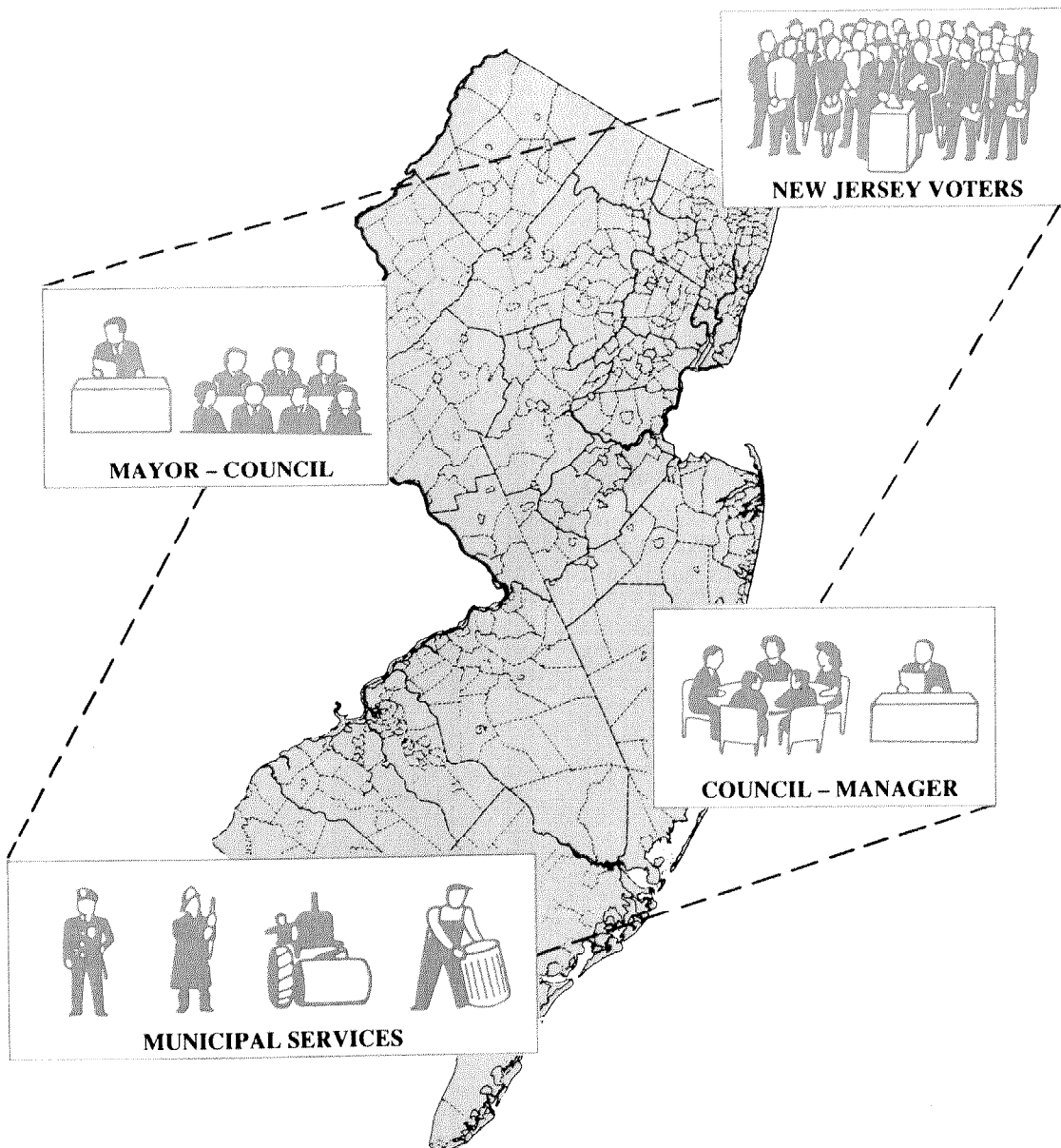


STATE OF NEW JERSEY  
STATE COMMISSION ON  
COUNTY AND MUNICIPAL GOVERNMENT

A Legislative Agency

# MODERN FORMS OF MUNICIPAL GOVERNMENT



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*State of New Jersey*  
**State Commission on  
County and Municipal Government**  
**A Legislative Agency**

# **MODERN FORMS OF MUNICIPAL GOVERNMENT**

**May 1992**

**STATE COMMISSION ON  
COUNTY AND MUNICIPAL GOVERNMENT**

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ACTING CHAIRMAN

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EXECUTIVE DIRECTOR

### **To His Excellency Governor James J. Florio and Honorable Members of the Senate and General Assembly:**

The State Commission on County and Municipal Government is pleased to submit its forty-second report, *Modern Forms of Municipal Government*.

The Commission has reviewed the statutes that govern the modern forms of municipal government - the Optional Municipal Charter Law (Faulkner Act), the 1923 Municipal Manager Form, the Commission Form (Walsh Act), and the special charters. In so doing, it has become clear that there is a need for certain policy and technical changes that will eliminate conflict with general law, clarify provisions in less ambiguous terms, and provide local officials and interested citizens with a more organized and efficient set of statutes. This report also takes into account over 35 interviews with mayors, council members, managers, administrators, and clerks, who have provided valuable information in developing the Commission's recommendations.

One of the most important findings of the Commission is the ever-growing popularity of the Faulkner Act. The experience of the last 42 years indicates overwhelming movement to the forms within that act. Today it has been adopted by 120 municipalities containing 47 per cent of the State's population. The Commission's analysis of the Faulkner Act has revealed certain provisions to be redundant, out-dated, or in conflict with general law. The Commission recommends revising the Faulkner Act in order to clarify and simplify the law.

In addition, the report recommends the merging of the 1923 Municipal Manager form with the identical Faulkner Act Council-Manager form and the revision of the 81 year old Commission Form of government law. The report also includes a first time analysis of the ten special charters in New Jersey.

It is the belief of the Commission that the numerous recommendations for statutory changes contained in the report will strengthen the modern forms of municipal government. The revision of these statutes will maintain and enhance the ability of our municipalities to serve their citizens.

Respectfully submitted by the members of the State Commission on County and Municipal Government:

/s/ Fred Stickel III, *Acting Chairman*

/s/ George F. Geist

/s/ Gerald B. Green

/s/ Robert W. Singer

/s/ Robert F. Casey

/s/ Benjamin R. Fitzgerald

/s/ Dennis A. Maycher

/s/ Susan Bass-Levin

/s/ John E. Trafford

/s/ Stephen Capestro

/s/ Carol J. Murphy

/s/ Linda Spalinski

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There have been many individuals, in particular, who have given freely of their time and advice:

John E. Trafford, executive director of the New Jersey State League of Municipalities, Robert F. Casey, business administrator of the Borough of Freehold, and Benjamin R. Fitzgerald, city clerk of Atlantic City, all members of the State Commission on County and Municipal Government, who provided invaluable information toward this project.

Others, who have been most helpful, are: Albert J. Wolfe, bureau chief of municipal information, New Jersey State League of Municipalities; Ernest C. Reock, director of the Bureau of Government Research, Rutgers, the State University of New Jersey; William H. Struwe, Division of Local Government Services, New Jersey State Department of Community Affairs; Robert E. Lupp, supervising librarian of New Jersey State Government Publications, New Jersey State Library; and Frank Haines Jr.

A special note of thanks is due to Arlene K. Wilkinson for her typing of the first drafts of this report and her diligent work on all other related tasks that go into the preparation of a Commission report.

In conclusion, much gratitude is extended to all the members of the State Commission on County and Municipal Government for making this project possible and for their support in the publication of its results.

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## EXECUTIVE SUMMARY

The Commission has reviewed the modern forms of municipal government, which include the Optional Municipal Charter Law (Faulkner Act), the 1923 Municipal Manager form, the Commission form (Walsh Act), and the ten special charters. The Statutes that authorize these forms currently serve 170 municipalities. The Commission's aim is to recommend both policy changes and modernization of these laws. The changes will eliminate inconsistencies with general law, clarify vague sections of the laws, change provisions based on experience, and provide New Jersey municipalities with organized and efficient forms of government.

The principal recommendations of the Commission are:

### I. **The Optional Municipal Charter Law (Faulkner Act)**

(A) The Optional Municipal Charter Law (Faulkner Act) has been in effect for over 40 years and the law has been amended over 20 times. New law has been enacted which supersedes the Faulkner Act in part, may conflict with it, or make it redundant. Therefore, it is an appropriate time to restate the law in a simpler format making it understandable to the average citizen and municipal official alike. *The Commission recommends that the Optional Municipal Charter Law be rewritten, with revisions into Title 40A.*

(B) **The Optional Municipal Charter Law (Faulkner Act) has been adopted by 120 municipalities containing 47 per cent of the State's population.** Another ten municipalities have utilized a special legislative charter. During this time only three municipalities have adopted and remained with one of the older forms of government. *The Commission recommends that the rewritten Optional Municipal Charter Law be the only way a municipality may change its form of government.*

(C) In addition to the fact that almost all charter changes in the last 42 years has been through the Faulkner Act, the act's provisions

have been used extensively by the larger municipalities of the State. Of the municipalities in the State with over 30,000 inhabitants, 45 of 61 have adopted the Faulkner Act, the 1923 Municipal Manager form or a modern special legislative charter. The large amount of activity occurring in larger communities of this size encourages the municipality to adopt the form of government which best meets its needs. The experience of the last 42 years indicates overwhelming movement to the Faulkner Act on part of these larger municipalities. ***The Commission recommends that every municipality with over 30,000 inhabitants move to the Faulkner Act.*** This recommendation does not change existing statutory language, but rather it encourages the larger municipalities to adopt one of the forms in the Optional Municipal Charter Law which best meets its needs.

## II. Mayor-Council and Council-Manager Form of government

(A) In many communities using the Mayor-Council Form of government, the mayor and council disagree over who has the power to appoint the municipal attorney. ***The Commission recommends that the Optional Municipal Charter Law Mayor-Council Form of government statute provide that the mayor shall appoint the municipal attorney as a department head.***

(B) There has been much discussion on both the local and national level with regard to at-large representation under representing minorities. ***The Commission recommends a "wards only" option be added to the list of possible combinations a municipality might adopt in the Mayor-Council and Council-Manager Forms of government.***

(C) The department of administration is headed by a business administrator, who administers a centralized purchasing system and personnel system. The business administrator also assists the mayor in the preparation of the budget. ***The Commission recommends that the business administrator in the Mayor-Council Form of government be elevated above the position of department head.***

(D) The wording of N.J.S.A. 40:69A-34.3b and 40:69A-83.3b does not allow for the options of concurrent terms of office with ward and at-large council representation. Staggered terms are mandated for

municipalities adopting the Mayor-Council or Council-Manager Form of government with ward and at-large council representation. The option of concurrent terms with ward and at-large representation was intended to be allowed by municipalities adopting the Mayor-Council and Council-Manager Form of government. ***The Commission recommends that the law be rewritten to clarify that municipalities adopting the Mayor-Council or Council-Manager Form of government have the option of concurrent terms of office for council when using wards or a combination of wards and at-large representation.*** Presently available as an option, but not clear in the law is concurrent terms of office for council using at-large representation. This option should also be rewritten in less ambiguous terms.

### III. Small Municipality Form of government

(A) All traditional municipalities have the option of using an optional administrator under general law. All Faulkner Act communities other than the Small Municipality form also require an administrator. The Commission believes municipalities can improve by hiring an administrator. ***The Commission recommends the Small Municipality Form of government provide for the option to hire an administrator by ordinance with advice and consent, who will be hired by the mayor, serve at his pleasure and whose duties would be determined by the mayor.***

### IV. Mayor-Council-Administrator Form of government

(A) Experience under the Mayor-Council-Administrator Form of government is limited, since only one municipality, the Township of North Brunswick, has adopted it. The original intention of this form was to bring the mayor and council into a closer relationship, but it is quite possible that the administrator could be pulled in two different directions, since the mayor and administrator share executive powers while in contrast the administrator serves at the pleasure of the council. ***Because of this built in conflict, the Commission recommends that this form be removed from the rewritten Optional Municipal Charter Law.*** Should North Brunswick continue to use the Mayor-Council-Administrator form, then that form should be saved from repeal for its use.

## V. Three-Member Governing Bodies

(A) In order to avoid conflict situations arising from the provisions of the Open Public Meetings Act and to provide greater representation to the citizenry, five-member governing bodies are more preferable than three. ***The Commission recommends that all Commission Form and 1923 Municipal Manager Form of government municipalities with three-member governing bodies retain the right to remain at three, but be encouraged to go to five members by referendum.*** Since no municipality selecting the Small Municipality Form of government has chosen to use the three-member governing body option, that option should be removed in the rewritten Faulkner Act Law.

## VI. 1923 Municipal Manager Form of government

(A) The 1923 Municipal Manager Form of government and the Faulkner Act's Council-Manager Form of government are substantially identical. The 1923 form has acquired a number of extra, unnecessary provisions during its 69 year history. In merging the two manager forms of government, a number of conflicting and obsolete provisions in the 1923 Act would be repealed. The Faulkner Act's Council-Manager Form is a little more modern, flexible, and better thought out. ***The Commission recommends that the 1923 Municipal Manager Form of government law be merged into the Optional Municipal Charter Law's Council-Manager Form of government.***

## VII. Commission Form of government (Walsh Act)

(A) The Commission Form of government law has been in effect for over 80 years and has been amended numerous times. Over the last 81 years many of the provisions of the Commission law have been superseded by more modern general law or judicial rulings. Several major portions of the Commission law are not clearly stated in current terminology, while other portions only apply to specific municipalities. Therefore, it is an appropriate time to restate the law in simpler format based on the State's 81 year experience with the Commission form. ***The Commission recommends that the Commission Form of government law be rewritten.*** The revised

Commission law will repeal 180 sections of old law and replace it with approximately 12 rewritten sections located in Title 40A of the statutes.

(B) Even though the Commission law contains language authorizing the mayor to “supervise” all departments, the New Jersey courts have interpreted the law to uphold the right of each commissioner to appoint, supervise and remove personnel within a department. The language appearing to provide across the board supervisory power to the mayor is fundamentally inconsistent with the Commission Form of government law. ***The Commission recommends that the rewritten Commission law remove this contradiction and recognize current practice.***

(C) In order to clarify the organization of the Commission Form of government law, ***the Commission recommends these laws be rewritten so as to delineate the general powers of the governing body and the specific powers of the commissioners.*** The commissioners as a ***group*** would exercise the legislative powers, while the commissioners as ***individuals*** would exercise the executive and administrative powers in their designated departments.

(D) The power to appoint an administrator with supervisory powers over all departments is inconsistent with the Commission Form of government. In order for the administrator’s role to work effectively in the Commission form, the administrator would have to be delegated supervisory power by each individual commissioner for that commissioner’s department. ***The Commission recommends that the Commission Form of government Law be rewritten to authorize the use of an administrator consistent with the statutory framework of the act.*** The administrator would coordinate activities of the municipal staff and would exercise all powers consistent with the Commission Form of government law; those delegated individually by the various commissioners.

(E) With the passage of the Faulkner Act in 1950, New Jersey’s largest municipalities began to abandon the Commission form. Municipalities with 82 per cent of the population formerly using the Commission form have moved to another form of government. All

but one of these moved to a more modern form of government. *The Commission recommends that the adopting language be removed from the Commission Form of government law.*

(F) *The Commission recommends that the language authorizing reversion of a Commission Form of government municipality to a traditional form of government be abandoned.* This provision has not been used for over forty years.

### VIII. Initiative, Referendum and Recall

(A) Initiative, referendum and recall in the Faulkner Act and the Commission Form of government law is ambiguous and difficult to understand by the average citizen. *The Commission recommends that initiative, referendum and recall be repealed in the Faulkner Act and in the Commission Form of government law and replaced with an entirely separate new law entitled "The Local Initiative Act", which would rewrite the provisions of both laws in clear and simple language.* The rewritten law would also apply to any special charter municipalities which were or are granted any of these powers.

### IX. Special Charters

(A) In order to consolidate the options available in obtaining a special charter to one section of the statutes for municipalities and counties, *the Commission recommends moving the two options available in obtaining a special charter in Title One of the statutes (N.J.S.A. 1:6-10 and 11) into the Faulkner Act and into the Optional County Charter Law section dealing with obtaining a special charter.*

### X. Classification

(A) The current statutory classification system is outdated. There is no reason why only cities should be classified. The first and second classes categorize the cities in terms of their population, while the third and fourth class categorize the cities in terms of both their population and their location. *The Commission recommends that the classification of cities law be rewritten to include all municipalities with three classes based solely on population.* The new classification

should be:

**First class municipalities - 100,000 and above**

**Second class municipalities - 12,000 to 100,000**

**Third class municipalities - below 12,000**

**This new classification system for municipalities would be more relevant in categorizing the ever changing and varied nature of municipalities in New Jersey.**

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## CHAPTER I

# NEW JERSEY MUNICIPAL HISTORY AND THE TRADITIONAL FORMS OF GOVERNMENT

The purpose of this report is to review the Walsh Act, the 1923 Manager Act, the Faulkner Act and the post World War II special charters and recommend both policy changes and modernization of these laws. It also describes the new laws governing the five traditional forms of government (city, borough, township, town and village).

## NEW JERSEY MUNICIPALITIES

New Jersey municipalities are significant, formidable entities. They are the main provider of most of the basic services received directly by New Jerseyans. Municipalities also bear an intimate relationship to the average citizen since their physical proximity is so close. Municipal government is one of the few institutions in which citizens can make personal impact by presenting grievances or ideas. The concept of municipal government as a corporation dates back to the Roman Empire. It developed in order to insure orderly local government under an entity that would have a continuing existence, independent of changes in population or political association. Today, as a municipal corporation, the municipality has the power to sue and be sued, to acquire and dispose of property, to make contracts, to tax, and to enact ordinances. New Jersey is divided into 567 municipalities.

New Jersey municipalities were first formed in colonial times. Townships did not become equal to other municipalities until the Home Rule Act of 1917. As a result of the 1917 law with subsequent amendments and modifications, New Jersey's municipalities, regardless of type or classification, may avail themselves of a common body of powers conferred for local purposes.

New Jersey municipalities have many attributes which are different from those of other states. First, New Jersey is entirely composed of incorporated municipalities. Most other states have unincorporated areas. Second, New Jersey's municipalities all enjoy the same basic powers, rights and duties. Many other states give different types of power or different authority to different types of municipal government.

## EARLY HISTORY OF NEW JERSEY MUNICIPAL GOVERNMENT

In the colonial period, New Jersey municipal units were modeled after English practice and tradition. Modifications subsequently introduced reflected

changing attitudes towards the role of local government in modern society.<sup>1</sup>

The Dutch West India Company, formed in Holland in 1621 to develop commerce, constituted the present New York-New Jersey-Hudson River area into the providence of New Netherland in 1623. Dutch governor Peter Stuyvesant surrendered New Netherland to the English in 1664.<sup>2</sup> The Dutch recaptured the former New Netherland area in 1673 and began to set up a government for "Achter Kol", as they named New Jersey. But a Westminster Treaty the following year returned the land to the English. The providence was divided into East and West Jersey in 1676. Puritan influence in the settlement of the eastern section resulted in the introduction of New England town organization. West Jersey development was based upon a system of properties revolving about geographic divisions called tenths.<sup>3</sup> Following the merger of the proprietary colonies of East and West Jersey to form the royal colony of New Jersey in 1702, the method of municipal incorporation changed from legislative grant to royal charter.

The new State legislature acted early in an effort to create a general system of government for local units. The Township Act of 1798, which created the original 104 townships of New Jersey, was the first general law to incorporate municipalities in the State of New Jersey. The Township Act was revised somewhat in 1846, but the basic structure of township government, the annual town meeting, was retained intact.

A constitutional amendment, adopted in the constitutional revision of 1875, prohibited the enactment of special or local legislation. In the course of the following decade, a classification system was established with limited applicability. Although the power to create new municipalities was gradually retrieved by the legislature, local communities were authorized by State law to make changes in boundaries through annexation from one municipality to another.

From the 1840s through the 1920s, an average of about five new municipalities were incorporated every year. Fundamentally, the citizens sought to meet the problems of local government in growth areas by creating new governmental units.

The vast increase in number of municipalities - from 125 in 1834 to a peak of 568 in 1957 - was largely a series of declarations of independence.<sup>4</sup> The Great Depression ended the massive continuous increase in new municipalities which

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<sup>1</sup>Stanley Friedelbaum, *Origins of New Jersey Municipal Government*, Rutgers University, 1955, p.1.

<sup>2</sup>John P. Snyder, *The Story of New Jersey's Civil Boundaries 1606-1968*, Trenton, 1969, p.1.

<sup>3</sup>Stanley Friedelbaum, *Origins of New Jersey Municipal Government*, Rutgers University, 1955, p.1.

<sup>4</sup>John P. Snyder, *The Story of New Jersey's Civil Boundaries 1606-1968*, Trenton, 1969, p.23.

had been going on for over a century. Since that time, townships have been accepted as municipalities in every sense of the word. New Jersey now has a stable system of municipal government with no municipal incorporation, almost no municipal annexation and no creation of special districts with property taxing power, except fire districts.

The new evolution of the twentieth century has been the authorization by the State legislature of optional forms of municipal government. These forms may be adopted by the voters of any municipality to replace the form of governmental organization specified by the general laws applying to each type of municipality. These optional forms included: the Commission Form of Government Act of 1911 (also known as the Walsh Act), the Municipal Manager Form of Government Act of 1923, and the Optional Municipal Charter Law of 1950 (also known as the Faulkner Act). In addition, as a result of the new State constitution of 1947 and the Faulkner Act of 1950, a municipality could obtain a special charter form from the legislature, providing a unique form of governmental organization for that community.

The problem of bringing new municipal services to the suburban fringe is now handled by the 567 existing municipalities. The evolution of New Jersey townships into full equal municipal governments has brought local stability to New Jersey. The annexation and incorporation wars common to local government in most of the country are basically non-existent in New Jersey.

