purchase or construct, or to authorize the borrowing of money and issuance of bonds or other obligations for any purpose for which any municipality may be authorized by law to issue bonds or other obligations.

6-36. Any proposed ordinance may be submitted to the governing body by petition of the electors, in the manner hereinafter provided.

6-37. A petition signed by electors equal in number to the percentage provided by section 6-41 of this chapter requesting that the proposed ordinance be submitted to the governing body, or to vote of the people if not passed by the governing body, shall be filed with the municipal clerk.

6-38. The signatures to the petition need not all be appended to one paper but each signer shall add after his signature his place of residence, giving the street and number. One of the signers of each paper shall make an oath before an officer competent to administer the same that the statement therein is true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be.

6-39. Within ten days after the filing of the petition, the municipal clerk shall examine the same and ascertain whether or not it is signed by the requisite number of qualified electors as hereinafter provided, and shall attach his certificate thereto showing the result of such examination. If by the clerk's certificate the petition is shown to be insufficient he shall forthwith return the same to the person filing it. The petition may be amended and refiled within ten days after the receipt thereof from the clerk.

6-40. The clerk shall, within ten days after such refiled, make a similar examination of the amended petition and if his certificate shall show the same to be insufficient he shall forthwith return it to the person filing it, without prejudice to the

filing of a new petition to the same effect. If the petition or amended petition shall be deemed to be sufficient the clerk shall submit the same to the governing body without delay.

6-41. If the petition accompanying the proposed ordinance be signed by electors equal in number to ten per cent of the registered voters and contains a request that the ordinance be submitted to a vote of the people if not passed by the governing body, the governing body shall either:

a. Pass the ordinance without alteration within twenty days after attachment of the clerk's certificate to the accompanying petition; or

b. Forthwith, after the clerk shall attach to the petition accompanying such ordinance his certificate of sufficiency, call a special election, unless a regular municipal election is to be held within ninety days thereafter, and at such special or general municipal election such ordinance shall be submitted without alteration to the vote of the electors of the municipality.

6-42. Any number of proposed ordinances may be voted upon at the same election in accordance with the provisions of this article, but there shall not be more than one special election in any period of six months for such purpose.

6-43. Whenever an ordinance, or proposition affecting an ordinance, is to be submitted to the voters of the municipality at any election, the clerk shall cause the ordinance or proposition to be published in at least two of the newspapers published in the municipality. The publication shall be not more than twenty nor less than five days before the submission of the ordinance or proposition to be voted on.

6-44. The ballots to be used at such election shall be in substantially the following form:

"To vote upon the public question printed below, if in favor thereof mark a cross (X) or plus (+) in the square at the left of the word YES, and if opposed thereto mark a cross (X) or plus (+) in the square to the left of the word NO.

YES "Shall the ordinance (or proposition)
 NO proposed by petition and providing for
 (here state nature of proposed ordinance
 or proposition) be adopted?"

6-45. If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the municipality. Any ordinance proposed by petition, or which shall be adopted by a vote of the people, shall not be repealed or amended except by a vote of the people.

ARTICLE 6

Succession in Government

6-46. An optional charter adopted pursuant to this act shall take effect at 12 o'clock noon on the last Tuesday of the third month next following the month in which the plan is adopted by the voters of the municipality.

6-47. Upon the effective date of an optional charter adopted pursuant to this act, any other charter and its amendments and supplements theretofore applicable to the municipality shall be superseded with respect to such municipality. All ordinances and resolutions of the municipality to the extent that they are not inconsistent with the provisions of this act shall remain in full force and effect until modified or repealed as provided by law.

6-48. At 12 o'clock noon on the effective date of an optional plan adopted pursuant to this act, all offices then existing in such municipality shall be abolished and the terms of all elected and appointed officers shall immediately cease and determine; *provided*, that nothing in this section shall be construed to abolish the office or terminate the term of office of any member of the board of education, trustees of the free public library, or of any official or employee now protected by any tenure of office law, or of any policeman, fireman, teacher, principal or school superintendent whether or not protected by a tenure of office law. If the municipality is operating under the provisions of Title 11 of the Revised Statutes (Civil Service) at the time of the adoption of this act, nothing herein contained shall affect the tenure of office of any person holding any position or office coming within the provisions of said Title 11 as it applies to said officers and employees.

6-49. All actions and proceedings of a legislative, executive or judicial character which are pending upon the effective date of an optional plan adopted pursuant to this act may continue, and the appropriate officer or employee under such optional plan shall be substituted for the officer or employee theretofore exercising or discharging the function, power or duty involved in such action or proceeding.