## MUNICIPAL SERVICES

Services rendered by New Jersey municipalities are varied and extensive, depending upon such factors as population, geographic location, and the economic situation of their residents. Police protection is one of the most important municipal services. Although some areas rely either exclusively or partially on the State Police, law enforcement is provided primarily by the municipalities. New Jersey municipalities expend over \$800 million on police protection (FY 1988)<sup>5</sup> and employ over 21,000 employees (FY 1987).<sup>6</sup> Municipal Police have full police powers to enforce the law and apprehend suspects. The governing body of the municipality has the statutory responsibility for police operations, including the hiring, promotion, and disciplining of police officers.

A second important local service is fire protection. The organization of fire protection in New Jersey differs markedly from municipality to municipality. Some localities have paid full-time fire organizations, while others have all volunteer departments. The geographic areas served by fire organizations also vary from community to community. Some organizations serve the entire municipality, some

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<sup>5</sup>*Division of Local Government Services, Statement of Financial Condition of Counties and Municipalities, 1988.*

<sup>6</sup>*1987 Census of Governments, Volume 3, Number 2.*

serve only part of a municipality, and still other departments serve one or more contiguous municipalities. Funds to support fire department and companies come from a variety of sources, such as the municipal budget, fire district taxes, private contributions, fund raising events, or any combination of these. New Jersey municipalities expend over \$314 million on fire protection (FY 1988)<sup>7</sup> and employ over 6,000 employees (FY 1987).<sup>8</sup>

Many communities operate their own sewer systems through municipal departments, municipal utilities or municipal authorities. The expenditure figures for sewers, water, solid waste, and streets are aggregate expenditures for municipal departments, municipal authorities and municipal enterprise activities. New Jersey municipalities expend over \$500 million on sewers and sewage processing (FY 1988)<sup>9</sup> and employ over 1500 employees (FY 1987).<sup>10</sup>

Some municipalities have their own water supply systems, while others obtain water on a contractual basis from a private water company or a neighboring community. New Jersey municipalities expend over \$350 million on water supply (FY 1988)<sup>11</sup> and employ over 2,000 employees (FY 1987).<sup>12</sup>

Expenditure for street maintenance and garbage removal in most of the State's largest municipalities are taken care of in the annual budget. Some municipalities collect and dispose of their garbage with their own personnel, some contract for collection and disposal with a private firm, and some municipalities take no action at all, leaving the citizens to arrange for garbage collection or to cart their garbage to a landfill themselves. New Jersey municipalities expend over \$300 million on garbage and trash disposal (FY 1988)<sup>13</sup> and employ close to 3,000 employees (FY 1987)<sup>14</sup>, while an additional \$300 million (FY 1988)<sup>15</sup> is spent on street maintenance with an employment of 5,000 employees (FY 1987).<sup>16</sup>

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<sup>7</sup>*Division of Local Government Services, Statement of Financial Condition of Counties and Municipalities, 1988.*

<sup>8</sup>*1987 Census of Government, Volume 3, Number 2.*

<sup>9</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>10</sup>*1987 Census of Governments, Volume 3, Number 2.*

<sup>11</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>12</sup>*1987 Census of Governments, Volume 3, Number 2.*

<sup>13</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>14</sup>*1987 Census of Governments, Volume 3, Number 2.*

<sup>15</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>16</sup>*1987 Census of Governments, Volume 3, Number 2.*

Planning and Zoning, although only existing since the 1920s, is thought by many to be the single most important component of municipal government. It is the means by which municipal government controls or affects the growth and development of a community.

All municipalities have the authority to appoint planning boards. Of the 567 municipalities, 558, or 98 per cent, have exercised that authority.<sup>17</sup> The nine communities that do not have planning boards are Audubon Park Borough, Pine Valley Borough, Tavistock Borough, East Newark Borough, Guttenberg Town, Shrewsbury Township, Walpack Township, Winfield Township, and Pahaquarry Township.

Even though there are few employees or money spent on planning and zoning it is still considered important in municipalities. It significantly influences all aspects of community life — physical, social, economic, and political. A municipality's environmental commission, shade tree commission, historical sites commission, and industrial commission are other aspects of this intense local interest in the development of the local community and home rule.

The increase in scope and cost of municipal administration is the source of political and budgeting headaches in many New Jersey municipalities. The increase results from the expansion of old functions and the rise of new functions for municipal governments. Law enforcement is an old function, which continues to expand through the adoption of more laws and ordinances to enforce. Old and new steps are involved in dealing with providing recreation facilities and libraries, regulating health and sanitary conditions, tax collection and assessment, handling welfare cases, and carrying on other important activities. Purchasing and personnel departments are newer activities formed in many expanding communities.

## TRADITIONAL FORMS OF MUNICIPAL GOVERNMENT

At the end of the 19th century the Legislature standardized the laws for the five traditional forms of municipal government: city, town, borough, township, and village. These forms are available only to municipalities which have been incorporated pursuant to State law as a particular type of municipality. The State Commission on County and Municipal Government's report *Functional Fragmentation and the Traditional Forms of Municipal Government in New Jersey*, reviewed these traditional forms of government and new laws were passed in 1987, 1988, and 1989, based on Commission recommendations. The Commission found that statutes governing the traditional forms of government were inadequate to serve the present day needs of local officials and citizens. The following is a brief description of the traditional forms of municipal government and the revisions of those laws as occurred in the late 1980s. Table 1 indicates that 397 municipalities still use these laws.

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<sup>17</sup>Harvey Moskowitz, *Planning Boards in New Jersey: Current Realities and Historical Perspectives*, Rutgers University, 1923, p.83

**TABLE 1  
TRADITIONAL FORMS OF GOVERNMENT  
IN NEW JERSEY  
(AS OF 1 JANUARY 1992)**

FORM OF GOVERNMENT	NUMBER OF MUNICIPALITIES	1990 POPULATION	PERCENTAGE OF TOTAL STATE POPULATION
Borough	218	1,435,412	18.57%
City	16	223,135	2.89%
Town	9	111,017	1.44%
Township/Village	154	1,513,485	19.58%
<b>TOTAL</b>	<b>397</b>	<b>3,283,049</b>	<b>42.47%</b>
Source: State Commission on County & Municipal Government.			

### City Form

The legislature passed a series of laws in the late nineteenth century, which became the basis for the City Form of government. This form is limited to municipalities incorporated as cities.

The 1897 and 1899 laws applied to cities with a population of less than 12,000. Both provided for a mayor and council elected separately. Terms of office were always staggered. Under the 1899 City law, the mayor was elected for a two-year term. Under the 1897 City law, the mayor was elected for a two-year term, with counties of the fourth class electing their mayor for a four-year term. Under both the 1897 and 1899 laws, the council was elected from wards for three-year staggered terms, and one council member was elected at-large for a two-year or four-year term. Elections were on a partisan basis, with primaries in June and the general election in November.

Over the years, the 1897 and 1899 City laws became misleading and obsolete. Public law 1987, Chapter 314 revised the laws pertaining to the City Form of government. That bill was a result of recommendations made to the Legislature and Governor by the State Commission on County and Municipal Government. The bill provided for the operation of city government in seven cities operating under the 1897 law and three cities operating under the 1899 law. Five cities oper-

ating under special charters granted by the Legislature prior to 1875 would also use the revised city law, with the exception that their old special charters still determine the size of the council and the terms of the mayor and council. The revised city law repealed over 600 sections of law.

Under the 1987 City law, the mayor is elected by the voters for a four-year term. If a city had previously elected its mayor for a two or three-year term, then it shall continue to elect its mayor for that term, until the term is extended to four years by referendum.

The 1987 City law states that the council shall consist of seven members, with six elected from two wards for staggered three-year terms and one elected at-large for a four-year term. The terms of the council members elected from wards shall be arranged so that terms of two council members, one from each ward, shall expire at the end of each year.

The 1987 City law designates that the only elected officials under the City form shall be the mayor and council. This law also provides for an annual partisan election, with primaries in June and the general election in November. The City form, as of January 1992, is being used by 16 municipalities.

The 1963 City law, used only by East Orange, gives the mayor veto power over ordinances and resolutions, which could only be overridden by a two-thirds vote of the council. The mayor's appointive power is quite extensive, but confirmation is required. This law also authorized the creation of semi-independent boards for the operation of the police, fire, and water departments. In this respect, East Orange is the only municipality in the State which has a form of government like that of most counties in the State, where the basic services provided by the government are provided by autonomous agencies rather than by the mayor and council.

The 1963 law is the only city law to include powers of recall, initiative and referendum for the local voters. The City law of 1963 was amended in 1987 to prevent any other city from using that act. Because of the existence of the autonomous boards, it might be in East Orange's interest to adopt an Optional Municipal Charter Law Form of government.

## Town Form

The Town Act of 1888 was the first general town law and it was declared unconstitutional by the courts. The Town Act of 1895 replaced the first Act and allowed any town, township, borough, or village which had a population of over 5,000 to become a town. The law provided for incorporation as a town through a petition and referendum process.

Under the Town Act of 1895, the mayor was chosen directly by the voters for a two or three-year term of office. An incorporated town was divided into at least three wards, with two council members per ward serving staggered two-year terms,

and one council member at-large, who also served a two-year term. The council member at-large would also serve as chairman of the town council. While certain statutory changes made in 1982 attempted to limit the number of council members and wards, all towns using this form of government were permitted to continue unchanged, so that town councils now range from five to eight members, with as many as eight wards in use. Runoff elections were not authorized and all elections are on a partisan basis, with primaries in June and the general election in November.

The Town Act was completely revised in 1988 and the new law was applicable to all towns incorporated under the Town Act of 1895 and to towns incorporated by a special charter granted by the Legislature prior to 1875. Public law 1988, Chapter 7, which revised the laws pertaining to the Town Form of government, was also a result of recommendations made by the State Commission on County and Municipal Government. The Town Act of 1988 became effective on January 1, 1989.

Under the Town Act of 1988, the mayor is elected by the voters of the municipality at-large and is also known as council member at-large. The mayor's term of office is two years, unless increased to three years by a petition and referendum process.

The council consists of eight members, two elected from each of four wards, and they serve for a two year staggered term of office. One council member from each ward is up for election each year.

Any town which had a different method of council election, different council size or number of wards, or a different term of office will continue to be governed by those different provisions until the voters choose to adopt any of the council structure provisions of the Town Act of 1988 in a referendum. The referendum is placed on the ballot by an ordinance of the town council.

This law provides for an annual partisan election, with primaries in June and the general election in November. The Town Form of government, as of January 1992, is being used by nine municipalities.

## **Borough Form**

The Borough Act of 1878 was the first general borough law. This Act allowed any township or part of any township with a land area of no more than four square miles and a population not exceeding 5,000 to establish itself as an independent borough through a petition and referendum process.

Under the Borough Act of 1878, the mayor was elected along with a six-member council. The mayor served a one-year term and the council members served staggered three-year terms.

The Borough Act was revised in 1897, which gave the borough a more extensive list of municipal powers and a more extended list of appointed officials. The

mayor gained the power of veto, which he did not have under the earlier act.

On January 1, 1988, the revised Borough Form of government law went into effect. This law was also the result of recommendations made by the State Commission on County and Municipal Government.

The Borough Act of 1987 retained a mayor elected by the voters of the municipality at-large who would serve for a term of four years. This Act also retained six council members elected at-large who would serve for a term of three years. Their terms would continue to be staggered so that the terms of two council members would expire at the end of each year. Presently, only two boroughs contain wards - Roselle and Roselle Park. The Borough Act of 1987 did not alter the division of powers between the mayor and council as they had evolved up to that point.

This law provides for an annual partisan election, with primaries in June and the general election in November. The Borough Form of government, as of January 1992, is being used by 218 municipalities.

The Borough Form of government is the most popular form of government in the State. It serves the needs of small, compact, developed municipalities very well. Unlike the situation in the other four forms of traditional local government, boroughs seldom feel the need to leave their traditional form of government for the new Optional Municipal Charter Law forms.

## Township Form

The Township Act of 1798 incorporated the original 104 townships of New Jersey. This form of government closely resembled the New England town meeting and was considered a direct democracy. The town meeting was authorized to elect five freeholders to serve as the township committee for a one-year term. The function of the township committee under the Township Act of 1798 was to supervise the expenditure of township funds between town meetings.

The Township Act was revised slightly in 1846, but the basic structure of township government remained intact. Between 1846 and 1899, the Township Act was amended 168 times. In 1899, a sweeping revision of the Township Act was passed.

*The Township Act of 1899 abolished the town meeting and all municipal legislative powers were concentrated in a strengthened township committee. The township committee consisted of three elected members, with staggered three-year terms. The law was later amended to allow for an increase to five members. The Township Act of 1899 served as the basis of township government from February, 1900 to 1990 when the latest revision of the Township form, the Township Act of 1989, took effect.*

The Township Act of 1989 repealed the 1899 law and its many amendments and established a much clearer and concise statutory basis for the township form of

government. These changes were again the result of recommendations made to the Legislature and Governor by the State Commission on County and Municipal Government.

The Township Act of 1989 retained the basic structure of the township form: a three or five member township committee serving staggered three-year terms with at-large representation and the mayor elected by the committee from among its members for a one-year term of office. One township, Winslow Township, has representation by wards and the one township committee member elected at-large serves as mayor. The voters of any township may also choose to increase the membership of the township committee from three to five members or decrease the membership from five to three, through a petition and referendum process.

This law provides for an annual partisan election, with primaries in June and the general election in November. The Township Form of government, as of January 1992, is being used by 153 out of 246 townships.

## Village Form

The Village Act of 1891 established the Village Form of government. A village operating under this act was governed by a five member board of trustees. The trustees were elected to staggered, three-year terms. The board of trustees elected one of their members to serve as president and one to be treasurer for a one-year term. In 1961, the Legislature repealed the sections of the Village Act of 1891 dealing with village incorporation to prevent any self-executing village incorporations.

The Village Act of 1989 revised the basis of the Village Form of government. As of January 1, 1990, every village, governed by the laws pertaining to the Village Form of government, shall operate and transact all of its business according to the laws pertaining to the Township Form of government and general law.

The Village Form of government is only used by the small community of Loch Arbour (population 370). Essentially, the Village Form of government is identical to the Township Form of government, except that the township committee is the board of trustees and the mayor is named the president of the board. Loch Arbour has a five-member board of trustees elected at-large for three-year staggered terms of office in elections which are partisan. Loch Arbour's board of trustees elect one of their members to serve as president for a one-year term of office. *It is recommended that the law be amended again to provide Loch Arbour with a mayor.*

## EARLY MODERN FORMS OF MUNICIPAL GOVERNMENT

At the beginning of the 20th century, the five traditional forms of municipal government were in operation. In all these forms, the council or committee has all or most of the executive power of the municipality. A reform period from about

1890 to 1920, known as the Progressive Era, addressed a great deal of dissatisfaction with a handful of socioeconomic and political problems.

By 1901, there was a great deal of frustration with the organization of municipal government among Progressives. It seemed that a solution was needed to break the ward based control of the party boss and the political machine. The times were right for bold new ideas in the structure of municipal government. The first of the 20th century forms of municipal government brought about by the Progressives was the Commission form, known as the Walsh Act in New Jersey. Many municipalities adopted the Walsh Act, but by 1920 the problems and defects of the Commission form were becoming obvious. From about 1915, many Progressives began to abandon support for the Commission form in favor of the new Council-Manager form. The Municipal Manager Law of 1923 was adopted as part of a movement toward a more efficient, businesslike, non-political, municipal government. Both the Commission Form of government and the Municipal Manager Law of 1923 will be described in detail in the following chapters.

## LATE MODERN FORMS OF MUNICIPAL GOVERNMENT

### Commission on Municipal Government (1948)

In 1948 a Commission on Municipal Government was created and charged by the Legislature with the duty of inquiring into the structure of municipal government in New Jersey. First, the Commission was to examine the laws governing the various forms of municipal government then in use in 1948. Second, the Commission was to determine the terms and conditions upon which each such form may be adopted by the people of any community. Third, the Commission was to investigate and evaluate the actual operation of each of the several forms in use; and fourth, the Commission was to obtain information concerning approved forms and practices of municipal government in other states.

The Commission on Municipal Government recommended enactment of the "Optional Municipal Charter Law" as an alternative to the already existing forms. The law permitted the municipalities of the State to select, on their own initiative and without subsequent legislative approval, any one of several forms of municipal government authorized in the law. The Commission had sought to provide sufficient flexibility in the several forms by offering lettered options so that each municipality could decide for itself how it wished to organize its local government.

The Commission on Municipal Government's report *Local Self-Government: A Proposed Optional Municipal Charter Plan*, published in February, 1950, became the foundation of the Optional Municipal Charter Law, which was enacted that same year.

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## Chapter II

# THE OPTIONAL MUNICIPAL CHARTER LAW

### TRENDS SINCE 1950

The four decades since 1950 have seen a shift in use of forms of municipal government in New Jersey. With the passage of the Optional Municipal Charter Law (OMCL), or Faulkner Act, in 1950, several new modern forms of government became available to any municipality in the State. The result has been a substantial trend away from the older forms and toward the more modern forms included in the Optional Municipal Charter Law (OMCL).

The older forms associated with a type of municipality — the City, Borough, Township, Town and Village Forms — have declined steadily in use, from 497 communities in 1950 to 397 in 1992. Uses of the Commission Form and the 1923 Council-Manager Form has declined even more precipitously from 69 communities in 1950 to 40 in 1992. At the same time, the forms of government contained in the Optional Municipal Charter Law (OMCL) have grown from zero to include 120 places by 1992, and ten special charters have been enacted by the Legislature and implemented locally.

Much more striking is a comparison of the proportion of the State's population served by each form of government. As the larger communities have abandoned the old forms of government in favor of the Optional Municipal Charter Law (OMCL) forms, the balance has shifted drastically. Since, 1950, City, Borough, Township, Town, and Village forms have dropped from 56 per cent of the State's population to only 42.47 per cent. The Commission form, formerly the most important on a population basis, has declined from serving 40 per cent to only five per cent of the population. Their places have been taken by the Optional Municipal Charter Law (OMCL) forms, which advanced from zero per cent to 47.29 per cent of the State's population in 1992, while post 1950 special charters add another four per cent.

The Optional Municipal Charter Law of 1950 (OMCL) provided three optional plans of government: Mayor-Council, Council-Manager, and a Small Municipality Plan. In 1981, a fourth optional plan was added, based on the borough form with a built-in administrator, the Mayor-Council-Administrator Plan. The Optional Municipal Charter Law (OMCL) has been amended over 20 times, with the most recent amendments in 1981, 1985, 1989, and 1991.

The three original forms of municipal government under the Optional Municipal Charter Law (OMCL) contained 15 options or sub-plans denoted by a letter. The Legislature repealed the specific letter plan options or sub plans in 1981

and further broadened the available options for municipalities, pursuant to the State Commission on County and Municipal Government's report, *Forms of Municipal Government in New Jersey*. For each municipality then using the lettered plans, the Legislature continued the plan then in use by that municipality.

Today the Optional Municipal Charter Law (OMCL) contains four forms of government with 136 combinations possible. The Legislature also added a mechanism for amending a Faulkner charter to go from one sub plan to another without having to place the entire charter on the ballot. Also, the Council-Manager form was amended to include the option of a voter elected mayor.

The latest revision of part of the Faulkner Act was enacted into law on January 18, 1992. The law makes technical corrections and clarifications in the Optional Municipal Charter Law P.L. 1950, c.210 (C.40:69A-1 et seq.). The enacted amendments clarify the process by which a municipality adopts an administrative code, provides a mechanism for adopting an authorized amendment to the current charter, and informs that municipalities may not revert to a form of government which is not currently authorized by law.

Another major revision of part of the Faulkner Act was enacted into law on November 26, 1985. The Legislature revised sections 40:69A-31 to 40:69A-48 to clarify what powers were vested in the council and mayor, respectively, in the Mayor-Council form. The enacted amendments define more closely what is meant by the legislative and executive functions in the Mayor-Council form. Specifically, the law has been amended to set out the council's power in more detail and to delineate the mayor's powers more carefully. The mayor's appointment powers are clarified in light of other changes to the general legislative and executive powers. These changes are designed to avoid the ambiguities that existed formerly between the Faulkner Act and general municipal law.

Most recently in 1989, N.J.S.A. 40:69A-43 dealing with departments and appointments was revised. The revision applied only to municipalities with a population greater than 100,000. Appointments in those municipalities now made to any board, authority, or commission will be vested in the mayor with the advice and consent of the council. The powers of the strong mayor are now even stronger in the four largest cities in the State - Newark, Jersey City, Paterson, and Elizabeth.

The Faulkner Act has been in effect for over 40 years and there has been vast improvements to the old forms of government. Nevertheless, in the 42 years, the law has been amended over 20 times. New law has been enacted which supersede the Faulkner Act in part, may conflict with it, or may make it redundant. Also, there are some unclear parts which need clarification, such as the abandoned letter plans and specification of administrative codes. Therefore, it is an appropriate time to restate the law in a simpler format based on the State's 42 year experience with the Faulkner Act, making it understandable to the average citizen and municipal officials alike. ***The Commission recommends that the Optional Municipal Charter Law be rewritten, with revisions into title 40A.***

As of January 1992, 64 municipalities with 35.45 per cent of the population in New Jersey, operate under the Mayor-Council Form of government. Thirty-eight municipalities with ten per cent of the population in New Jersey, operate under the Council-Manager Form of government and 17 municipalities with one per cent of the population in New Jersey, operate under the Small Municipality Form of government. The Mayor-Council-Administrator Form of government is used by one municipality with less than one per cent of the population (see Table 2).

**TABLE 2  
OPTIONAL MUNICIPAL CHARTER LAW  
FORMS OF GOVERNMENT  
(AS OF 1 JANUARY 1992)**

FORM OF GOVERNMENT	NUMBER OF MUNICIPALITIES	1990 POPULATION	PERCENTAGE OF TOTAL STATE POPULATION
Mayor-Council	64	2,740,483	35.45%
Council-Manager	38	779,668	10.09%
Small Municipality	17	103,991	1.35%
Mayor-Council-Administrator	1	31,287	0.40%
<b>TOTAL</b>	<b>120</b>	<b>3,655,429</b>	<b>47.29%</b>
Source: State Commission on County & Municipal Government.			

## **DISTINCTION ON MUNICIPAL BRANCHES OF GOVERNMENT**

There are two major functions of local government: legislative (policy-making) and executive (administration). The elected governing body, whether it is called council, committee, commission or board of trustees, is responsible for the legislative function, meaning the passing of ordinances and resolutions, including the budget, under which the community is governed. The major distinction among forms is in the allocation of executive powers. Since no clear philosophy of local government guided early development, there was little attempt at separation of legislative and executive powers such as was built into the federal or state governmental framework. Lines of responsibility, which were never clear to begin with,

became increasingly fuzzy as new offices and bodies with special powers and functions were added to municipal machinery.<sup>1</sup>

The distinction between the executive and legislative branches of municipal government is a twentieth century development in both municipal and county government. With regard to counties, the Faulkner Act served as a model for the Optional County Charter Law. The first attempt to establish a clear division of legislative and executive functions was the 1911 Commission Law. In this form, each individual Commissioner is statutorily responsible for a share of the municipality's executive activities. This form was quickly followed by the 1923 Municipal Manager Law which provides for a unified executive. The council operates in a policy-making capacity and hires a manager who has the responsibility for executing their policies. This distinction between the executive and legislative functions was widely accepted with the adoption of the 1950 Optional Municipal Charter Law, otherwise known as the Faulkner Act. Each of the four forms within the Optional Municipal Charter (OMCL) provides for a clear division of legislative and executive functions.

There is no history of having an independent branch of local government for the judiciary. The judicial activities of municipal government are carried out organizationally in a manner similar to that of executive departments. The judicial decision-making process of municipal government is carried out pursuant to State statutes and State judicial regulations and oversight.

## **OPTIONAL MUNICIPAL CHARTER LAW**

### **Mayor-Council Form**

The Optional Municipal Charter Law's Mayor-Council Form of government is a "Strong Mayor" Form of government, providing for a separately elected mayor and council, who serve for four-year terms of office. The mayor, elected by the people, is the chief executive officer. He/she is responsible for carrying out all council decisions and the conduct of all other functions of the municipality. The elected council is the legislative body - it adopts ordinances, makes all appropriations, decides policies, and holds investigative power over the administration.

The OMCL Mayor-Council Form of government authorizes four primary and several secondary options which authorize 33 different combinations of choices (see Table 3). A municipality operating under the OMCL Mayor-Council Form of government may choose the following options:

- 1) Division of the municipality by wards and at-large or solely at-large
  - a) Number of wards
- 2) Size of council (five, seven, or nine)

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<sup>1</sup>League of Women Voters of New Jersey, *New Jersey Spotlight on Government*, North Plainfield, 1969, p. 83.

**TABLE 3  
OPTIONS AVAILABLE AND USE OF THEM  
UNDER THE FAULKNER ACT FORMS OF GOVERNMENT  
(As of 1 January 1992)**

Options Available for Form <sup>1</sup>	Mayor-Council Form 33	Council- Manager Form 66	Small Municipality Form 36	Mayor-Council- Administrator Form 1	Total Using Option
<b>SIZE OF COUNCIL</b>					
(a) 3 Member	No	No	Yes (0) <sup>2</sup>	No <sup>3</sup>	(0)
(b) 5 Member	Yes (29)	Yes (24)	Yes (14)	No	(67)
(c) 7 Member	Yes (24)	Yes (13)	Yes (3)	No	(40)
(d) 9 Member	Yes (11)	Yes (1)	No	No	(12)
<b>PARTISAN OR NON-PARTISAN</b>					
(a) General Elections	Yes (36)	Yes (21)	Yes (13)	Yes (1)	(71)
(b) Regular Municipal Election					
(i) with run off provisions	Yes (9)	Yes (8)	Yes (1)	No	(18)
(ii) without run off provisions	Yes (19)	Yes (9)	Yes (3)	No	(31)
<b>WARDS &amp; AT-LARGE OR AT-LARGE ONLY ELECTIONS</b>					
(a) At-large only	Yes (33)	Yes (30)	Yes (17)	Yes (1)	(81)
(b) Wards & At-large					
(i) 5 Members - 2 Wards	Yes (0)	Yes (0)	No	No	(0)
(ii) 5 Member - 3 Wards	Yes (7)	Yes (3)	No	No	(10)
(iii) 7 Member - 4 Wards	Yes (13)	Yes (4)	No	No	(17)
(iv) 9 Member - 5 Wards	Yes (2)	Yes (1)	No	No	(3)
(v) 9 Member - 6 Wards	Yes (9)	Yes (0)	No	No	(9)
<b>VOTER ELECTION OF MAYOR OR SELECTION OF MAYOR BY GOVERNING BODY</b>					
(a) Mayor elected separately	Yes (64)	Yes (6)	Yes (16)	Yes (1)	(87)
(b) Mayor selected by Council	No	Yes (32)	Yes (1)	No	(33)
<b>CONCURRENT OR STAGGERED</b>					
(a) Concurrent terms <sup>4</sup>	Yes (9)	Yes (3)	Yes (2)	No	(14)
(b) Staggered terms	Yes (55)	Yes (35)	Yes (15)	Yes (1)	(106)
<sup>1</sup> The total number of options available under all the Faulkner Act Forms of government is 136. <sup>2</sup> The numbers in parentheses indicate how many municipalities have chosen that option. <sup>3</sup> The Mayor-Council-Administrator Form of government requires there to be six members of council and a mayor elected separately. <sup>4</sup> Under the present law, when a municipality chooses wards and at-large elections for council, council may not have concurrent terms of office. Source: State Commission on County & Municipal Government.					

- 3) Partisan or non-partisan elections
  - a) Run off (suboption of non-partisan elections)
- 4) Staggered or concurrent term

Under this form of government, the mayor is always elected by the people.

The mayor makes most major appointments, while the council may only veto his/her nominations. The mayor prepares the budget and submits it to council for approval. The council may reduce items in the mayor's budget by a simple majority, but may increase items only by a two-thirds majority. The business administrator serves, basically, at the pleasure of the mayor. The council may, however, veto removal of the business administrator. The mayor has no formal role at council meetings, thus frequently he/she does not attend. At times, an end result of this separation of power creates an atmosphere of conflict between mayor and council.

The council may consist of five, seven, or nine members. The council may be elected at-large or from a combination of wards and at-large at the non-partisan regular municipal election or partisan general election. The size of the council determines the number of wards if the ward option is chosen. Five council members will have two or three wards, seven council members will have four wards and nine council members will have five or six wards. Since no municipality with five members has opted to divide itself into two wards, this suboption should be dropped from the rewritten law.

The wording of N.J.S.A. 40:69A-34.3.b (First Council Members; Terms of Office) make it mandatory for any municipality adopting the Mayor-Council form using a combination of ward and at-large representation on the council to use staggered terms of office. Municipalities adopting the Mayor-Council form should have, and were intended to have, the option of concurrent terms of office for the council when using a combination of ward and at-large representation.<sup>2</sup> Municipalities should also have the choice of using a *wards only option* for staggered or concurrent terms of office for council. ***The Commission recommends that N.J.S.A. 40:69A-34.3.b be rewritten to clarify that municipalities adopting the Mayor-Council Form of government have the option of concurrent terms of office for the council when using wards or a combination of ward and at-large representation.*** Presently available as an option, but not clear in the law is concurrent terms of office for the council using at-large representation. This should also be rewritten in less ambiguous terms.

If a municipality chooses to have partisan elections, primaries would be held in June and the election in November. Non-partisan elections would be held in May. The council may serve their term concurrently for the full four years, but if their terms are staggered, part of the council is elected every two years. When wards are used with staggered council terms, the mayor and at-large council members run for office in the same year.

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<sup>2</sup>Albert Wolfe, *The Faulkner Act: New Jersey's Optional Municipal Charter Law*, Trenton, 1989, Appendix H.

The mayor may attend council meetings and has the right to speak, but not to vote, except to break a tie in filling a council vacancy. The mayor has a veto power over ordinances, which may be overridden by two-thirds majority of the council. The council exercises the legislative power of the municipality and has various investigative and fiscal control powers. The council's only appointment power, under the Mayor-Council Form of government, is that of municipal clerk, a council attorney, and certain boards and authorities. They may remove municipal officers only for cause.

In many communities using this form of government, the mayor and council disagree over who has the power to appoint the municipal attorney. *The Commission recommends that the statute provide that the mayor shall appoint the municipal attorney as a department head.*

In most cases general law provides the distribution of appointment powers for all autonomous or independent boards, commissions and authorities. Because of the demonstrated need in the largest municipalities to assure a united and coordinated program for the delivery of services, the Legislature in 1989 authorized the mayor, in Mayor-Council municipalities of more than 100,000 persons to appoint all members of autonomous and independent boards, commission and authorities whenever the general law uses the term governing body in providing for said appointments.

During the forty years of existence of the Optional Municipal Charter Law, a number of special considerations were added to the act for certain cities. A number of these special considerations concern the power of appointment and exceptions for civil service coverage or other factors affecting the internal affairs of a certain number of communities. These special considerations should not be carried forward into the new law, but should be preserved for the affected municipalities. These sections such as N.J.S.A. 40:69A-43.1 et seq. and N.J.S.A. 40:69A-60.1 et seq. should be saved from repeal. Other sections such as N.J.S.A. 40:69A-67.1 et seq. do not provide any new powers and should be repealed and not replaced in the new law.

The current non-civil service provision (N.J.S.A. 40:69A-60.1) in the Mayor-Council Form of government applies to municipalities above 80,000 in population. *The Commission recommends that N.J.S.A. 40:69A-60.1 be expanded to authorize more non-civil service positions for all Mayor-Council Form of government municipalities above 12,000 in population.* Expanding the provision would authorize the use of nine additional unclassified positions in those pertinent municipalities.

The mayor is responsible for supervising the departments of the municipal government. The organization of the municipal government is limited to a maximum of ten departments, in addition to the offices of municipal clerk and tax assessor. The mayor appoints the department heads, with the advice and consent of the council, and they may serve for the mayor's full term. Department heads may be removed by the mayor, but the council may veto the removal by a two-thirds vote.

The law currently does not authorize that the council may speak to department heads. They may only go through the mayor in order to obtain information. The Commission reviewed this issue and chose to retain the status quo.

The department of administration is headed by a business administrator, who administers a centralized purchasing system and personnel system. The business administrator also assists the mayor in the preparation of the budget. ***The Commission recommends that the business administrator be elevated above the position of department head.***

Figure 1 indicates the powers and duties of the mayor, council, and administrator in the Mayor-Council Form of government.

In summary, the OMCL Mayor-Council Form of government is a “strong mayor” form of government with five basic options. It is possible for a municipality operating under the OMCL Mayor-Council Form of government, through a referendum, to change any of the optional choices, such as the size of council, partisan or non-partisan elections, the use of wards, staggered or concurrent council terms, and the use of runoff elections, without undergoing a complete change in form of government.

As of January 1992, 64 New Jersey municipalities have adopted the OMCL Mayor-Council Form of government (see Table 4 and Map 1).

## Council-Manager Form

The second form of government made available to any municipality under the Optional Municipal Charter Law (OMCL) of 1950 is the Council-Manager form. The Council-Manager Form of government is quite similar to the 1923 Municipal Manager Law which is described in the next chapter. Similar to the Mayor-Council Form of government, all executive and legislative duties are separated. The manager has all executive and administrative duties. The mayor is the presiding officer of the legislative branch and symbolic leader of the community. As of January 1992, 38 municipalities have adopted this form.

The Council-Manager Form of government was first adopted in Sumter, South Carolina in 1912. Today, the Council-Manager Form of government is the most widely used form of government across the country, despite its more limited use in New Jersey and the northeast section of the United States. From an international standpoint, it is virtually the only form of government that is used in Canada, the United Kingdom and Australia.

The ideological commitment in the Council-Manager’s principles of professional management continues to be embodied in this form of government. This includes non-partisanship for employees, a unification of local government power, merit systems for hiring and firing public employees, high ethical standards for

**FIGURE 1  
MUNICIPAL GOVERNMENT IN NEW JERSEY  
MAYOR-COUNCIL FORM**

<b>MAYOR</b>	<b>VOTERS</b>	<b>COUNCIL</b>
<p>Administers Municipality</p> <p>Appoints Business Administrator Department Heads, Members of Boards, Commissions and Authorities, Subject to Advice and Consent</p> <p>Supervises, Directs and Controls all the Departments</p> <p>Negotiates Contracts for the Municipality</p> <p>Vetoes Ordinances</p> <p>Submits Budget</p>		<p>Passes Ordinances and Resolutions</p> <p>Passes/Modifies Budget</p> <p>Adopts Administrative Code</p> <p>Investigates Administration</p> <p>Appoints Municipal Clerk</p> <p>Consents to Appointments of Administrator, Department Heads and Members of Boards, Commissions and Authorities</p> <p style="text-align: center;">2/3 Veto Override</p>

**BUSINESS ADMINISTRATOR**

- Heads Department of  
Administration
- Assists Mayor with Budget
- Administers Centralized  
Purchasing and Personnel System

As the name implies, the Mayor-Council form places the entire administration of the municipality in the hands of a separately elected mayor who, by virtue of his election, is strongly independent of council. He runs the administration (with the help of a professional administrator) and he is responsible for the people of the municipality for his stewardship.

He may veto ordinances passed by the council. He submits the budget and reports annually to the council on the status of the municipality.

Politically, he is a strong and visible leader, elected at large by the people of the municipality.

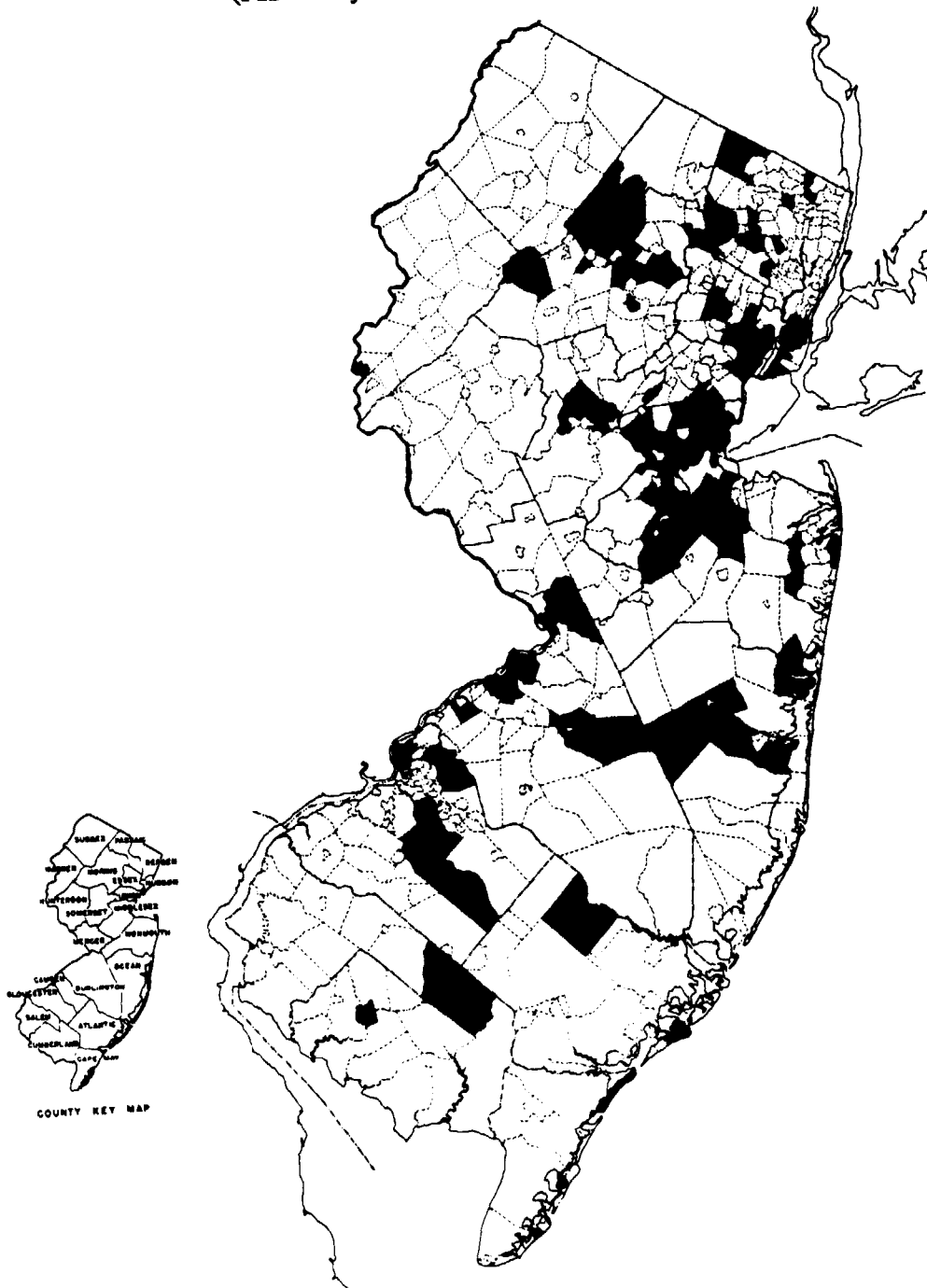
Source: State Commission on County and Municipal Government.

**TABLE 4  
MUNICIPALITIES OPERATING UNDER THE MAYOR-COUNCIL  
FORM OF GOVERNMENT  
(AS OF 1 JANUARY 1992)**

NAME OF MUNICIPALITY	TYPE OF MUNICIPALITY	COUNTY	1990 CENSUS POPULATION
Newark	City	Essex	275,221
Jersey City	City	Hudson	228,537
Paterson	City	Passaic	140,891
Elizabeth	City	Union	110,002
Woodbridge	Township	Middlesex	93,086
Edison	Township	Middlesex	88,680
Trenton	City	Mercer	88,675
Camden	City	Camden	87,492
Hamilton	Township	Mercer	86,553
Cherry Hill	Township	Camden	69,348
Brick	Township	Ocean	66,473
Bayonne	City	Hudson	61,444
Irvington	Township	Essex	61,018
Passaic	City	Passaic	58,041
Old Bridge	Township	Middlesex	56,475
Vineland	City	Cumberland	54,780
Gloucester	Township	Camden	53,797
Parsippany-Troy Hills	Township	Morris	48,478
Piscataway	Township	Middlesex	47,089
Wayne	Township	Passaic	47,025
East Brunswick	Township	Middlesex	43,548
Perth Amboy	City	Middlesex	41,967
Washington	Township	Gloucester	41,960
New Brunswick	City	Middlesex	41,711
West Orange	Township	Essex	39,103
Atlantic City	City	Atlantic	37,986
Berkeley	Township	Ocean	37,319
Manchester	Township	Ocean	35,976
Hoboken	City	Hudson	33,397
Bridgewater	Township	Somerset	32,509
Pemberton	Township	Burlington	31,342
Orange City	Township	Essex	29,925
Long Branch	City	Monmouth	28,658
Marlboro	Township	Monmouth	27,974
Monroe	Township	Gloucester	26,703
Rahway	City	Union	25,325
Monroe	Township	Middlesex	22,255
Mount Olive	Township	Morris	21,282
Rockaway	Township	Morris	19,572
Bridgeton	City	Cumberland	18,942
North Plainfield	Borough	Somerset	18,820
Mahwah	Township	Bergen	17,905
Jefferson	Township	Morris	17,825
Hawthorne	Borough	Passaic	17,084
Morristown	Town	Morris	16,189
Phillipsburg	Town	Warren	15,757
Ocean City	City	Cape May	15,512
Clark	Township	Union	14,629
Denville	Township	Morris	13,812
Saddle Brook	Township	Bergen	13,296
Delran	Township	Burlington	13,178
Burlington	Township	Burlington	12,454
Tinton Falls	Borough	Monmouth	12,361
Lincoln Park	Borough	Morris	10,978
Florence	Township	Burlington	10,266
Burlington	City	Burlington	9,835
River Vale	Township	Bergen	9,410
Washington	Township	Bergen	9,245
Spotswood	Borough	Middlesex	7,983
South Amboy	City	Middlesex	7,863
Mullica	Township	Atlantic	5,896
Wildwood	City	Cape May	4,484
Mine Hill	Township	Morris	3,333
Avalon	Borough	Cape May	1,809

Source: State Commission on County & Municipal Government.

# MAP 1 MUNICIPALITIES OPERATING UNDER THE MAYOR-COUNCIL FORM OF THE FAULKNER ACT (AS OF JANUARY 1, 1992)



public managers, and objective systematic analysis of the efficiency and effectiveness of alternative public policy options.<sup>3</sup> Correspondingly, the training and educational requirements of managers have increased, which has led to greater levels of professionalism.

The OMCL Council-Manager form authorizes five primary and several secondary options for a total of 66 different combinations of choices available (see Table 3). A municipality operating under the OMCL Council-Manager Form of government may choose the following options:

- 1) Division of the municipality by wards and at-large or solely at-large
  - a) Number of wards
- 2) Size of council (five, seven, or nine)
- 3) Direct election by the people or selection from the governing body for the mayor
- 4) Partisan or non-partisan elections
  - a) Run off (suboption of non-partisan elections)
- 5) Staggered or concurrent terms

If a municipality chooses to have partisan elections, primaries would be held in June and the general election in November. Non-partisan elections would be held in May. Council terms may be concurrent for four years, or they may be staggered, so that there is an election every two years. If the terms are staggered and wards are used, the at-large council members will run in one election and the ward council members two years later.

The wording of N.J.S.A. 40:69A-83.3.b (First council members; Terms of office) does not allow for the options of concurrent terms of office with ward and at-large council representation. Staggered terms are mandated for municipalities adopting the Council-Manager form with ward and at-large council representation. The option of concurrent terms with ward and at-large representation was intended to be allowed by municipalities adopting the Council-Manager form.<sup>4</sup> Municipalities should also have the choice of using a *wards only option* for staggered or concurrent terms of office for council. ***The Commission recommends that N.J.S.A. 40:69A-83.3b be rewritten to clarify that municipalities adopting the Council-Manager Form of government have the option of concurrent terms of office for the council when using wards or a combination of ward and at-large representation. Presently available as an option, but not clear in the law is concurrent terms of office for the council using at-large representation.***

The mayor may be selected by the council from among its own members or the mayor may be elected directly by the voters. As of January 1992, six Council-Manager municipalities elected their mayor by the voters, while 32 Council-Manager municipalities selected their mayor from the governing body (see Table 7).