APPENDIX

COMMISSION GOVERNMENT SUPPLEMENT (Optional Amendments to the Walsh Act)

This appendix sets forth a supplement to the commission form of government law which would provide an option for the commission government municipalities that are unable or unwilling to adopt one of the standard optional forms. The purpose is to use the basic philosophy of commission government—that is, the election of commissioners who are at the same time a legislative body and administrative heads—but to add the advantage of centralized executive responsibility in a mayor who would be separately elected. Under this supplement the mayor is head of the department of administration and finance, assigns the commissioners to head the other departments and has a large measure of control over the budget.

1. This act shall be known as the Commission Government Supplement.

2. The legally qualified voters of any municipality governed by Chapters 70 to 76 of Title 40 of the Revised Statutes may adopt this act at a special election held in such municipality to be called by the municipal clerk, upon request or petition in writing of 10 per cent of the qualified voters of the municipality, or upon recommendation of a charter commission constituted pursuant to law.

3. The municipal clerk shall call such special election to be held on the third Tuesday following the date of the filing of the petition, or, in the event the election is called upon recommendation of a charter commission, at such regular municipal or general election or within such time as the charter commission shall recommend.

4. Any election called by the municipal clerk pursuant to section 3 of this supplement shall be conducted in the manner prescribed in sections 40:71-2 to 40:71-5 of the Revised Statutes.

5. No petition for submission of the question of adopting the commission government supplement pursuant to this act may be filed within two years after any other such petition has been filed nor within two years after a resolution or petition for the election of a charter commission has been duly filed.

6. Whenever the legally qualified voters of any municipality by a majority of those voting on the question, vote in favor of adopting this supplement, such municipality shall be governed under the provisions of this act and under the provisions of Chapters 70 to 76 of Title 40 of the Revised Statutes to the extent that said provisions are not inconsistent with this act.

7. Immediately after the adoption of this supplement by any municipality, the board of commissioners shall be reorganized in accordance with the provisions of this act and the commissioner who has been designated as mayor pursuant to section 40:72-10 of the Revised Statutes shall exercise all the powers and duties of the mayor under this act.

8. Each municipality adopting this supplement shall be governed by a board of commissioners consisting of an elected mayor and commissioners and such other officers as shall be appointed pursuant to this supplement and Chapters 70 to 76 of the Revised Statutes.

9. The board of commissioners shall consist of the mayor and two commissioners in municipalities having less than ten thousand inhabitants; and of the mayor and four commissioners in municipalities having ten thousand inhabitants or more, subject to the provisions of sections 40:72-1.1 to 40:72-1.3 of Title 40 of the Revised Statutes.

Each member shall have been a citizen and resident of the municipality for at least two years immediately preceding his election, or shall have voted in such municipality at the two general elections for members of the General Assembly immediately preceding his election.

10. When a vacancy occurs in the office of mayor or commissioner the remaining members of the board of commissioners shall, within thirty days thereafter, elect a properly qualified

person to fill such vacancy for the unexpired term, provided that if the remaining members fail to fill the vacancy within said thirty days, the vacancy shall be filled by the candidate for mayor (or commissioner, as the case may be) if any, who failed of election at the last preceding regular municipal election, and who has not been appointed to fill a vacancy, in the order of the greatest number of votes cast for such candidates.

11. The legislative power of the municipality shall be exercised by the board of commissioners. The executive, judicial and administrative authority and duties shall be distributed into and among as many departments as there are members of the board of commissioners, each of which shall be headed by a commissioner. One of the departments shall be a department of administration and finance and shall be headed by the mayor.

12. The board of commissioners shall exercise its powers over departments and officers under R. S. 40:72-5 by vote of the mayor and two commissioners, or by vote of four commissioners exclusive of the mayor, where the board consists of five members; and by a majority of the board where it consists of three members.

13. At the first regular meeting of the board of commissioners after the election of its members, it shall be the duty of the mayor to assign the other members of the board of commissioners to head the several administrative departments. The mayor may reassign at his discretion any commissioner if in his judgment the interests of the municipality may be served thereby.

14. The mayor shall preside at meetings of the board, and shall supervise all departments and report to the board for its action all matters requiring the attention of the board or any department.

As head of the department of administration and finance, the mayor shall: (a) be chief budget officer of the municipality, with the functions, powers and duties hereinafter set forth; (b) shall administer a centralized purchasing system; and (c) shall administer a municipal personnel system.