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<sup>3</sup>International City Management Association, *The Municipal Year Book: 1990*, Washington, D.C., 1990, p.41.

<sup>4</sup>Albert Wolfe, *The Faulkner Act: New Jersey's Optional Municipal Charter Law*, Trenton, 1989, Appendix H.

The mayor is a member of council, and simply presides over its meeting with no separate policy-making power, such as the mayor has in the Mayor-Council form. The mayor has limited powers of appointment. The council appoints members of certain autonomous boards and commissions and appoints the members of independent authorities.

The council appoints a manager, a municipal clerk and a tax assessor. They may provide for the method of selection of the municipal attorney, planning and zoning board, and advisory boards and commissions. The reference to a personnel board should be removed from the rewritten law. The council is limited to legislative duties and must act as a body. Individual members of council are prohibited from dealing with the administrative service except through the manager. The current law does not authorize council to speak to department heads to obtain information. They must go through the manager. The Commission reviewed this issue and chose to retain the status quo.

The manager, appointed by council and fully accountable to it, is the municipal chief executive and administrative official. The manager appoints all subordinate personnel not otherwise provided for or delegates the appointive power to department heads. The budget is prepared by the manager, and he/she submits it to the council for revision and approval. The manager must attend all council meetings and may take part in discussions, but has no vote. The manager serves at the pleasure of the council and may be removed by a majority vote at any time.

Figure 2 indicates the powers and duties of the manager, mayor and council in the Council-Manager Form of government.

The OMCL Council-Manager form contains numerous options which a municipality may use to construct the plan to its own needs and desires. Just like the Mayor-Council form, it is possible for a municipality operating under this form of government, through a referendum, to change any of the optional aspects, without undergoing a complete change in charter.

Prior changes in the legislation in the last few years made it possible for the office of mayor to be filled by direct election, rather than through selection from the council. Beyond this, there has been little done to give the mayor's office more potential for political leadership.

In summary, the OMCL Council-Manager Form of government is very businesslike in concept. The council is the legislative branch and the professional manager has executive authority. The OMCL Council-Manager Form of government is the most popular nationally. The non-political, efficient and effective method of operation under this form of government has attracted individuals with management skills, political savvy and analytical expertise.

As of January 1992, 38 New Jersey municipalities, containing ten per cent of the State population, have adopted the OMCL Council-Manager Form of government (see Table 5 and Map 2).

**FIGURE 2  
MUNICIPAL GOVERNMENT IN NEW JERSEY  
COUNCIL-MANAGER FORM**

**VOTERS**

**MANAGER**

Chief Executive

Administers Municipality

Appoints all Department Heads  
and all other Officers,  
Subordinates and Assistants

Prepares Budget,  
Delivers Annual Message

Negotiates Contracts for  
the Municipality

**COUNCIL**

Appoints Manager by  
Majority Vote

Appoints Municipal Clerk,  
Tax Assessor and  
Provides for the Appointment of  
Members of the Boards, Commissions  
and Authorities

Passes Ordinances and  
Resolutions

Passes/Modifies Budget

Adopts Administrative Code

Investigates Administration

**MAYOR\***

Member of Council, Presides at  
Council Meetings

The Council-Manager Form of government rests on the assumption that a fully qualified professional manager is the best person to administer a municipal government.

The council hires the manager and it may fire him. While he is manager, he is chief executive of the municipality and is responsible for the entire administration of the municipality. He hires and fires all subordinate officers, supervises and controls the administration of the municipality without political interference and ensures the efficient execution of all policies made by council.

The manager prepares the budget and reports annually to the council and people on the status of the municipality.

The manager, as an appointed official, follows policies adopted by the council. The council, however, sets the general course the municipality will follow.

\*The mayor may be elected separately by the people or be chosen from among the council by a majority vote of all council members.

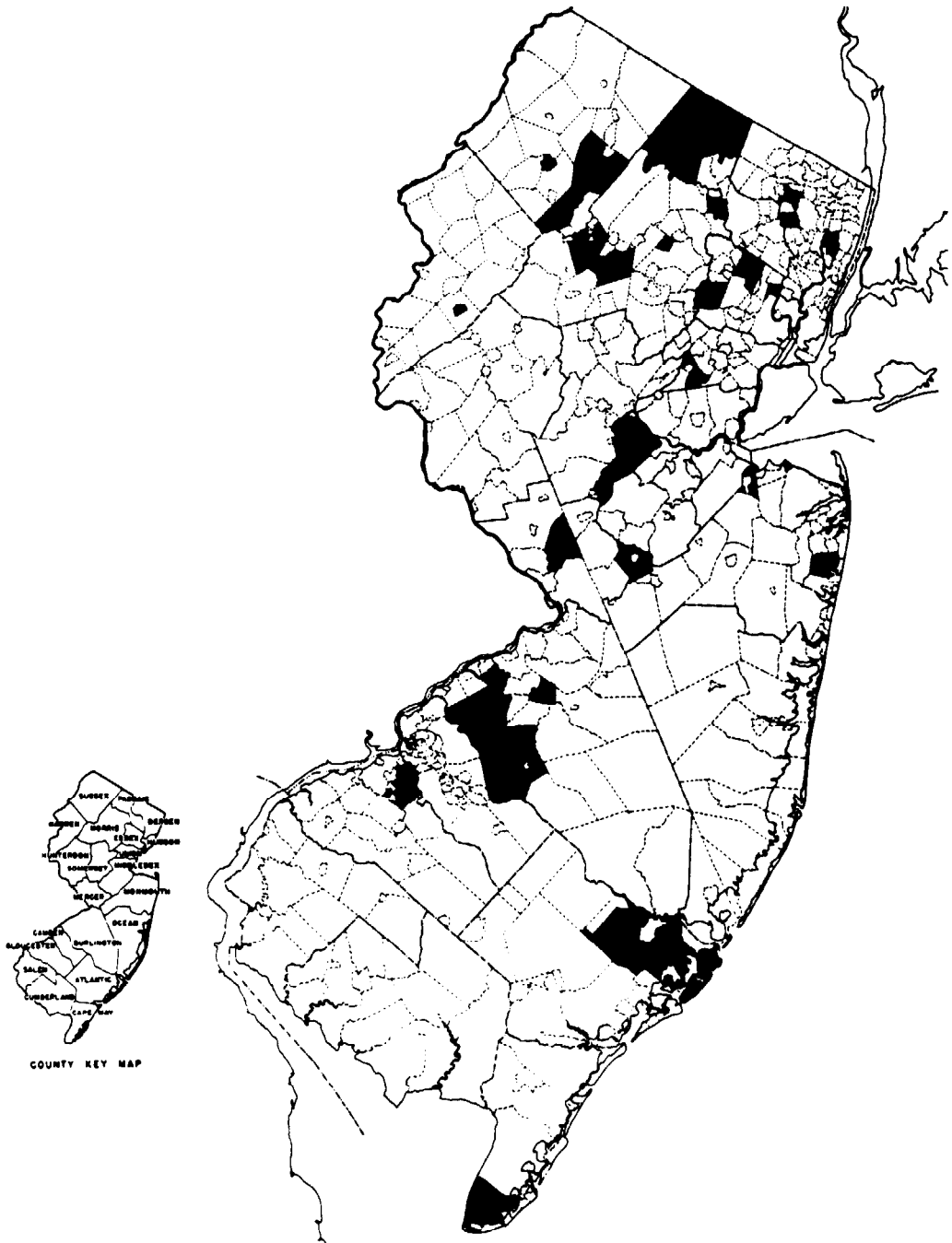
Source: State Commission on County and Municipal Government.

**TABLE 5  
MUNICIPALITIES OPERATING UNDER THE COUNCIL-MANAGER  
FORM OF GOVERNMENT  
(AS OF 1 JANUARY 1992)**

NAME OF MUNICIPALITY	TYPE OF MUNICIPALITY	COUNTY	1990 CENSUS POPULATION
Franklin	Township	Somerset	42,780
Teaneck	Township	Bergen	37,825
Montclair	Township	Essex	37,729
Willingboro	Township	Burlington	36,291
Evesham	Township	Burlington	35,309
Belleville	Township	Essex	34,213
Fair Lawn	Borough	Bergen	30,548
Mount Laurel	Township	Burlington	30,270
Livingston	Township	Essex	26,609
Lawrence	Township	Mercer	25,787
West Milford	Township	Passaic	25,430
Ocean	Township	Monmouth	25,058
Ridgewood	Village	Bergen	24,152
Deptford	Township	Gloucester	24,137
Galloway	Township	Atlantic	23,330
East Windsor	Township	Mercer	22,353
Scotch Plains	Township	Union	21,160
Lower	Township	Cape May	20,820
Medford	Township	Burlington	20,526
Roxbury	Township	Morris	20,429
Randolph	Township	Morris	19,974
Maple Shade	Township	Burlington	19,211
Aberdeen	Township	Monmouth	17,038
Moorestown	Township	Burlington	16,116
Sparta	Township	Sussex	15,157
Verona	Township	Essex	13,597
Pequannock	Township	Morris	12,844
Ringwood	Borough	Passaic	12,623
Weehawken	Township	Hudson	12,385
Cedar Grove	Township	Essex	12,053
Brigantine	City	Atlantic	11,354
Keansburg	Borough	Monmouth	11,069
Mount Holly	Township	Burlington	10,639
Byram	Township	Sussex	8,048
Newton	Town	Sussex	7,521
Washington	Borough	Warren	6,474
Eastampton	Township	Burlington	4,962
Mountain Lakes	Borough	Morris	3,847

Source: State Commission on County & Municipal Government.

MAP 2  
MUNICIPALITIES OPERATING UNDER THE  
COUNCIL-MANAGER FORM OF THE FAULKNER ACT  
(AS OF JANUARY 1, 1992)



## Small Municipality Form

The third form of government available under the Optional Municipal Charter Law of 1950 is the Small Municipality form, which is available only to municipalities with population of less than 12,000. Municipalities which adopt this form while under the 12,000 limit are not precluded from retaining it if they grow beyond that size.

The Small Municipality form is a modernized version of the borough form and the township form. It is very close to the Mayor-Council form or "strong mayor" form in that it places all executive powers in the mayor. The mayor in the Small Municipality Form of government appears to be *stronger* than the mayor in the Mayor-Council Form of government, in that the mayor has all the executive powers of the municipality and also acts as the leader of the legislative branch of municipal government.

The Small Municipality Form of government allows New Jersey's smaller communities to mix and match most of the various options for the election of their council authorized in the other Faulkner Act forms. Elections may be either partisan or nonpartisan and either staggered or concurrent. There is a choice in the number of council members and the mayor may be elected by the voters or selected by his/her colleagues. Nonpartisan elections may include provision for run off elections if no candidate receives a majority of the vote, but this is not required. All elections are at-large; wards are not an option.

The OMCL Small Municipality Form of government contains four primary options and one secondary option which authorize 36 different combinations of choices available (see Table 3). A municipality operating under the OMCL Small Municipality Form of government may choose the following options:

- 1) Size of council (three, five or seven)
- 2) Direct election by the people or selection from the governing body for the mayor
- 3) Partisan or non-partisan elections
  - a) Run off (suboption of non-partisan elections)
- 4) Staggered or concurrent terms

The council consists of the mayor and two, four or six other council members. Council terms are three years on either a concurrent or a staggered basis. The option of having only three council members is often seen as a weakness in this form of government. Council members will often have problems conducting business and may at time be in violation of the Open Public Meeting Act. Five or more members also encourage more voter and council member participation in government. ***The Commission recommends the removal of the three council person option from the Small Municipality Form of government.*** As of January 1992, all 17 municipalities operating under the Small Municipality Form of government have five or seven member councils.

The council exercises the legislative power of the municipality and has no

specified administrative duties or appointment powers. The council is prohibited from speaking to department heads. One member of the council is chosen as president of the council to preside in the absence of the mayor. The municipal budget is prepared by the mayor with the assistance of the treasurer and submitted to the council for review and revision.

The executive power of the municipality is exercised by the mayor. The mayor appoints an assessor, a tax collector, a municipal clerk, a treasurer and such officers as are provided by ordinance, all with the advice and consent of the council. The mayor also appoints the finance committee and other committees of the council. The mayor does not have veto power, though, he/she presides over council and has a vote.

The mayor may be elected directly by the voters or may be selected by the council from among its own members. The length of time for a directly elected mayor to serve after he/she is first elected is unclear. ***The law should be revised and provide that all elections for mayor are for four years.***

If the mayor is chosen from the council, his/her term of office is one year. Currently, 16 municipalities elect their mayor by the voters and only one municipality, Estell Manor City, selects its mayor from the governing body (see Table 7).

Figure 3 indicates the powers and duties of the mayor and council in the Small Municipality Form of government.

All traditional municipalities have the option of using an optional administrator under general law. All Faulkner Act communities other than the Small Municipality form also require an administrator. The Commission believes municipalities can improve by hiring an administrator. ***The Commission recommends the Small Municipality Form of government provide for the option to hire an administrator by ordinance with advice and consent, who will be hired by the mayor, serve at his pleasure and whose duties would be determined by the mayor.*** This provision may be achieved by merging sections 122 and 124 of the present law using section 43 of the Mayor-Council form as a model for the conditions.

The section on the municipal clerk (N.J.S.A. 40:69A-126) provides that the municipal clerk in the Small Municipality Form of government shall serve at the pleasure of the council. However, chapter 147 of the Public Laws of 1980 amended N.J.S.A. 40A:9-133 to create a mandatory three-year term for all untenured municipal clerks.<sup>5</sup> ***The Commission recommends that N.J.S.A. 40:69A-126 state that the municipal clerk be appointed by council.***

It is possible for a municipality operating under the Small Municipality Form of government, through a referendum, to change any of the optional aspects, without changing the basic form of government. This includes the size of the council, partisan or nonpartisan elections, staggered or concurrent terms, the use of runoff elections and the election or selection of the mayor.

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<sup>5</sup>Ibid.

**FIGURE 3  
MUNICIPAL GOVERNMENT IN NEW JERSEY  
SMALL MUNICIPALITY FORM**

**VOTERS**

**MAYOR**

Chief Executive  
of Municipality and  
Responsible for Administering  
the Municipality

Presides at Council,  
Participates and Votes  
as an Ordinary Member of  
Council

Appoints Tax Assessor,  
Tax Collector, Municipal Clerk,  
Treasurer and other Officers  
as are Provided by Ordinance  
with Advice and Consent of  
Council

Appoints Finance Committee  
of Council

Prepares Budget with  
Assistance of Treasurer

Submits Annual Address  
to Council

**COUNCIL**

Legislative Body  
of the Municipality

Passes Ordinances and  
Resolutions

Passes/Modifies  
Budget

Adopts Administrative  
Code

Investigates Administration

Consents to Appointments of  
Mayor

The Small Municipality form provides for a more flexible modern form of government. The mayor is not separated from the council as in the Mayor-Council form. Yet, the mayor has an administrative responsibility which is not placed in the mayor in the Council-Manager form. Moreover, the mayor is an ordinary member of council, not only able to participate but also to vote.

The mayor submits the budget to the council and reports annually on the status of the municipality.

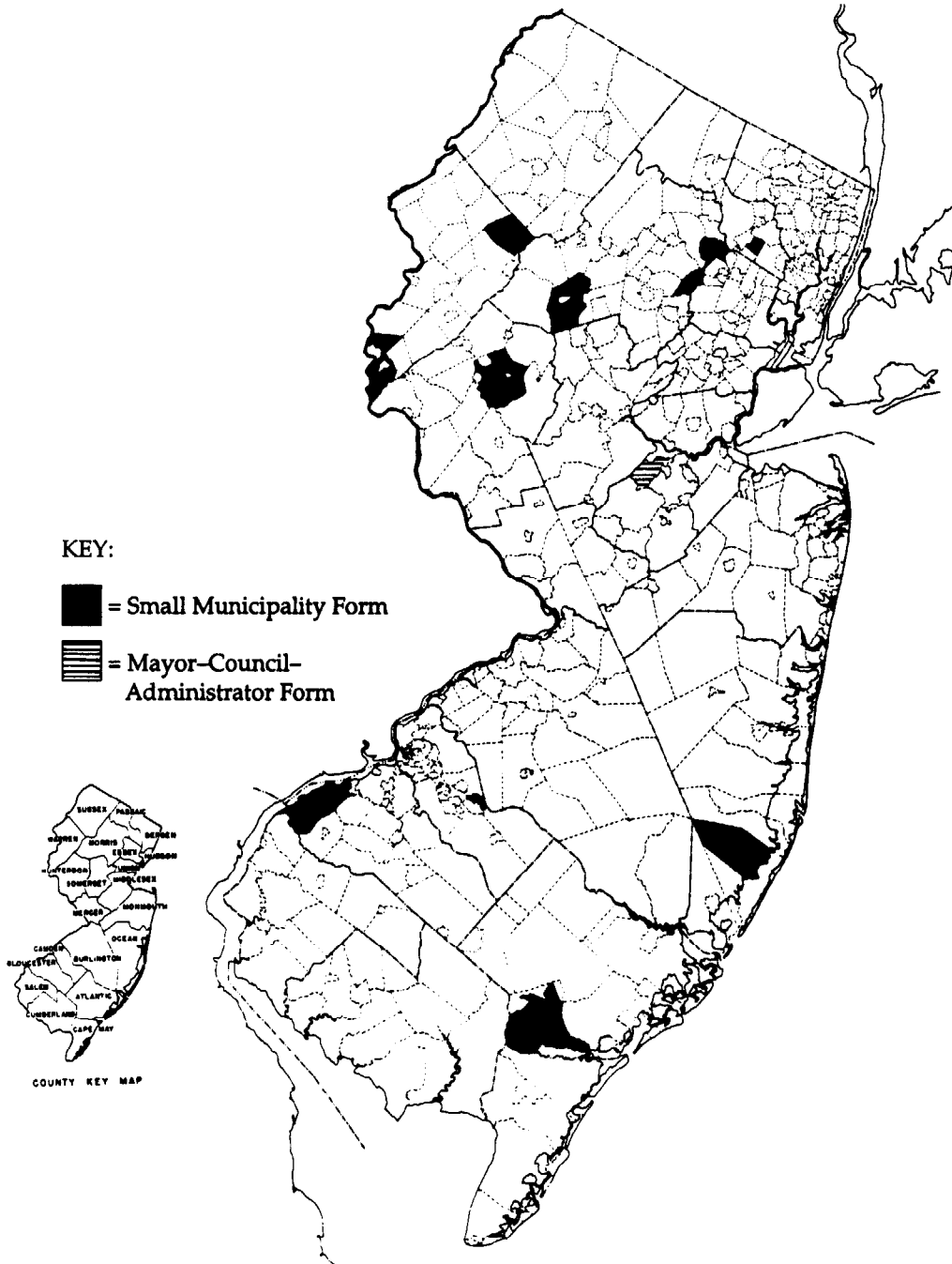
Source: State Commission on County and Municipal Government.

In summary, the Small Municipality Form of government allocates the legislative power to the council and the executive power to the mayor. The most surprising aspect of this division is the fact that the mayor is also the head of the legislative branch. This fact makes the Small Municipality Form of government an even "*Stronger Mayor*" form than the Mayor-Council Form of government.

As of January 1992, 17 municipalities have adopted the OMCL Small Municipality Form of government (see Table 6 and Map 3).

<b>TABLE 6</b> <b>MUNICIPALITIES OPERATING UNDER THE SMALL MUNICIPALITY</b> <b>FORM OF GOVERNMENT</b> <b>(AS OF 1 JANUARY 1992)</b>			
<b>NAME OF MUNICIPALITY</b>	<b>TYPE OF MUNICIPALITY</b>	<b>COUNTY</b>	<b>1990 CENSUS POPULATION</b>
Stafford	Township	Ocean	13,325
West Paterson	Borough	Passaic	10,982
Clinton	Township	Hunterdon	10,816
East Hanover	Township	Morris	9,926
Fairfield	Township	Essex	7,615
Chester	Township	Morris	5,958
Belmar	Borough	Monmouth	5,877
Berlin	Township	Camden	5,466
Logan	Township	Gloucester	5,147
Greenwich	Township	Gloucester	5,102
Lopatcong	Township	Warren	5,052
Highlands	Borough	Monmouth	4,849
Lambertville	City	Hunterdon	3,927
Pohatcong	Township	Warren	3,591
Allamuchy	Township	Warren	3,484
Island Heights	Borough	Ocean	1,470
Estell Manor	City	Atlantic	1,404
<b>MUNICIPALITIES OPERATING UNDER THE</b> <b>MAYOR-COUNCIL-ADMINISTRATOR</b> <b>FORM OF GOVERNMENT</b> <b>(AS OF 1 JANUARY 1992)</b>			
<b>NAME OF MUNICIPALITY</b>	<b>TYPE OF MUNICIPALITY</b>	<b>COUNTY</b>	<b>1990 CENSUS POPULATION</b>
North Brunswick	Township	Middlesex	31,287
Source: State Commission on County & Municipal Government.			

**MAP 3**  
**MUNICIPALITIES OPERATING UNDER THE**  
**SMALL MUNICIPALITY**  
**AND MAYOR-COUNCIL-ADMINISTRATOR**  
**FORM OF THE FAULKNER ACT**  
**(AS OF JANUARY 1, 1992)**



## Mayor-Council-Administrator Form

The Mayor-Council-Administrator Form of government is another version of the borough form of government. It was added to the Optional Municipal Charter Law in 1981. The act places executive power in the mayor and legislative power in the council. It then goes on to divide the executive power between an elected mayor and an appointed business administrator who serves during the term of the mayor, but is removable by the council. In this sense it is a "Weak Mayor" form of government and generally inconsistent with the Faulkner Act. In essence it is the only form in the Faulkner Act which divides executive powers between two persons. As of January 1992, only North Brunswick is operating under this form of government (see Table 6 and Map 3).

The council consists of an elected mayor and six elected council members, elected at-large, in the partisan general elections in November. There is no runoff elections. The mayor serves for a four-year term. The six council members serve staggered three-year terms, with an election of two members every year. Unlike the three other optional forms of government, the Mayor-Council-Administrator Form of government has no internal options or choices. It simply is a one package deal (see Table 3).

The council exercises the legislative power of the municipality. Council members have no administrative duties and no appointive power granted under this form of government. The council does not have the critical task of preparing the municipal budget with the assistance of the municipal administrator and the treasurer.

The mayor is supposed to exercise the executive power of the municipality. The mayor presides over the council, but has no vote except to break ties. He has veto power over ordinances, which can be overridden only by a two-thirds vote of the council. The mayor appoints a municipal administrator, tax collector, assessor, attorney, municipal clerk, treasurer, and other officers that are provided by ordinance, with the advice and consent of the council. All other municipal personnel for whom no method of selection is specified, are appointed by the mayor.

As in the Mayor-Council Form of government, there is a chief appointed administrative officer (CAAO). The municipal administrator serves at the pleasure of the council and may be removed by a two-thirds vote of the council. He is directed to administer the business affairs of the municipality.

Experience under this form is limited, since only one municipality, the Township of North Brunswick, has adopted it. The original intention of this form was to bring the mayor and council into a closer relationship, but it is quite possible that the administrator could be pulled in two different directions, since the mayor and administrator share executive powers while in contrast the administrator serves at the pleasure of the council. ***Because of this built in conflict, the Commission recommends that this form be removed from the rewritten Optional Municipal Charter Law.***

Should North Brunswick continue to use the Mayor-Council-Administrator Form of government, that form should be saved from repeal for its use. The rewritten Optional Municipal Charter Law (OMCL) should state that in using the Mayor-Council-Administrator form, North Brunswick should be subject to all other general portions of the rewritten Optional Municipal Charter Law (OMCL) Mayor-Council Form of government.

In summary, the Mayor-Council-Administrator Form of government divides the legislative power in the council and the executive power between the mayor and an appointed administrator. This fact makes the Mayor-Council-Administrator Form of government a "Weak Mayor" form of government and thus it is generally inconsistent with the Faulkner Act.

## ELECTION OR SELECTION OF THE MAYOR

Table 7 indicates 337 municipalities or 59 per cent elect their mayor by the voters and 230 municipalities select their mayor from the governing body. Under the Optional Municipal Charter Law's Small Municipality Form of government and the Council-Manager Form of government, the municipalities have a choice whether to elect their mayor by the voters or to select their mayor from the governing body. Post-1950 Special Charters may include the election or selection of the mayor. Since 1950, 72 per cent or 94 of 130 municipalities that have changed their form of government have favored an elected mayor. Of those municipalities that use Pre-1950 forms of government, 243 of 437 or 56 per cent favor an elected mayor.

## OTHER PROVISIONS OF THE FAULKNER ACT

One hundred and twenty municipalities have adopted one of the forms of government authorized by the Faulkner Act since 1950. Another ten municipalities have utilized a Special Legislative Charter. During this time only three municipalities have adopted and remained with one of the older forms of government.

*The State Commission on County and Municipal Government recommends that the rewritten Optional Municipal Charter Law be the only way a municipality may change its form of government.*

**Section 12 (Reports and Recommendations Which Commission May Make)** should be rewritten to authorize municipalities to adopt one of the three Optional Forms authorized in this act, to adopt a Special Legislative Charter, to remain unchanged, or to amend an existing Faulkner charter. Since the Faulkner Act would be the only way a municipality could change its form of government, N.J.S.A. 40:43-9.1, regarding other forms of government, would be repealed.

Another part of section 12 that is unclear is whether the Charter Study Commission has the power to recommend amendments to a Faulkner Charter that

**TABLE 7  
ELECTION OR SELECTION OF THE MAYOR  
UNDER NEW JERSEY'S FORMS OF MUNICIPAL GOVERNMENT  
(AS OF 1 JANUARY 1992)**

<b>FORMS OF GOVERNMENT IN WHICH THE MAYOR IS ELECTED BY THE VOTERS</b>		<b>FORMS OF GOVERNMENT IN WHICH THE MAYOR IS SELECTED BY THE GOVERNING BODY</b>	
Number of —Municipalities—	Form of —Municipal Government—	Number of —Municipalities—	Form of —Municipal Government—
218	Borough	153	Township
16	City	32	Commission
9	Town	8	1923 Municipal Manager
64	Mayor-Council (OMCL)	1	Village
16	Small Municipality (OMCL)*	1	Small Municipality (OMCL)*
6	Council-Manager (OMCL)*	32	Council-Manager (OMCL)*
1	Mayor-Council-Administrator (OMCL)	3	Special Charter*
7	Special Charter*		
<b>TOTAL</b>	<b>337</b>	<b>TOTAL</b>	<b>230</b>

Notes: \*Municipalities under the forms of government marked with an asterisk have the option to elect the mayor by the voters or select the mayor from the governing body.  
(OMCL) = Optional Municipal Charter Law (Faulkner Act). P.L. 1950, c. 210.

Source: State Commission on County & Municipal Government.

is currently under use in a municipality.<sup>6</sup> Section 12 should be rewritten to clarify that a referendum be held by the qualified voters of a municipality to amend one or more of the options available under the present form of government authorized in the Faulkner Act.

**Section 14 (Form of Submission of Question of Adoption of Optional Plans of Government)** makes no mention of the option for staggered or concurrent terms of office for the municipal council. The model question also makes no provision for the option of a voter elected or council selected mayor in the Council-Manager and Small Municipality Form of government.<sup>7</sup> Section 14 should be revised to authorize municipalities using the Mayor-Council Form of government to have the following choices:

- 1) At-large, wards only or wards and at-large elections
  - a) If appropriate, number of wards
- 2) A council of five, seven, or nine members
- 3) Partisan or non-partisan elections
  - a) Run off or not in non-partisan elections
- 4) Staggered or concurrent terms

The Council-Manager Form of government would contain the following choices:

- 1) At-large, wards only or wards and at-large elections
  - a) If appropriate, number of wards
- 2) A council of five, seven, or nine members
- 3) Direct election or selection by his/her colleagues for the mayor
- 4) Partisan or non-partisan elections
  - a) Run off or not in non-partisan elections
- 5) Staggered or concurrent terms

The Small Municipality Form of government would contain the following choices:

- 1) A council of five or seven members
- 2) Direct election or selection by his/her colleagues for the mayor
- 3) Partisan or non-partisan elections
  - a) Run off or not in non-partisan elections
- 4) Staggered or concurrent terms

**Section 17 (Other Proceedings Pending; No New Regulation or Petition Within Four Years)** is ambiguous with regard to changing a form of government. Both sections 17 and 21 appear to leave an option open to the residents of a municipality to petition for a Charter Study Commission immediately after the failure of a direct petition and vice-versa. The law, however, did not anticipate the use of one method after the failure of another immediately afterwards.

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<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

Section 17 should be revised to make clear that no action may be taken to change the form of government of a community after a charter study commission referendum or direct petition referendum has been held in that community. This may be accomplished by merging sections 17 and 21 to remove any ambiguity with regard to time requirements between referenda.

**Section 18 (Adoption of Optional Plan Without Charter Commission)** should be revised to include authorization to municipal governing bodies to place a charter change on the ballot without a petition or a Charter Study Commission.

**Section 25 (Petition and Referendum on Revision to Prior Plan)** should be revised to allow any municipality to abandon its present form of government and to revert to the *standard* form of government (city, borough, township, town, village) authorized for that type of municipal government.

**Section 180 (Presiding Officer)** provides that the president of the municipal council presides at council meetings. This is true in the Mayor-Council Form of government. However, in the other forms the mayor presides over council, and the council president presides only in the mayor's absence.<sup>8</sup> This provision should be clarified.

**Section 207 (Existing Offices Abolished on Effective Date of Optional Plan; Exceptions)** is vaguely spelled out in that it calls for adoption of ordinances setting up the structure of municipal government with an interim resolution. It does not make clear the provision for an administrative code. The Optional County Charter Law, enacted in 1972, included a State Commission on County and Municipal Government recommendation for an administrative code. Section 207 should be amended to specifically state and outline the provision for an administrative code.

Also included in section 207 is the provision of the new governing body's extensive authority to structure its new government as it sees fit. The Faulkner Act is designed to provide maximum amount of local discretion as consistent with general law (see Section 30). In this respect, there should be few exceptions to this local discretion as possible. Section 207 should be amended to allow maximum authority to a municipality in structuring its new government, taking into account provisions of general law.

Initiative, referendum and recall, essentially N.J.S.A. 40:69A-168 to 178 and N.J.S.A. 40:69A-184 to 196, is ambiguous and difficult to understand by the average citizen. *The Commission recommends that initiative, referendum and recall be repealed in the Optional Municipal Charter Law and replaced with an entirely separate new law entitled "The Local Initiative Act", that would rewrite those provisions of the Faulkner Act in clear and simple language.*

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<sup>8</sup>Ibid.

In addition to the fact that almost all charter changes in the last 42 years has been through the Faulkner Act, the act's provisions have been used most extensively by the larger municipalities of the State. Of the municipalities in the State with over 30,000 inhabitants, 45 of 61 have adopted the Faulkner Act, the 1923 Municipal Manager Act or a modern special legislative charter. The large amount of activity occurring in larger communities of this size encourages the municipality to adopt the form of government which best meets its needs. The experience of the last 42 years indicates overwhelming movement to the Faulkner Act on part of these larger municipalities.

***The Commission recommends that every municipality with over 30,000 inhabitants move to the Faulkner Act.*** This recommendation does not change existing statutory language, but rather it encourages the larger municipalities to adopt one of the forms in the Optional Municipal Charter Law which best meets its needs.

## SUMMARY

The Optional Municipal Charter Law (OMCL) has been adopted by 120 municipalities containing 47.29 per cent of the State's population in the 42 years since its enactment. As of January 1992, 64 municipalities have adopted the Mayor-Council form, 38 municipalities have adopted the Council-Manager form, 17 municipalities have adopted the Small Municipality form, and one municipality has adopted the Mayor-Council-Administrator form.

The three original forms of government authorized by the law contain several primary and secondary options each. This provides 135 different combinations of choices available to municipalities.

The Commission recommends the re-enactment of the Optional Municipal Charter Law (OMCL) in Title 40A of the statutes. The law has been amended over 20 times in its 42 years of existence. It remains fundamentally sound. The numerous amendments recommended herein are to make a good law even better. They will significantly clarify the existing situation where 15 letter plans have been replaced by five, four, or three primary and one or two secondary options for each of the three forms of government authorized in the act. The amendments will eliminate inconsistencies with general law which have built up in recent years, clarify vague sections of the law, change provisions based on experience, and provide that the Optional Municipal Charter Law (OMCL) is the only way for municipalities to change their form of government.

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### CHAPTER III

## THE 1923 MUNICIPAL MANAGER FORM OF GOVERNMENT

The Council-Manager Form of government is the most widely used form of government in the United States, despite limited use in New Jersey. The National Municipal League endorsed the Council-Manager Form of government as the most desirable form of local government in the United States. To thousands of communities scattered all over the United States, the Council-Manager form has brought professional management that would have been unavailable under any other known governmental system.

The Council-Manager Form of government was first adopted in Sumter, South Carolina in 1912, at the height of the Progressive reform era in this country. It was based on a few simple but powerful ideas. The most important one was that politics and government could be separated. The Council-Manager form attempted to extract ward based partisanship from municipal government and create professional management with non-partisan, at-large elections, eliminating elected administrative positions and concentrating executive powers in a professional manager. The Council-Manager form separated the legislative functions (council) from the execution of policy (manager).

In New Jersey the Faulkner Act Council-Manager form with 38 municipalities, four special charter municipalities, and the 1923 Municipal Manager forms with eight municipalities are modelled on this act. To a much lesser degree the 159 traditional municipalities, which have added an ordinance administrator to their government, are utilizing at least a portion of this concept.

In 1923, New Jersey passed the Municipal Manager Law, which was part of the early 20th century movement toward more nonpolitical and businesslike municipal government with more professional administration. In 1950, eight municipalities were operating under the 1923 Municipal Manager Form of government. Previous to Lodi Borough recently joining this form in 1991, Garfield City was the last municipality to join in 1972 (Fair lawn had joined in 1979, but left in 1984). As of January 1991, eight municipalities remain in the 1923 Municipal Manager Form of government (see Table 8 and Map 4). In the last twenty years, Keansburg Borough, Fair Lawn Borough, and Teaneck Township have left this form of government.

Under the 1923 Municipal Manager form, the voters elect three, five, seven, or nine, members of a council. Clifton City and Lodi Borough utilize the seven

**TABLE 8  
MUNICIPALITIES OPERATING UNDER  
THE 1923 MUNICIPAL MANAGER  
FORM OF GOVERNMENT  
(AS OF 1 JANUARY 1992)**

<b>NAME OF MUNICIPALITY</b>	<b>TYPE OF MUNICIPALITY</b>	<b>COUNTY</b>	<b>1990 CENSUS POPULATION</b>
Clifton	City	Passaic	71,742
Hackensack	City	Bergen	37,049
Garfield	City	Bergen	26,727
Lodi	Borough	Bergen	22,355
Asbury Park	City	Monmouth	16,799
Cape May	City	Cape May	4,668
Medford Lakes	Borough	Burlington	4,462
Teterboro	Borough	Bergen	22

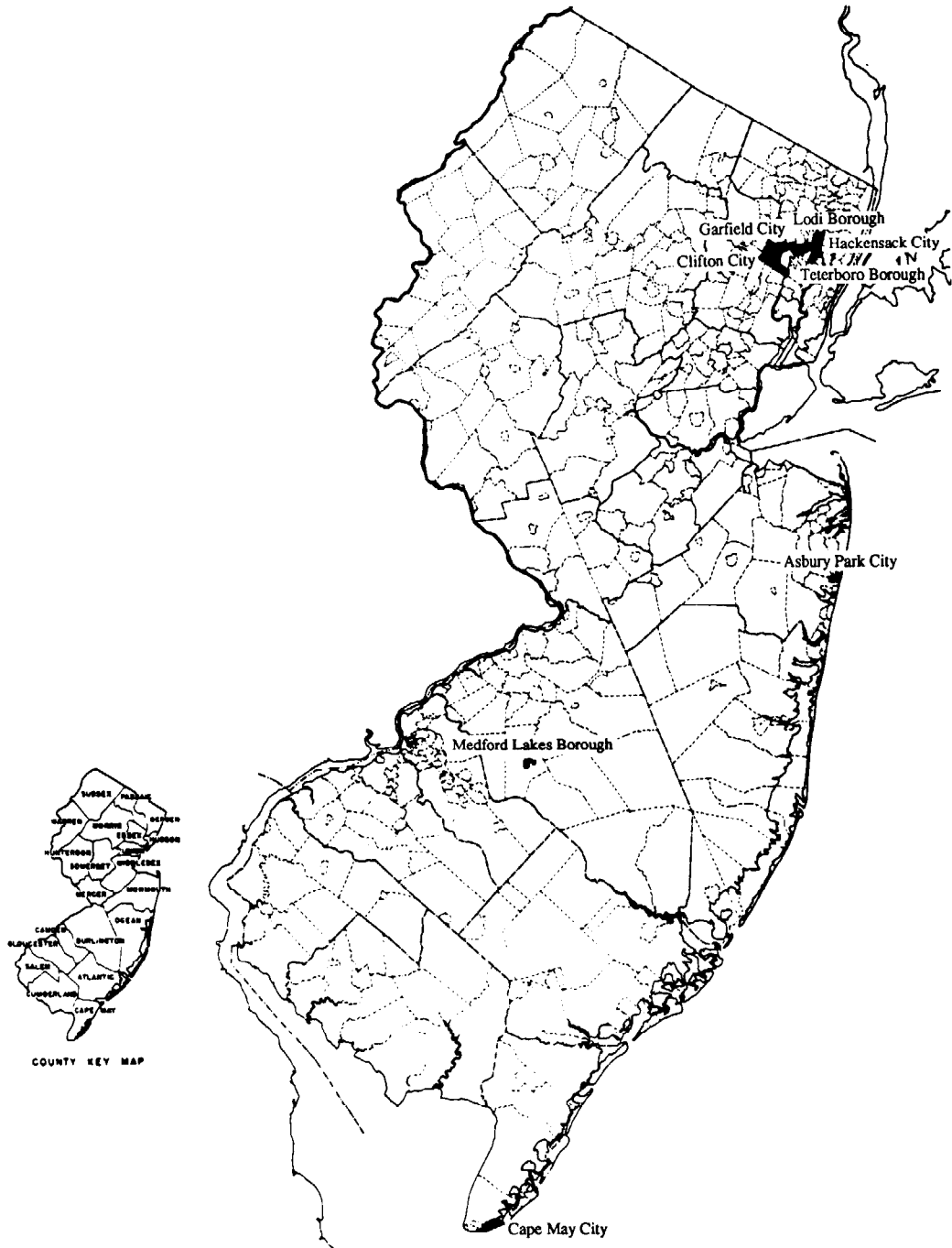
Source: State Commission on County & Municipal Government.

member option for council while Asbury Park, Garfield City, Hackensack City, and Teterboro Borough utilize the five-member option for council. Only Cape May City and Medford Lakes Borough utilize the three-member option. The council is elected at-large in non-partisan elections. The law originally only allowed four-year concurrent elections, but the law was changed in 1981, to allow municipalities, by petition and referendum, to have four-year staggered elections (N.J.S.A. 40:81-5.1). Seven municipalities operating under the 1923 Municipal Manager Form of government use four-year concurrent terms, while Lodi Borough uses four-year staggered terms. Runoff elections may be included in case no candidate receives a majority of the votes cast. Seven municipalities operating under the 1923 Municipal Manager Form of government do not use the runoff option. Lodi Borough, however, uses the runoff option.

The council functions strictly as a legislative body and administrative duties are prohibited. The council may investigate the administration, may determine internal organization, and may create and abolish boards and departments. The council appoints a municipal manager, a tax assessor, a treasurer, an auditor, a municipal clerk, and an attorney. The council may appoint an acting manager during the manager's absence. The council does not appoint the treasurer in the Optional Municipal Charter Law's Council-Manager Form of government. This power of appointment is under the manager.

# MAP 4

## MUNICIPALITIES OPERATING UNDER THE 1923 MUNICIPAL MANAGER FORM OF GOVERNMENT (AS OF JANUARY 1, 1992)



Clifton City is one of the owner-operators of the Passaic Valley Water Commission. It was decided in the 1965 case of *Bingham vs. Mayor and Council of City of Clifton*, 43 N.J. 556, that the appointment of Clifton's representative to Passaic Valley Water Commission should have been made by the city manager and not the council.

The manager is the municipal chief executive and executes laws and policies. The manager prepares the budget for council consideration and attends meetings with a voice but no vote. The manager recommends improvements and implements those approved. The manager oversees contracts and franchises and reports violations. The manager appoints and removes department heads and makes all additional appointments not made by council.

The manager runs the municipality like a business. The manager does not make policy - he/she is ideologically neutral. The manager simply translates the wishes of the council into action, without concern for partisan or factional advantage. The council is the managers only constituency; he/she does not worry about the views or needs of the broader electorate unless the council instructs. The manager is not a public figure. The closer he/she comes to anonymity among ordinary citizens, the better the manager is doing his/her job.<sup>1</sup>

The mayor is selected by the council from among its own members. The mayor's duties, as a result of the 1923 Municipal Manager Law, are mainly limited to presiding and voting as a member in council meetings and making appointments to the board of library trustees and the board of education where that board is not elective. The mayor appoints the board of education in two Type 1 schools, Clifton City and Hackensack City. The mayor's term of office is four years concurrent (N.J.S.A. 40:81-7).

The 1923 Municipal Manager Form of government and the Faulkner Act's Council-Manager Form of government are substantially identical and should be merged. Faulkner's Council Manager form is a little more modern, flexible, and better thought out. The 1923 Municipal Manager Form of government was used by a maximum of ten municipalities, during the late 1960s. Those who have left this form - Teaneck Township, Keansburg Borough, and Fair Lawn Borough - have changed to the Faulkner Act's Council-Manager Form of government. It has been almost twenty years since a municipality has joined the 1923 Municipal Manager form (with the exception of the recent addition of Lodi Borough in July 1991).

The 1923 Municipal Manager Form of Government has acquired a number of extra, unnecessary provisions during its 69 year history. In merging the two manager forms of government, a number of conflicting and obsolete provisions in the 1923 Act would be repealed. General law in Title 40 now applies to non-partisan elections, vacancies, officers and employees, contracts, ethics, and so on. The specialized laws in the 1923 Act are no longer necessary.

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<sup>1</sup>Governing, "The New City Manager", September 1990, p.41.

***The Commission recommends that the 1923 Municipal Manager Form of Government law be merged into the Optional Municipal Charter Law's Council-Manager Form of government.*** In the enabling act merging the two forms of government together, language will be included that will recognize the conversion from 1923 Municipal Manager to OMCL Council-Manager.

Tenure was one of the most important reasons that discouraged the use of the 1923 Municipal Manager Form of government by many New Jersey municipalities. Until 1982, the law provided that the manager would acquire tenure in office after three years. After three years, the council could only remove the manager for "cause". The tenure provision created the possibility of a tenured "free agent", accountable to no one, serving as municipal chief executive as long as he/she did not violate the narrow bounds of "cause". In the State Commission on County and Municipal Government's report, *Forms of Municipal Government in New Jersey*, the Commission found it inappropriate for an appointed officer with substantial executive power to have tenure. In 1982, the Legislature removed the tenure provisions for new managers.