15. Ordinances and resolutions passed by the board of commissioners, shall be submitted to the mayor for his approval. The mayor shall within 10 days after receiving any ordinance either approve the ordinance by affixing his signature thereto or return it to the board of commissioners together with a statement setting forth his objections thereto or in the case of ordinances appropriating money, his objections to any specific item or items contained therein. No ordinance or resolution shall take effect without the mayor's approval unless, upon reconsideration thereof on or after the third day following its return by the mayor, the board of commissioners shall resolve to override the mayor's veto and such resolution shall be adopted by a majority vote of the whole board of commissioners or unless the mayor fails to return an ordinance or resolution to the council within ten days after it has been presented to him; *provided, however,* that any resolution to override the mayor's veto on an appropriation ordinance or any specific item or items thereof, shall be adopted by an affirmative vote of four members where the whole number of the board is five and by three members where the whole number of the board is three.

16. The mayor may designate a commissioner, a business administrator, if there be one, or any other officer of the municipality as deputy mayor. The person so designated by the mayor may exercise all the powers and shall have the duties of the mayor whenever the mayor shall be unable to attend to the duties of his office because of absence or disability.

17. The board of commissioners shall by ordinance fix the compensation of the mayor and the commissioners. Any ordinance passed fixing the compensation of the mayor or commissioners shall not be subject to any of the limitations imposed under sections 40:72-21 to 40:72-25 of the Revised Statutes.

18. The mayor of any municipality adopting this act may appoint, at a salary to be fixed by the board of commissioners, a suitably qualified person to be known as business administrator who shall be deputy director of the department of administration and finance. His term of office shall be co-extensive with

the term of the mayor but he may be removed at any time at the pleasure of the mayor. It shall be his duty to:

- (a) assist in the preparation of the budget
- (b) administer a centralized purchasing system
- (c) serve as municipal personnel officer and be responsible for a sound personnel system

19. The board of commissioners shall appoint a comptroller to hold office for such term as it shall fix. The board shall provide for an encumbrance system of budget operation, for expenditures only upon written requisition, for the pre-audit of all claims and demands against the municipality prior to payment, and for the control of all payments out of any public funds by individual warrants for each payment to the municipal official having custody of the municipal treasury.

20. The municipal budget shall be prepared by the mayor with the assistance of the business administrator if there be one. During the month of November, the mayor shall require all department heads to submit requests for appropriations for the ensuing budget year, and to appear before the mayor or his representative at public hearings, which shall be held during that month on the various requests.

21. On or before the 15th day of January the mayor shall submit to the board of commissioners his recommended budget together with such explanatory comment or statement as he may deem desirable. The budget shall be in such form as is required by law for municipal budgets, and shall in addition have appended thereto detailed analysis of the various items of expenditure and revenue.

The board of commissioners may provide for the operation of a system of work programs and quarterly allotments for operation of the budget, to be administered by the Department of Administration. It shall be the duty of the mayor in administering any such program to develop and report appropriate unit costs of all the various items of municipal expenditure.

22. The first municipal officers elected pursuant to this act shall be elected at the regular municipal election next occurring

after its adoption. The terms of office of all such officers shall commence at 12 o'clock noon on the first Tuesday of July.

23. The election of all subsequent officers shall be held at the time and in the manner prescribed in Chapter 75 of Title 40 of the Revised Statutes to the extent not inconsistent with this act except that the mayor shall be separately elected. The term of office of all elected officers shall commence at 12 o'clock noon on the first Tuesday of July next following their election.

24. The candidates receiving the greatest number and a majority of the votes cast shall be elected; *provided, however, that:*

(a) if two or more candidates for the office of commissioner in a municipality having a five-member board of commissioners receive a majority of the votes cast in the election, the four candidates receiving the greatest number of votes shall be elected;

(b) if at least one of the candidates for the office of commissioner, in municipalities having a three-member board of commissioners, receives a majority of the votes cast at the election, the two candidates receiving the greatest number of votes shall be elected.

25. If at any regular municipal election a sufficient number of candidates do not receive a majority of the votes cast to elect the required number of commissioners, or no candidate for mayor receives a majority of the votes cast for that office, a run-off election shall be held on the second Tuesday next following such uncompleted election. The candidates for commissioners not elected at such first election, equal in number to twice the number of commissioners remaining to be elected, who received the greatest number of votes at such first election, and the two candidates for mayor receiving the greatest number of votes at such first election at which a mayor failed of election shall be the candidates for the office for which they were nominated at such run-off election.

26. The mayor may be removed by means of a recall after he has been in office one year. The procedure to effect his recall and for the election of a successor shall be the same as that provided for the recall of the commissioners under sections 40:75-25 to 40:75-49 of the Revised Statutes.