The Commission interviewed the two remaining tenured managers in Asbury Park and Cape May City. The two managers preceded the 1982 law which phased out tenure for new municipal managers. The two tenured managers agreed that merging the two forms of government was a positive concept. However, Cape May City's manager expressed apprehension if it meant losing his tenured position. ***The Commission recommends that the two managers with tenure be grandfathered into the OMCL Council-Manager Form of government.***

While there are many similarities in the 1923 Municipal Manager Form of government and the Faulkner Act's Council Manager Form of government, one major difference which was the source of extensive litigation, was the "recall" provision. Basically, the differences stem from problems in compliance.

Under the 1923 Municipal Manager form, any elective officer shall be subject to removal from office for cause connected with his/her office, after he/she has served at least *two* years. If the petition is sufficient, the municipal clerk notifies within two days the mayor, council member, or council members whose recall is sought. If the municipal clerk orders and fixes a date for holding a recall election, the election shall not be less than *forty* nor more than *fifty* days from the filing of the petition.

Under the Faulkner Act's Council-Manager Form, any elective officer shall be subject to removal from office for cause connected with his/her office, after he/she has served at least *one* year. If the petition is sufficient, the municipal clerk notifies within two days the mayor, council member, or council members whose recall is sought. If the municipal clerk orders and fixes a date for holding a recall election, the election shall not be less than *sixty* nor more than *ninety* days from the filing of the petition.

The 1923 Municipal Manager form's recall provision gives more time to the

elective officer before authorizing a recall campaign and less time for holding an election from the point the petition is filed. This issue has caused many problems in the City of Hackensack. On such case, *Pizza et. al. vs. City of Hackensack*, is a prime example of just how disjointed the recall provision is in the 1923 Municipal Manager form. A brief for the case states:

The recall statute governing municipalities like Hackensack was initially enacted in 1923 and, despite urgent judicial pleas to the Legislature from the New Jersey Supreme Court to clarify apparently significant issues, it has remained unamended to the present day.

The recall provision creates further puzzlement since N.J.S.A. 40:58-8 clearly requires the filing of nominating petitions 54 days prior to the election. This, in turn, means that in municipal manager municipalities, nominating petitions must be in fact filed prior to the filing of recall petitions. This statutory mandate makes it difficult for persons not associated with a recall movement, to file nominating petitions since only those involved in the recall will know when the recall petitions will be filed.

In the City of Hackensack it appears as though the use of the recall has become a political process. How else can one account for the fact that within the last quarter of a century, there have been at least *seven* recall campaigns in the City? One must question whether the drafters of the recall statutes ever envisioned such overuse.<sup>2</sup>

The confusing provision of recall in the 1923 Municipal Manager form coupled with the fact that this form of government is quite identical otherwise with the Faulkner Act's Council-Manager form, are substantial reasons for merging the two forms of government. Another important aspect is that Fair Lawn Borough has switched back and forth between the two forms of government so many times, municipal officials were occasionally unsure of which form the municipality was operating under in a given year.

The appointment power of the manager is slightly stronger under Faulkner's Council-Manager Form of government. The 1923 manager now will gain power to appoint the treasurer as a result of merging the two forms of government.

The 1923 Municipal Manager Form of government authorizes the power of recall by the local voters, but not the powers of initiative and referendum. The eight municipalities operating under the 1923 Municipal Manager Form of government will gain the powers of initiative and referendum as a result of merging the two manager forms of government.

Council size varies among the municipalities using the 1923 Municipal Manager Form of government. The majority utilize five or seven council members. The small size of the three-member council used in Cape May City and Medford

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<sup>2</sup>*Pizza et. al. vs. City of Hackensack, October 1988.*

Lakes Borough is a weakness authorized in this form of government. A three-member council is more susceptible to violating the Open Public Meeting Act. No two members of a three-member council can get together for an informal discussion on municipal government under that act. This puts a strain on the governing body because of the law's strict requirement. Also the concept of representation, of getting more people involved in the activities of municipal government, makes five council members more desirable. The two affected municipalities both have a population of more than 4,000 persons and a large enough work load and budget to justify a five-member council. ***The Commission recommends that municipalities with three member governing bodies retain the right to remain at three, but be encouraged to go to five members by referendum.***

The primary reasons for merging the 1923 Municipal Manager Form of government and the Optional Municipal Charter Law's Council-Manager Form of government is that they are substantially identical now, the tenure and recall provisions discouraged municipalities from using the 1923 Act, initiative and referendum are offered under Faulkner's Council-Manager Form of government, and the Faulkner Act is newer and provides more flexibility to municipalities using it. There has been virtually almost no interest in moving to the 1923 version of the manager form for forty years. The Optional Municipal Charter Law's Council-Manager Form of government is growing in popularity and will continue to be the favorite form of government for those communities desiring a professional, nonpolitical form of government.

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## CHAPTER IV

# THE COMMISSION FORM OF MUNICIPAL GOVERNMENT

The Progressive Era, from about 1890 to 1920, was an attempt to reform and strengthen municipal government in the United States. The ward-based control of the party boss and the political machine gave way to bold new experiments in the structure of municipal government. One of the first opportunities came as a result of the hurricane which devastated Galveston, Texas on September 8, 1900.

The Galveston hurricane claimed over 6,000 lives and caused approximately \$17 million in property damage. About 4,000 homes were destroyed. Prior to the hurricane, Galveston had been a prosperous port city of about 40,000 people. Within days of the storm, between the deaths and the exodus of homeless victims, the city's population dropped by almost 10,000 people. The death and devastation caused by the hurricane served as a catalyst for the creation of a new type of city government: the Commission form.<sup>1</sup>

All executive and legislative powers were concentrated in a five member city commission. Each commissioner was the director of a city department. And when they met as a body, the five commissioners functioned as Galveston's legislature.

The new form of government was a great success at reviving Galveston. Word spread of Galveston's experience under the Commission Form of government. The city received hundreds of inquiries concerning this form of government. Among Progressives seeking municipal reform the Commission form became the idea whose time had come.

New Jersey's Commission Form of government law, known as the Walsh Act, was approved by Governor Woodrow Wilson on April 25, 1911. The Walsh Act made the Commission form available as an optional form of government for all of New Jersey's municipalities. A municipality could adopt the Commission Form of government through a petition and referendum process. The Walsh Act was the first New Jersey municipal charter law to allow initiative, referendum and recall.

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<sup>1</sup>Albert Wolfe, *History of Municipal Government in New Jersey Since 1798*, New Jersey State League of Municipalities, Trenton, 1990, p.25.

During the 1910s and the 1920s and up until 1950, over 60 municipalities including most of the large cities, many older suburbs, and a number of seashore resorts, adopted the Commission Form of government law in New Jersey. In 1950, 63 municipalities with 40 per cent of the State's population operated under the Commission form. Since the introduction of the Faulkner Act in 1950, the trend has been reversed, with 31 municipalities abandoning the Commission form and adopting an Optional Municipal Charter Law (OMCL) Form of government (See Table 9). Two other municipalities abandoned the Commission form for another form, the most recent of which was in 1968. Only three municipalities have adopted the Commission form since 1950, the most recent of which was in 1972 (See Table 10).

As of January 1992, 32 New Jersey municipalities containing over 300,000 people continue to operate under the Commission Form of government law. The Commission form has been in effect for 81 years and has been amended numerous times. Over the last 81 years many of the provisions of the Commission Form of government law have been superseded by more modern general law or judicial rulings. Certain major portions of the Commission law are not clearly stated in current terminology. Other portions only apply to specific municipalities. Therefore, it is an appropriate time to restate the law in simpler format based on the State's 81 year experience with the Commission form, making it understandable to the average citizen and municipal official alike. ***The Commission recommends that the Commission Form of government law be rewritten.*** The revised Commission law will repeal 180 sections of old law and replace it with between 8 to 15 rewritten sections located in Title 40A of the statutes.

The original 1911 Commission Law made it mandatory that municipalities having less than 12,000 inhabitants should consist of three commissioners and municipalities having 12,000 or more inhabitants should consist of five commissioners. In 1953, the law was amended for those municipalities with populations between 12,000 and 25,000 to give them the choice of going to five commissioners from three by petition and referendum of the voters. In 1981, another amendment to the law allowed "all" municipalities to choose to go from three to five commissioners by petition and referendum of the voters. At the same time the Township law was amended to make it permissive rather than mandatory to move from three to five member township committees upon reaching a population of 4,500 people.

As of January 1992, 25 communities have a three-member commission and 7 communities have a five-member commission (See Table 11 and Map 5). A three-member commission may be increased to five through a petition and referendum process. The small size of the three-member commission is thought to be a weakness in this form of government for two reasons. Since 1975, all local governments have been subject to the Open Public Meetings Act. One of the main thrusts of that act was to ensure that whenever a majority of the local governing body wished to discuss municipal business, a public advertisement to that effect was to be made prior to holding that discussion. As a result of this particular requirement of the law, three-member commissions are severely restrained whenever two members

**TABLE 9  
MUNICIPALITIES THAT HAVE ABANDONED THE  
COMMISSION FORM OF GOVERNMENT AND  
HAVE ADOPTED AN OPTIONAL  
MUNICIPAL CHARTER LAW FORM (1950-1991)**

<b>Municipality</b>	<b>County</b>	<b>Year of Change</b>	<b>Form of Government</b>	<b>1990 Population</b>
Vineland City	Cumberland	1953	M-C	54,780
Hoboken City	Hudson	1953	M-C	33,397
Newark City	Essex	1954	M-C	275,221
Cedar Grove Township	Essex	1955	C-M	12,053
Edison Township	Middlesex	1958	M-C	88,680
Jersey City	Hudson	1961	M-C	228,537
Clark Township	Union	1961	M-C	14,629
Long Branch City	Monmouth	1961	M-C	28,658
Camden City	Camden	1961	M-C	87,492
Bayonne City	Hudson	1962	M-C	61,444
Trenton City	Mercer	1962	M-C	88,675
West Orange Township	Essex	1962	M-C	39,103
Irvington Township	Essex	1962	M-C	61,018
Cherry Hill Township	Camden	1963	C-M	69,348
Passaic City	Passaic	1967	C-M	58,041
Phillipsburg Town	Warren	1969	C-M	15,757
Ridgewood Township	Bergen	1970	C-M	24,152
New Brunswick City	Middlesex	1971	M-C	41,711
Perth Amboy City	Middlesex	1972	M-C	41,967
Orange City	Essex	1976	M-C	29,925
Spotswood Borough	Middlesex	1976	M-C	7,983
Ocean City	Cape May	1978	M-C	15,512
Avalon Borough	Cape May	1979	M-C	1,809
Montclair Township	Essex	1980	C-M	37,729
Atlantic City	Atlantic	1982	M-C	37,986
Lambertville City	Hunterdon	1983	S-M	3,927
Wildwood City	Cape May	1983	M-C	4,484
Hawthorne Borough	Passaic	1990	M-C	17,084
Belleville Township	Essex	1990	C-M	34,213
Belmar Borough	Monmouth	1991	S-M	5,877
Brigantine City	Atlantic	1991	C-M	11,354

**Total (31) 1,532,546**

Note: On July 1, 1992, Bradley Beach Borough will become the thirty-second Commission form municipality to abandon the Commission Form of government and move to the Faulkner Act.

**TABLE 10  
MUNICIPALITIES THAT HAVE ABANDONED THE COMMISSION  
FORM OF GOVERNMENT AND HAVE ADOPTED A  
NON-FAULKNER ACT FORM**

<b>Municipality</b>	<b>County</b>	<b>Year of Change</b>	<b>Form of Government</b>	<b>1990 Population</b>
Cape May City	Cape May	1960	1923 Manager	4,668
Beachwood Borough	Ocean	1968	Borough	9,324

**MUNICIPALITIES THAT HAVE ABANDONED THE COMMISSION  
FORM OF GOVERNMENT BECAUSE OF CONSOLIDATING WITH  
ANOTHER MUNICIPALITY**

<b>Municipality</b>	<b>County</b>	<b>Year of Change</b>
Island Beach	Ocean	1959

**MUNICIPALITIES THAT HAVE ADOPTED THE COMMISSION  
FORM OF GOVERNMENT SINCE 1950**

<b>Municipality</b>	<b>County</b>	<b>Year of Adoption</b>	<b>1990 Population</b>
West Wildwood Borough	Cape May	1964	453
Ventnor City	Atlantic	1968	11,005
Bass River Township	Burlington	1972	1,580

get together informally or even talk over the telephone.

Another factor, that has received much attention in recent years, is the trend to get more people involved at the local level by expanding the choices available to the voters. This concept of enlarging representation has gained support and, in the Commission form, would make five-member commissions more desirable. It brings local government even closer to the community. *The State Commission on County and Municipal Government recommends that all Commission Form of*

**TABLE 11  
MUNICIPALITIES THAT HAVE THE FIVE-MEMBER  
COMMISSION FORM OF GOVERNMENT**

<b>Municipality</b>	<b>County</b>	<b>Year of Adoption</b>	<b>1990 Population</b>
Lyndhurst Township	Bergen	1913	18,262
Millville City	Cumberland	1913	25,992
North Bergen Township	Hudson	1931	48,414
Nutley Township	Essex	1912	27,099
Ridgefield Park Village	Bergen	1912	12,454
Union City	Hudson	1930	58,012
West New York Town	Hudson	1931	38,125

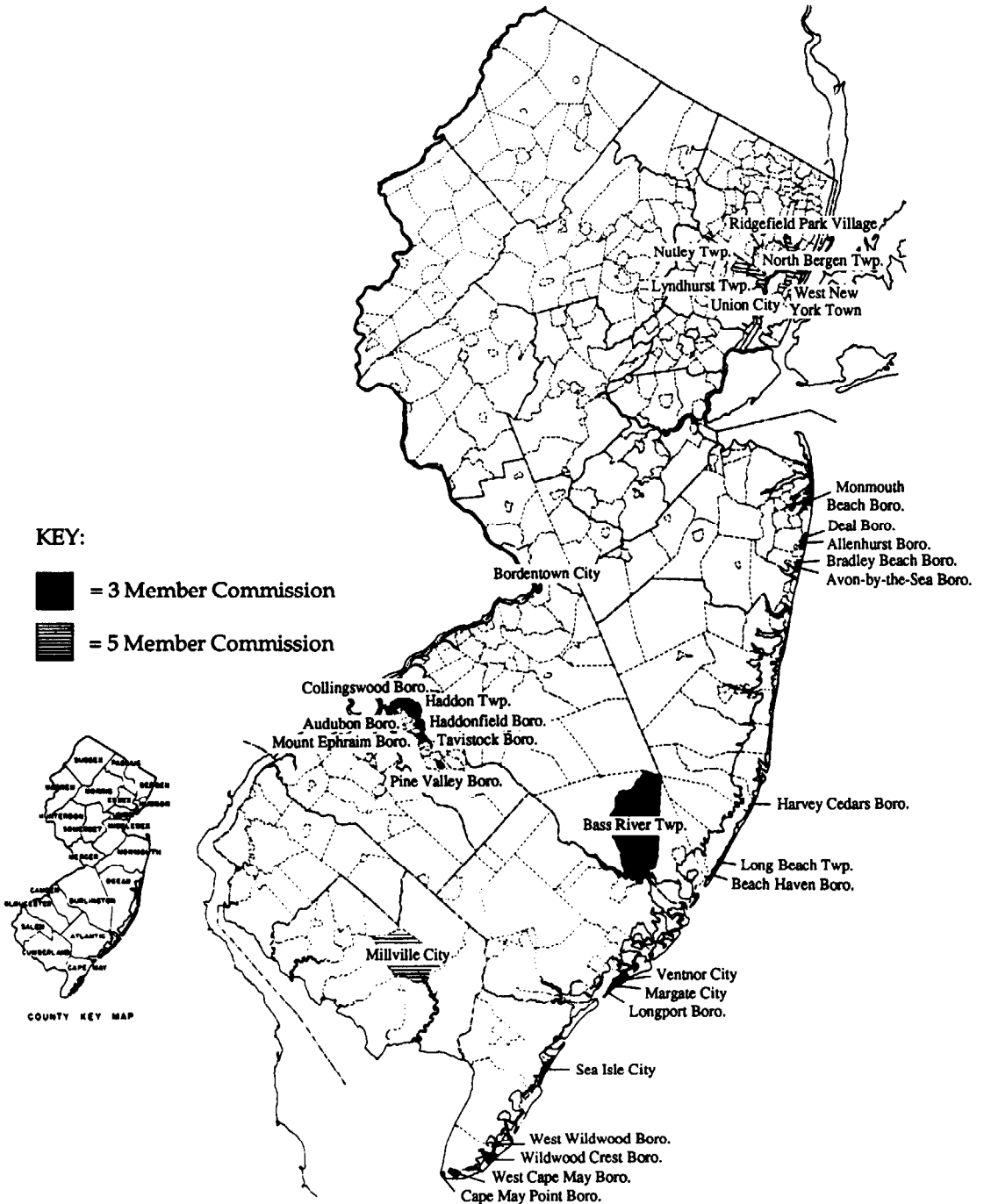
**MUNICIPALITIES THAT HAVE THE THREE-MEMBER  
COMMISSION FORM OF GOVERNMENT**

<b>Municipality</b>	<b>County</b>	<b>Year of Adoption</b>	<b>1990 Population</b>
Allenhurst Borough	Monmouth	1916	759
Audubon Borough	Camden	1921	9,205
Avon-by-the-Sea Borough	Monmouth	1919	2,165
Bass River Township	Burlington	1972	1,580
Beach Haven Borough	Ocean	1946	1,475
Bordentown City	Burlington	1913	4,341
Bradley Beach Borough	Monmouth	1915	4,475
Cape May Point Borough	Cape May	1916	248
Collingswood Borough	Camden	1917	15,289
Deal Borough	Monmouth	1912	1,179
Haddon Township	Camden	1950	14,837
Haddonfield Borough	Camden	1913	11,650
Harvey Cedars Borough	Ocean	1923	362
Long Beach Township	Ocean	1936	3,407
Longport Borough	Atlantic	1912	1,224
Margate City	Atlantic	1911	8,431
Monmouth Beach Borough	Monmouth	1929	3,303
Mount Ephraim Borough	Camden	1935	4,517
Pine Valley Borough	Camden	1942	19
Sea Isle City	Cape May	1913	2,692
Tavistock Borough	Camden	1928	13
Ventnor City	Atlantic	1968	11,005
West Cape May Borough	Cape May	1948	1,026
West Wildwood Borough	Cape May	1964	453
Wildwood Crest Borough	Cape May	1937	3,631

**TOTAL** **335,644 \***

\* Total includes both five and three member commission municipalities.

# MAP 5 MUNICIPALITIES OPERATING UNDER THE COMMISSION FORM OF GOVERNMENT (AS OF JANUARY 1, 1992)



***government municipalities with three member governing bodies retain the right to remain at three, but be encouraged to go to five members by referendum.***

The commissioners are elected at-large in non-partisan elections and serve four year, concurrent terms. Candidates are prohibited from adding a political party label to their names on the ballot. The Uniform Non-partisan Elections Law, enacted in 1982, provided that runoff elections may be included in case no candidate receives a majority of the votes cast, but they were not required. In 1990 this provision was repealed for the Commission Form of government law.

Once the commissioners take office they divide up the municipal departments, each becoming the director of a department, pursuant to N.J.S.A. 40:72-4. The Walsh Act created five municipal departments in communities with a five-member commission:

1. Department of Public Affairs
2. Department of Public Safety
3. Department of Public Works
4. Department of Parks and Public Property
5. Department of Revenue and Finance

In communities with a three-member commission, the statute provides that the first and second departments be combined, and that the third and fourth departments be combined.

The commissioners collectively constitute the legislative body of the municipality. The executive function of the municipality is divided among the three or five commissioners, each of whom heads one of the municipal departments specified in the law. Each commissioner supervises and has the power of appointment for all of the personnel in his department. The general powers, duties and appointment powers of the commissioners are provided by statutes and court cases.

One commissioner is chosen to serve as mayor and presides over the board of commissioners when they sit as a legislative body. The mayor also has those appointment powers provided to all mayors by general law. In some communities the commissioner receiving the most votes is traditionally selected to be the mayor. A contradictory aspect of the law is the direction for the mayor to “supervise” all departments. Even though the law contains language authorizing the mayor to “supervise” all departments, in practice the language has become meaningless. The New Jersey courts have interpreted the law to uphold the right of each commissioner to appoint, supervise and remove personnel within a department.<sup>2</sup> The mayor’s supervisory authority over departments other than his own depends more upon his personal leadership capabilities than on statutory authority. The mayor’s supervisory role is fundamentally inconsistent with the Commission Form of government law. ***The Commission recommends that the rewritten law remove this contradiction and recognize current practice.***

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<sup>2</sup>*Daly v. City of New Brunswick*, 3 N.J. 397, 70 A.2d 744 (1950).

Although the Commission Form of government law makes no provision for a chief appointed administrative officer, such a position can be established by local ordinance, through use of the Ordinance Administrator Law (N.J.S.A. 40A:9-136). Three municipalities, Allenhurst Borough, Deal Borough, and Millville City, have an individual who serves as both clerk and chief administrative officer. Another three municipalities, Collingswood Borough, Haddonfield Borough, and Vetnor City, have a separate individual who serves as chief administrative officer.

The power to appoint an administrator with supervisory powers over all departments is inconsistent with the Commission form. In order for the administrator's role to work effectively in the Commission form, the administrator would have to be delegated supervisory power by each individual commissioner for that commissioner's department. ***The Commission recommends that the Commission Form of government law be rewritten to authorize the use of an administrator consistent with the statutory framework of the act.*** The administrator shall be appointed by the full Commission and shall be located in the Department of Revenue and Finance. The administrator would coordinate activities of the municipal staff and would exercise all powers *consistent* with the Commission Form of government law; those delegated individually by the various commissioners.

The absorption of boards and commissions (N.J.S.A. 40:71-9) mirrors a similar provision in the Faulkner Act. The use of similar language is not surprising since the Commission form's provision was written in 1953, three years after the adoption of the Faulkner Act. In chapter two we recommended that section 207 of the Faulkner Act be revised to authorize Faulkner Act municipalities to absorb autonomous boards as direct agencies of municipal government. Modern language should be added to the Commission form authorizing municipalities using this form to absorb autonomous boards as direct agencies of municipal government. ***The Commission recommends N.J.S.A. 40:71-9 be rewritten to clarify the power of the municipality to organize its internal affairs as appropriate to its circumstances and that the commissioners by ordinance have the power to assume all responsibilities that were previously delegated to boards and commissions of the municipality.***

The power to pass ordinances (N.J.S.A. 40:72-3) and the procedures to pass ordinances (N.J.S.A. 40:74-1 to 4) are covered by more extensive provisions in general law. As such, these provisions of the Commission form are redundant and misleading. In the revision of the Commission Form of government law N.J.S.A. 40:72-3 and 74-1 to 4 should be repealed.

The Commission Form of government law established the board of commissioners as having all the executive, legislative, administrative, and judicial powers and duties of any municipality upon adoption of the form of government (N.J.S.A. 40:72-2). N.J.S.A. 40:72-3 provides that the municipality continue to have all powers of a municipality including the power to enact and enforce ordinances. The Commission Form of government law then distributes the functions of government among the three or five departments (N.J.S.A. 40:72-4). N.J.S.A. 40:72-5 gives the

full commission the authority to determine the powers and duties to be performed by each department. N.J.S.A. 40: 72-6 requires the commissioners, at the reorganization meeting or thereafter, to select one commissioner to be director of and supervisor of each department.

Sections 72-2 to 6, having been written 80 years ago, reads differently from the manner in which more modern law states municipal organization, powers, duties and responsibilities and in that respect may be somewhat confusing. ***In order to clarify the organization of the Commission Form of government law, the Commission recommends these laws be rewritten so as to delineate the general powers of the governing body and the specific powers of the commissioners, whereby the commissioners as a group exercise the legislative powers and the commissioners as individuals exercise the executive and administrative powers in their designated departments.*** It is now understood that the municipal judicial power is exercised through the municipal judge.

The appointment of deputy directors by directors in second class cities and certain fourth class cities, provided by N.J.S.A. 40:72-9, was added in 1924. It now applies to Millville City and Union City and is currently utilized only by Union City. The deputy directors serve at the pleasure of the specific commissioner. The deputy director's function is to oversee "the proper and efficient conduct of affairs of such departments". This provision should be retained in the rewritten law stating that Commission form municipalities above 50,000 inhabitants (Union City) may continue to utilize the deputy director position.

The procedure for the appointment of the municipal clerk in the Commission Form of government law (N.J.S.A. 40:73-7) was repealed in 1971 and was replaced with general law (N.J.S.A. 40A:9-133). The appointment of the municipal attorney is also determined by general law (N.J.S.A. 40A:9-139). In most Commission Form of government municipalities, the commission as a body appoints the clerk and the attorney or solicitor. This is consistent with both general law and the Commission Form of government.

Initiative, referendum and recall, essentially N.J.S.A. 40:74-5 to 19 and N.J.S.A. 40:75-25 to 49 are obscure and difficult to understand by the average citizen. ***The Commission recommends that initiative, referendum, and recall be repealed in the Commission Form of government law and replaced with an entirely separate new law entitled "The Local Initiative Act", that would rewrite these provisions of the Commission Form of government law and the Faulkner Act in clear and simple language.***

The Commission Form of government is fundamentally distinct from all other municipal government laws in New Jersey. The Faulkner Act has a strong mayor or a manager with executive power; the Borough, Town and City laws have a mayor who shares executive power with a council. The Commission law places all executive powers in the individual commissioners. The powers of an individual commissioner to supervise a specific department are much more sweeping than the authority of a member of a township committee. In essence, the township commit-

tee exercises executive power as a body, where the commissioners exercise executive power as individuals. If the commissioners lack a common vision as to where the municipality should be going, the possibility for governmental chaos is very strong. At its worst, the Commission form gives a municipality not one unified organization, but potentially three or five diverging organizations, as each commissioner reigns supreme in his own department.

The Commission Form of government lacks a single, strong executive. It places far too much emphasis on the executive responsibilities of the several individual commissioners in their own departments at the expense of the coordination of the entire municipal government. The Hudson Observer declared that "it provides for divided responsibility... there must be a single responsible head chosen directly by the people, in charge of any business or commercial enterprise if it is to be efficient and economical, and not three or five heads pulling in opposite directions."<sup>3</sup>

With the passage of the Optional Municipal Charter Law (OMCL) in 1950, New Jersey's largest municipalities began to abandon the Commission Form of government. Municipalities with 82 per cent of the population formerly using the Commission Form of government law have moved to another form of government. All but one of these moved to a more modern form of government. ***The Commission recommends that the power to adopt the Commission Form of government be removed.*** The language authorizing reversion of a Commission Form of government municipality to a traditional form of government should be abandoned. This provision has not been used for over forty years.

In summary, the Commission Form of government law provides for a three or five member commission. The commissioners as a body exercise the legislative function of the municipality. The executive function is divided among the three or five commissioners. Each commissioner is considered supreme in his own department. In the last 81 years, the Commission Form of government law has been amended numerous times and many of its provisions have been overridden by general law. It is an especially suitable time to restate the law in clear, concise and modern language, making it understandable to the average citizen and municipal official alike.

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<sup>3</sup>Hudson Observer, February 17, 1913, p.8.

## CHAPTER V

# SPECIAL CHARTERS

The State Constitution of 1947 reopened the doors to the enactment of special acts dealing with individual local government units. The Constitution made it possible for individual communities to obtain a unique form of government through the enactment of a law providing them with their own special charter. As of January 1992, 10 municipalities with 1.8 per cent of the State's population have received Post 1950 special charter legislation (see Map 6).

The usual approach in writing the Post 1950 special charters has been to base them on one of the Optional Municipal Charter Law forms while retaining aspects of their preexisting traditional form of government. The ten municipalities with special charters in New Jersey appear to reflect a common desire to go to a Faulkner Act form (Council-Manager or Strong Mayor), but at the same time those particular municipalities wished to retain aspects of their traditional forms of government. Thus, all ten special charters have merged provisions of their previous traditional forms with a Faulkner Act form. Eight of the ten are primarily Council Manager or Strong Mayor, while two are predominately traditional (see Tables 12, 13, and 14).

The procedure for obtaining a special charter, which is available to any municipality, can be accomplished in three ways.

A governing body may enact an ordinance for a special charter any time:

The governing body of a municipal corporation formed for local government, hereinafter called a municipality, or the board of chosen freeholders of any county, may petition the Legislature for the passage of a private, special or local law regulating the internal affairs of the municipality or county, when authorized so to do by ordinance of the municipality, or by resolution of the board of chosen freeholders of the county, as the case may be, specifying the general nature of the law sought to be passed, duly adopted, after publication and opportunity afforded for public hearing upon not less than ten days' notice duly published.<sup>1</sup>

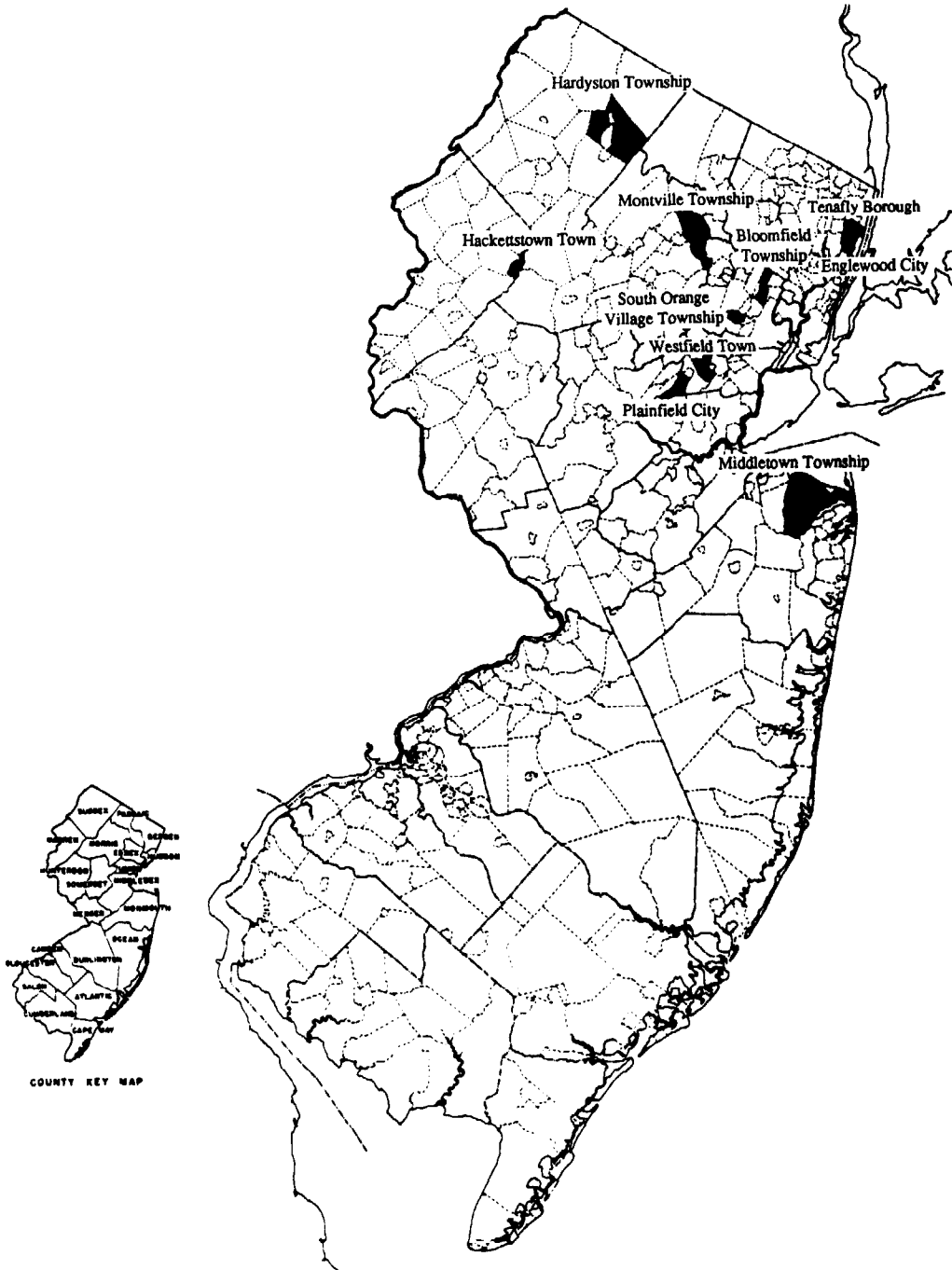
The voters may petition for a special charter any time:

Whenever there shall be filed with the clerk of a municipality or the clerk of the board of chosen freeholders of a county a petition signed by at least twenty per centum (20%) or fifteen thousand, whichever is less, of the registered voters of the municipality or county requesting the

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<sup>1</sup>N.J.S.A. 1:6-10

# MAP 6 MUNICIPALITIES OPERATING UNDER SPECIAL CHARTERS (AS OF JANUARY 1, 1992)



filing of a petition with the Legislature for the passage of a private, special or local law regulating the internal affairs of the municipality or of the county and specifying the general nature of the law sought to be passed, the clerk shall examine the same and ascertain whether or not it is signed by the requisite number of registered voters and, within ten days after the filing thereof, shall attach his certificate thereto showing the result of such examination and submit the same to the governing body of the municipality or board of chosen freeholders of the county.<sup>2</sup>

A charter study commission may recommend a special charter after their study:

If the charter study commission shall propose a special charter or specific amendment or amendments of or to 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 study commission.<sup>3</sup>

Once one of the three ways to obtain a special charter is chosen, the municipal chief executive takes action to prepare a petition to the Legislature for a special charter and prepares a legislative bill embodying the special charter. A notice of intent to introduce the bill for special charter is published and the bill is introduced into the Legislature. The Legislature may enact private, special, or local law embodying the special charter by two-thirds vote of all members of each house whenever in session. The Governor may approve or disapprove within 45 days after enactment by the Legislature. If approved, it is put to vote by the voters of the municipality at the next general election following enactment, unless this occurs within 25 days of a general election, in which case the referendum is at the next succeeding general or regular municipal election. The special charter is effective immediately upon favorable vote in referendum, with implementation as specified in the charter. ***The Commission recommends moving the two options available in obtaining a special charter in Title One of the statutes (N.J.S.A. 1:6-10 and 11), including procedural points in N.J.S.A. 1:6-15 and 16, into the Faulkner Act and into the Optional County Charter Law section dealing with obtaining a special charter (N.J.S.A. 40:69A-16 and 40:41A-17).*** This would consolidate the options available in obtaining a special charter to one section of the statutes for municipalities and for counties. ***The Commission recommends that initiative, referendum, and recall be rewritten and replaced with an entirely separate new law entitled "The Local Initiative Act" that would serve as the foundation for all Faulkner Act, Commission Form, and Post 1950 Special Charter municipalities granted these powers.***

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<sup>2</sup>N.J.S.A. 1:6-11

<sup>3</sup>N.J.S.A. 40:69A-16

Any community considering use of a special charter must recognize that an act of the State legislature is required and, particularly, that any future amendments will also require action by the legislature and the governor. Care should be taken that the charter not include excessively detailed aspects of local government which the community in the future may wish to modify. For example, salary limitations in South Orange's charter or departmental organization in Plainfield's charter might better be left to local determination, rather than included in the charter.

In addition to the 10 Post 1950 special charter municipalities, five cities and one town operate under special individual charters granted by the legislature between 1851 and 1870. The State Commission on County and Municipal Government's report, *Functional Fragmentation and the Traditional Forms of Municipal Government in New Jersey*, recommended that statutory clarification and the adoption of simplified, modern and uniform statutes for the traditional forms would greatly assist officials in the various municipalities to do their job more efficiently and effectively. As a result of this recommendation, the city and town laws were revised and the seven Pre 1875 special charters were partially incorporated into the new city and town law.<sup>4</sup> These municipalities retain from their special charters the number of council members, term of office for council members, whether or not council members have concurrent or staggered terms, and whether or not council members are elected at-large or from wards or from a combination of the two.

Eight of the ten municipalities with Post 1950 special charters based their form of government on the Council-Manager or Strong Mayor forms found in the Faulkner Act. These special charters contain various additions or deletions often based on the traditional form of government in use before adoption of the special charter. Some exceptions to this general concept are Plainfield and South Orange. Plainfield's charter appears not to have incorporated their old city form into their special charter, but rather adds to the Faulkner Act's Strong Mayor form provisions for three departments and provisions for a special election pattern. South Orange's charter also appears not to have incorporated aspects of the Village Form of government in their charter, but rather a potpourri of elements from various forms of government.

Bloomfield and Tenafly, on the other hand, basically kept their traditional forms and added minor elements of the Faulkner Act. Bloomfield gave additional statutory powers to the administrator under their town form and Tenafly added initiative, referendum, and recall to their borough form. The following sections explain the special charters in greater detail.

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<sup>4</sup>The Cities of Beverly, Egg Harbor, Gloucester, Salem, and Woodbury operate for the most part under the revised City Form of government law, as of January 1, 1989. The Town of Hammonton operates for the most part under the revised Town Form of government law, as of January 1, 1989.

**TABLE 12  
SPECIAL CHARTERS  
Mayors**

MUNICIPALITY (DATE OF ADOPTION)	MAYOR	MAYOR'S TERM	MAYOR'S VOTE	MAYOR SIT AT COUNCIL MEETINGS	POWERS OF THE MAYOR
ENGLEWOOD CITY (1978)	Elected	3 Years	Tie vote or to provide for an affirmative vote for the passage of a resolution or ordinance	May attend and speak	<ul style="list-style-type: none"> <li>- Appoints ad hoc advisory committees and members of board of education</li> <li>- Vetoes ordinances</li> </ul>
HARDYSTON TOWNSHIP (1985)	Selected from council	1 Year	Yes	Shall preside	<ul style="list-style-type: none"> <li>- Powers granted under general law</li> </ul>
MIDDLETOWN TOWNSHIP (1971)	Selected from committee	1 Year	Yes	Shall preside	<ul style="list-style-type: none"> <li>- Powers granted under general law</li> </ul>
MONTVILLE TOWNSHIP (1974)	Selected from committee	1 Year	Yes	Shall preside	<ul style="list-style-type: none"> <li>- Powers granted under general law</li> </ul>
PLAINFIELD CITY (1968)	Elected	4 Years	No	May attend and speak	<ul style="list-style-type: none"> <li>- Appoints all department heads and other employees</li> <li>- Prepares budget</li> <li>- Vetoes ordinances</li> </ul>
WESTFIELD TOWN (1967)	Elected	2 Years	Yes	Shall preside	<ul style="list-style-type: none"> <li>- Makes all appointments</li> <li>- Directs and supervises Town Administrator</li> <li>- Vetoes ordinances</li> </ul>
HACKETTSTOWN TOWN (1970)	Elected	3 Years	Tie vote	Shall preside	<ul style="list-style-type: none"> <li>- Makes all appointments</li> <li>- Prepares budget</li> <li>- Vetoes ordinances</li> </ul>
SOUTH ORANGE VILLAGE TWP. (1977)	Elected Village President	4 Years	Tie vote or to provide for an affirmative vote for the passage of a resolution or ordinance	Shall preside	<ul style="list-style-type: none"> <li>- Appoints officers and employees</li> <li>- Supervises and directs all subordinate officers and employees</li> </ul>
BLOOMFIELD TOWNSHIP (1955)	Elected	3 Years	Yes	Shall preside	<ul style="list-style-type: none"> <li>- Consults and advises with administrator regarding budget</li> <li>- Vetoes ordinances</li> </ul>
TENAFLY BOROUGH (1980)	Elected	4 Years	Tie vote	Shall preside	<ul style="list-style-type: none"> <li>- Powers granted under general law</li> <li>- Nominates and appoints all officers with confirmation by council</li> <li>- Vetoes ordinances</li> </ul>

**TABLE 13  
SPECIAL CHARTERS  
Council, Committees, or Trustees**

MUNICIPALITY (DATE OF ADOPTION)	COUNCIL, COMMITTEE, OR TRUSTEES	TERMS OF COUNCIL, COMMITTEE, OR TRUSTEES	MUNICIPAL ELECTION PATTERN	STAGGERED OR CONCURRENT	TYPE OF MUNICIPAL ELECTION	POWERS OF COUNCIL, COMMITTEE, OR TRUSTEES
ENGLEWOOD CITY (1978)	5 Members of council	3 Years	4 Wards and 1 At-large	Staggered	Partisan	- Legislative power - Appoint city manager, solicitor, auditor, physician, and court judge - Advice and consent for the boards
HARDYSTON TOWNSHIP (1985)	3 Members of council	3 Years	At-large	Staggered	Partisan	- Legislative power - Appoint municipal manager and clerk
MIDDLETOWN TOWNSHIP (1971)	5 Members of committee	3 Years	At-large	Staggered	Partisan	- Legislative power - Appoint township administrator, clerk, attorney, engineer, and members of planning and zoning
MONTVILLE TOWNSHIP (1974)	5 Members of committee	3 Years	At-large	Staggered	Partisan	- Legislative power - Appoint township administrator, clerk, attorney, engineer, and members of planning and zoning
PLAINFIELD CITY (1968)	7 Members of council	4 Years	4 Wards and 3 At-large	Staggered	Partisan	- Legislative power - Appoint city clerk - Advice and consent
WESTFIELD TOWN (1967)	8 Members of council	2 Years	4 Wards	Staggered	Partisan	- Legislative power - Advice and consent
HACKETTSTOWN TOWN (1970)	6 Members of council	3 Years	At-large	Staggered	Partisan	- Legislative power - Advice and consent
SOUTH ORANGE VILLAGE TWP. (1977)	6 Board of trustees	4 Years	At-large	Staggered (Biennially)	Non-Partisan	- Legislative power - Appoint clerk, tax collector, assessor, treasurer, and counsel - Establish procedure for preparation of budget
BLOOMFIELD TOWNSHIP (1955)	6 Members of council	3 Years	3 Wards and 3 At-large	Staggered	Partisan	- Legislative power - Appoint all staff
TENAFLY BOROUGH (1980)	6 Members of council	3 Years	At-large	Staggered	Partisan	- Legislative power - Confirms mayoral appointments or if not appoints officers itself

<p style="text-align: center;"><b>TABLE 14</b> <b>SPECIAL CHARTERS</b></p>							
<p style="text-align: center;"><b>Manager or Administrator</b></p>				<p style="text-align: center;"><b>General Powers</b></p>			
MUNICIPALITY (DATE OF ADOPTION)	ADMINISTRATOR OR MANAGER	TERMS OF ADMINISTRATOR OR MANAGER	OFFICE OF ADMINISTRATOR OR MANAGER	POWERS OF ADMINISTRATOR OR MANAGER	WHO HAS THE EXECUTIVE POWER	ADMINISTRATIVE CODE	INITIATIVE, REFERENDUM, OR RECALL
ENGLEWOOD CITY (1978)	Manager appointed by the council	Indefinite term...removed by majority vote of the council	By charter	<ul style="list-style-type: none"> <li>- Exercises all executive and administrative functions</li> <li>- Appoints all department heads</li> <li>- Prepares budget</li> </ul>	Manager	By charter	No provision
HARDYSTON TOWNSHIP (1985)	Manager appointed by the council	Indefinite term...removed by majority vote of the council	By charter	<ul style="list-style-type: none"> <li>- Chief executive and administrative official</li> <li>- Appoint all department heads</li> <li>- Prepares budget</li> </ul>	Manager	By charter	Initiative, referendum, and recall
MIDDLETOWN TOWNSHIP (1971)	Administrator appointed by the committee	At the pleasure of the committee	By charter	<ul style="list-style-type: none"> <li>- Chief administrative officer</li> <li>- Appoints all department heads, assessor, tax collector</li> <li>- Prepares budget</li> </ul>	Administrator	By charter	Initiative and referendum
MONTVILLE TOWNSHIP (1974)	Administrator appointed by the committee	At the pleasure of the committee	By charter	<ul style="list-style-type: none"> <li>- Chief executive and administrative officer</li> <li>- Appoints all department heads and other employees</li> <li>- Prepares budget</li> </ul>	Administrator	By charter	Initiative and referendum
PLAINFIELD CITY (1968)	Administrator appointed by the mayor with the advice and consent of the council	Serve during the term of office of the mayor appointing him	By charter	<ul style="list-style-type: none"> <li>- Assists mayor</li> <li>- Directs and supervises the administration of the departments</li> </ul>	Mayor	By charter	Initiative, referendum, and recall
WESTFIELD TOWN (1967)	Administrator appointed by the mayor with the approval of the council	Definite term...removed by the mayor with approval of the council	By charter	<ul style="list-style-type: none"> <li>- Assists mayor</li> <li>- Directs and supervises the administration of the departments</li> <li>- Prepares budget</li> </ul>	Mayor	By charter	Recall
HACKETTSTOWN TOWN (1970)	No Administrator or Manager	None	None	- None	Mayor	By charter	No provision
SOUTH ORANGE VILLAGE TWP. (1977)	Administrator appointed by the president with approval of the trustees	Definite term...removed by the board of trustees	By Ordinance Administrator Law	<ul style="list-style-type: none"> <li>- Assists village president and the board of trustees</li> </ul>	Village President	By general law	Recall
BLOOMFIELD TOWNSHIP (1955)	Administrator appointed by the council	Indefinite term...removed by majority vote of the council	By charter	<ul style="list-style-type: none"> <li>- Supervises the departments</li> <li>- Prepares budget</li> </ul>	Council	By charter	No provision
TENAFLY BOROUGH (1980)	Administrator appointed by the mayor with advice and consent of the council	At the pleasure of the mayor and council	By Ordinance Administrator Law	<ul style="list-style-type: none"> <li>- Assists mayor and council</li> </ul>	Council	By general law	Initiative, referendum, and recall

## **MANAGER OR ADMINISTRATOR AS CHIEF EXECUTIVE**

### **Englewood City (1978)**

The City of Englewood's manager exercises all the executive and administrative functions of the municipality. He appoints all department heads and prepares the budget. Englewood's previous form of government was the old city form. What is unique in Englewood's charter is that it provides for a separately elected mayor who is not part of the five-member council. The mayor's term is three years as opposed to the four year term a mayor has under the Optional Municipal Charter Law's Council-Manager Form of government. The mayor appoints ad hoc advisory committees and members of the board of education, vetoes ordinances, and may attend and speak at council meetings. The mayor may only vote in case of a tie or to provide for an affirmative vote for the passage of a resolution or ordinance. Council president presides at meetings of the council and may appoint committees of the council to assist in the conduct of the council's business. Council's term is three years as opposed to the four year term they serve under the Optional Municipal Charter Law's Council-Manager Form of government. The council is the legislative power of the municipal government - they appoint the city manager, solicitor, auditor, physician, and court judge. There is no provision for initiative, referendum, or recall.

### **Hardyston Township (1985)**

The Township of Hardyston's manager is the chief executive and administrative official. He appoints all department heads and prepares the budget. The mayor is selected from council and serves a one year term. The mayor has only those powers granted under general law in addition to presiding at council meetings with a right to vote. Hardyston has retained aspects of the township form of election in their special charter. The council consists of three members serving three year terms as opposed to the Optional Municipal Charter Law's Council-Manager form which provides for a five-member council. The council has the legislative power of the municipal government - they appoint the municipal manager and clerk. Hardyston's charter provides for initiative, referendum, and recall.

### **Middletown Township (1971)**

The Township of Middletown's chief administrative officer is the township administrator. He appoints all department heads, the assessor, and the tax collector, and prepares the budget. Middletown retained the nomenclature of township committee in their charter. The committee consists of five members serving three year terms. The committee is the legislative power of the municipal government - they appoint the township administrator, clerk, attorney, engineer, and members of the planning and zoning boards. The mayor is selected from the committee with a one year term of office. The mayor has only those powers granted under general law in addition to presiding at committee meetings with a right to vote. Middletown's

charter provides for initiative and referendum.

### **Montville Township (1974)**

The Township of Montville's administrator is the chief executive and administrative officer. He appoints all department heads and other employees and prepares the budget. Montville also retained the nomenclature of township committee in their charter. The committee consists of five members serving three year terms. The committee is the legislative power of the municipal government - they appoint the township administrator, clerk, attorney, engineer, and members of the planning and zoning boards. The mayor is selected from committee with a one year term of office. The mayor has only those powers granted under general law in addition to presiding at committee meetings with a right to vote. Montville's charter provides for initiative and referendum.

## **MAYOR AS CHIEF EXECUTIVE**

### **Plainfield City (1968)**

The executive power of the City of Plainfield is exercised by the elected mayor who serves a four year term of office. The mayor appoints all department heads and other employees, prepares the budget, and vetoes ordinances. The mayor may attend meetings of the council and may take part in discussions, but he has no vote. The council president presides at meetings of the council and performs such other duties as the council may prescribe. Plainfield's charter provides for an administrator who serves during the term of office of the mayor appointing him. The administrator assists the mayor, but the charter also provides that the administrator direct and supervise the administration of the departments of the city government. Plainfield's charter specifically designates three departments of the local government - Administration and Finance, Public Works, and Public Affairs and Safety. The seven-member council serves four year terms of office. What is unique about Plainfield's charter is their municipal election pattern. One member of the council is elected from the city at-large, one member is elected from each of the four councilmanic wards established and maintained pursuant to the charter, one member is elected from the first and fourth wards at-large, and one member is elected from the second and third wards at-large. The city council exercises the legislative power of the municipal government - they appoint the city clerk and have advice and consent on mayoral appointments. Plainfield's charter provides for initiative, referendum, and recall.

### **Westfield Town (1967)**

The executive power of the Town of Westfield is vested in the elected mayor, who much like the mayor in the Town Form of government, serves a two year term. The mayor makes all appointments, vetoes ordinances, and directs and supervises the town administrator. The mayor presides over meetings of the council,

participates and votes as a member of council, and appoints committees of the council. The administrator has a definite term of office, but is removable by the mayor with the approval of council prior to the expiration of his term of appointment for cause. Westfield's charter provides the administrator with the preparation of the budget as well as assisting the mayor and directing and supervising the administration of the departments. Westfield's charter includes elements of the Town Form of government, with eight members of council chosen from four wards and serving two year terms of office. The town council exercises the legislative power of the municipal government - they have advice and consent on mayoral appointments. Westfield's charter provides only for recall.

### **Hackettstown Town (1970)**

The executive power of the Town of Hackettstown is vested in the elected mayor who serves a three year term of office. The mayor makes all appointments, directs and supervises the administration of the departments, vetoes ordinances, and prepares the budget. The mayor presides over meetings of the council, but has no vote except in case of a tie to cast the deciding vote. He also appoints committees of the council. There is no provision for an administrator in Hackettstown's charter. There are elements of the Town Form of government contained in Hackettstown's charter, which include six members of council chosen at-large and serving three year terms. The town council exercises the legislative power of the municipal government - they have advice and consent on mayoral appointments. Hackettstown's charter has no provision for initiative, referendum, or recall.

### **South Orange Village Township (1977)**

The village president is the chief executive officer of South Orange Village Township. He appoints officers and employees and supervises and coordinates the activities of the various units of village government. He is elected for a four year term of office. The village president presides over meetings of the board of trustees and may participate in discussions at all meetings of the board, but has no vote except in case of a tie or to provide for an affirmative vote for the passage of a resolution or ordinance. South Orange's charter is very unique in that it does not fundamentally resemble the Village or Township Form of government, but is indeed closer to the Faulkner Act's Mayor-Council Form of government, where the executive power is placed in the mayor....or in the case of South Orange, the village president. The administrator has a definite term of office, but is removable by the board of trustees prior to the expiration of his term of appointment for cause. The administrator assists the village president and the board of trustees. The administrator's position in South Orange was created by the Ordinance Administrator Law rather than being specifically stated in the charter. The six-member board of trustees are chosen at-large and they serve four year terms of office. A non-partisan municipal election is held biennially on the second tuesday in May. The board of trustees functions primarily as the legislative body - they appoint the village clerk,

tax collector, tax assessor, counsel, and treasurer. The board of trustees establish the procedure for the preparation of the budget. South Orange's charter specifically states that the village president and trustees shall not receive any compensation or emoluments for their services. The provision of recall is available under South Orange's charter.

## **SPECIAL CHARTERS EMPHASIZING TRADITIONAL FORMS OF GOVERNMENT**

### **Bloomfield Township (1955)**

The Township of Bloomfield's charter contains many elements of the traditional town law. The mayor and six-member council exercises the administrative and legislative powers of the municipal government. Similar to the traditional town law, the council members are chosen from three wards and three at-large and they serve three year terms of office. The council appoints all staff, including the administrator. The administrator serves at the pleasure of the council and supervises the administration of the departments and prepares the budget. These statutory powers granted to the administrator are not typical of the old town law. The mayor is elected and serves for a three year term. He presides at all meetings of council and has a right to vote. The mayor has the power to veto ordinances and to consult and advise with the administrator regarding the budget. Bloomfield's charter has no provision for initiative, referendum, and recall.

### **Tenafly Borough (1980)**

The Borough of Tenafly's charter essentially added the provision of initiative, referendum, and recall to their Borough Form of government. The six-member council exercises the administrative and legislative powers of the municipal government. The council confirms mayoral appointments or they will appoint the officers themselves. The council is elected at-large and serves three year terms of office. The mayor is elected for a four year term of office. The mayor preside at council meetings and may only vote in the case of a tie. The mayor vetoes ordinances and nominates and appoints all officers with confirmation by council. The administrator's position in Tenafly Borough was created by the Ordinance Administrator Law rather than being specifically stated in the charter. The administrator assists the mayor and council and serves at their pleasure. Tenafly's charter provides for initiative, referendum and recall.

In summary, the usual approach in these special charters has been to base them on the Council-Manager or Strong Mayor forms found in the Faulkner Act. The various additions or deletions of provisions in the charters are often based on the traditional form of government in use before the adoption of the special charter. A majority of the ten municipalities appear to reflect a common desire to go to a

Faulkner Act form, but at the same time those particular municipalities wished to retain aspects of their traditional forms of government, thus resulting in a special charter. The inclusion of any detailed aspects of local government (such as salaries in South Orange and numbers of departments in Plainfield) is better left to future local determination rather than incorporating it into the special charter.

The Commission concurs with the basic premise that municipalities have the option of picking and choosing from major aspects of the Optional Municipal Charter Law and their existing traditional form of government law. The recommendations contained herein preserve the special legislative charter options in a revised Optional Municipal Charter Law.

## CHAPTER VI

# MUNICIPAL NAMES AND MUNICIPAL CLASSIFICATION

### MUNICIPAL NAMES

#### Types and Forms of Municipal Government

In New Jersey there is a distinction between “type” of municipality and “form” of government. Types of municipalities in New Jersey (cities, townships, boroughs, towns, villages) have developed historically, both during and after the colonial period. In 1798 the Legislature enacted the Township Law which divided the State into 104 townships. The State Legislature had previously recognized the four Cities of Burlington, Perth Amboy, New Brunswick and Trenton, as well as the Borough of Elizabeth and the Town of Paterson. At that time these six municipalities were still considered within the township boundaries.

From 1798 to 1875, the Legislature created and thereby incorporated municipalities other than townships by special acts. The cities, boroughs, and towns were carved from portions of the then existing townships. The Legislature gave these new municipalities an individual structure and specified their powers in each of these acts. Because the Legislature appeared to abuse this power of creating new municipalities, by interfering in the internal affairs of local government, the State Constitution was amended in 1875 to prohibit this method of incorporation. It required instead the enactment of general forms of government laws.

From 1875 to 1911, the Legislature started enacting general form of government laws. At the same time, it provided the residents of a portion of a municipality with local initiative to incorporate as a new municipality. Local initiative eliminated the need for special legislation at the State level each time a new municipality was to be created. An example of this method of local initiative would be whereby a group of residents would separate from their township by referendum and incorporate as a borough in order to operate under the Borough Form of government laws. There was such a flood of new incorporations that the Legislature began to take away the local power to incorporate. In 1897, the Legislature removed the power to incorporate new boroughs by local action. In 1982 the last remaining authorization to incorporate new municipalities was removed from the town laws. Up to 1911, a municipality’s type and form of government were always the same.

Since 1911, however, when optional forms of municipal government began to become available, many municipalities have changed their form of government, by

adopting a new form from among the optional forms the Legislature has enacted. These forms include the Commission Form of Government Act of 1911 (also known as the Walsh Act), the Municipal Manager Form of Government Act of 1923, and the Optional Municipal Charter Law of 1950 (also known as the Faulkner Act). Nevertheless, in changing their form of government, they have not changed their classification or type of government.

Thus, for example, borough x, in 1900, was a borough (by its incorporation and, thereby, its type) governed by the borough laws. In 1980, say, it adopted the Optional Municipal Charter Law (Faulkner Act) Council-Manager Form of government, which is entirely different from the old borough law. Its form of government is Council-Manager, but it is still called a borough and that is its classification or type.

### Federal Revenue Sharing

The State and Local Fiscal Assistance Act of 1972, known as the Revenue Sharing Act, initiated an entirely new type of Federal assistance to State and local governments. It would allow maximum flexibility to State and local governments in choosing how the funds would be used, with a minimum of involvement by the federal government. The funds were distributed so that one third went to State governments and two thirds to local governments. "*Local governments*" were interpreted to mean municipalities and townships. The Federal Revenue Sharing funding formula was designed so that in some cases townships would receive more money than cities, boroughs, towns, and villages. In 1981 States were eliminated from the program. In 1986 Federal Revenue Sharing was also eliminated for local governments. In that final year, \$4.4 billion was provided to local governments nationwide under the program.

### Name Changing in Essex County

In the early 1980s, in order to gain some advantage under Federal Revenue Sharing, 15 municipalities in Essex County, at a regular, general, or special election held in their respective municipalities, changed the name of the municipality so that the word "*township*" could be inserted into the official name. The federal government has considered, and still does consider, townships as different from other types of municipalities.<sup>1</sup>

Eight of the 15 municipalities have dropped their original name and have fully adopted the term "township" as the type of municipality they are. In seven other municipalities a more confusing situation prevails. Four municipalities now have names providing two types of government. For example, there are such

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<sup>1</sup>The State Commission on County and Municipal Government, the New Jersey League of Municipalities, and other organizations are currently leading a campaign to change this federal policy.

places as the "Township of Glen Ridge Borough", which continues to function under the Borough Form of government even though technically it is known as a township. It may be even more confusing in the three municipalities operating under the Borough Form of government who have fully adopted the name "township" (see Table 15).

<b>TABLE 15 MUNICIPALITIES WITH TWO TYPES OF NAMES</b>				
<b>Community</b>	<b>Type of Municipality</b>	<b>Year</b>	<b>Forms of Government</b>	
Twp of Boro of Caldwell	Township	1981	Borough	
Twp of Glen Ridge Boro	Township	1981	Borough	
South Orange Village Twp	Township	1981	Special Charter	
City of Orange Twp	Township	1982	OMCL:MC	
<b>MUNICIPALITIES WHOSE FORM OF GOVERNMENT IS NOT CONSISTENT WITH THEIR TYPE</b>				
<b>Community</b>	<b>Type of Municipality</b>	<b>Year</b>	<b>Forms of Government</b>	
Essex Falls Township	Township	1981	Borough	
North Caldwell Township	Township	1982	Borough	
West Caldwell Township	Township	1981	Borough	
<b>MUNICIPALITIES WHO HAVE DROPPED BOROUGH OR TOWN FOR TOWNSHIP</b>				
<b>Community</b>	<b>Dropped</b>	<b>Added</b>	<b>Year</b>	<b>Forms of Government</b>
Verona Township	Borough	Township	1982	OMCL:CM
Irvington Township	Town	Township	1982	OMCL:MC
Belleville Township	Town	Township	1981	OMCL:CM
Bloomfield Township	Town	Township	1981	Special Charter
Montclair Township	Town	Township	1981	OMCL:CM
Nutley Township	Town	Township	1981	Commission
West Orange Township	Town	Township	1980	OMCL:MC
Fairfield Township	Borough	Township	1979	OMCL:SM

Since Federal Revenue Sharing is no longer in existence, there is no need for municipalities having two differing types of official name. Correcting this municipal name situation will make “*type of municipality*” and “*form of government*” consistent and less confusing for all. Every municipality should have one type of name only which is not inconsistent with its form of government. The four municipalities with two types of municipal names (Caldwell, Glen Ridge, South Orange, and Orange) and the three municipalities whose form of government is not consistent with its type (Essex Fells, North Caldwell, West Caldwell), should revert to their original names.

In order to prevent the confusion which might come from any future change in the *type* of municipality which is inconsistent with its form, the 1917 name changing statute, N.J.S.A. 40:43-4, would have to be amended. ***The Commission recommends that the statute provide that every municipality have one type of name only which is not inconsistent with its form of government.*** This would be applicable to future use of the statute and would also provide for a direct reversion to their original name for the seven affected municipalities. Those municipalities should be authorized to change the name on facilities, vehicles and letterhead over a period of time in order to save money on transitional costs.

## CLASSIFICATION OF CITIES

Classification is a mechanism states use to get around provisions in their constitutions prohibiting the enactment of special laws for a single local government. The Legislature has recognized in New Jersey large and small municipalities as basic categories of size. Those municipalities above 12,000 in population are considered large and those below 12,000 are considered small. Nevertheless, only cities have been classified in New Jersey and of those there are only 52. Some 515 municipalities are not classified at all. Cities have been classified into four classes since 1882 (see Table 16).

Classification is used by the legislature every year for a number of reasons. It authorizes particular municipalities to undertake a specified activity - such as for example imposing a sales tax limited to certain classes of transactions<sup>2</sup> or for the appointment of deputy directors in second class cities and certain fourth class cities.<sup>3</sup> Whatever the case, classification provides the means for some 52 cities to be granted or prohibited certain powers or functions.

First class cities are those that have a population of over 150,000; Newark and Jersey City are the only two that qualify for this designation. Second class are those cities that have a population between 12,000 and 150,000, which totals some 28 municipalities. The third class classification includes all other cities, except those along the Atlantic Ocean. These latter are categorized as under fourth class cities. The third class contains 15 cities and the fourth class comprises seven Atlantic Ocean resort cities.

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<sup>2</sup>Karins v. Board of Commissioners of Atlantic City, 137 N.J.L. 349, 60A. 2nd 246 (1948)

<sup>3</sup>N.J.S.A. 40:72-9

**TABLE 16  
CLASSIFICATION OF CITIES  
(R.S. 40A:6-4)**

**First Class:** Over 150,000 population (Newark, Jersey City)

**Second Class:** Between 12,000 and 150,000

**Third class:** All others, except Atlantic Ocean resorts

**Fourth Class:** Atlantic Ocean resorts

<u><b>Second Class</b></u>	<u><b>Third Class</b></u>	<u><b>Fourth Class</b></u>
Paterson	Somers Point	Brigantine
Elizabeth	Woodbury	Ventnor City
Trenton	Burlington	Margate City
Camden	South Amboy	North Wildwood
East Orange	Northfield	Cape May
Clifton	Absecon	Wildwood
Bayonne	Salem	Sea Isle
Passaic	Linwood	
Union City	Egg Harbor City	7
Vineland	Bordentown	
Plainfield	Lambertville	
Perth Amboy	Beverly	
New Brunswick	Estell Manor	
Atlantic City	Port Republic	
Hackensack	Corbin City	
Linden		
Hoboken	15	
Long Branch		
Garfield		
Millville		
Rahway		
Englewood		
Summit		
Bridgeton		
Asbury Park		
Pleasantville City		
Ocean City		
Gloucester City		
28		

The current classification system is outdated. There is no reason why only cities should be classified. Why should 515 municipalities be excluded? Under the 1917 Home Rule Act, all municipalities have the same powers. Therefore, creating a difference between cities and others is nonsensical. All should have the same flexibility that is provided in the statutes for municipalities of equal or similar size.

The first and second class categorize the cities in terms of population, while the third and fourth class categorize the cities in terms of both their population and their location. In the third and fourth class cities this distinction between cities on or not on the Atlantic Ocean may have had validity back in the late 1800s when classification was devised, but it is now not pertinent. Brigantine, Margate, and Ventnor border the Atlantic Ocean, which makes them cities of the fourth class. Absecon, Linwood, and Northfield do not border on the Ocean, which make them cities of the third class. Why should there be a separation between these two classes on the basis of location? It is also interesting to note that Atlantic City is an Atlantic Ocean resort, but it is placed in the second class category because of its population. The fourth class category has outlived its purpose and should be eliminated.

***The Commission recommends that the classification of cities laws be rewritten to include all municipalities with three classes based solely on population.***

The new population limits should be:

- First class municipalities - 100,000 and above
- Second class municipalities - 12,000 to 100,000
- Third class municipalities - below 12,000

This new classification system for municipalities would be more relevant in categorizing the ever changing and varied nature of municipalities in New Jersey.

## **FUTURE PUBLICATIONS OF THE STATE COMMISSION ON COUNTY AND MUNICIPAL GOVERNMENT**

- Intergovernmental Funding Within New Jersey
- Municipal Volunteers and Independent Boards
- Local Budget Reporting
- Thoughts on the Form of County Government
- Open Space and Recreation in New Jersey

## ABOUT THE COMMISSION

The New Jersey Legislature established the State Commission on County and Municipal Government in 1966 with the charge to “study the structure and functions of county and municipal government... and to determine their applicability in meeting the present and future needs of the State and its political subdivisions”. Since then, the Commission has had a long record of making a positive contribution to the legislative process, to improving the effectiveness of local government operations and to harmonizing policy between county and municipal government and the State government. The Commission, by amendment to its enabling act, became permanent in 1991.

To achieve as broad a representation as possible, the Commission is composed of fifteen members, with nine members named by the Governor, three Senators named by the President of the Senate, and three members of the Assembly named by the Speaker of the General Assembly. Of the Governor’s appointees, three are nominees of the New Jersey Association of Counties, three are nominees of the New Jersey State League of Municipalities, and three are from among the citizens of the State.

The Commission has worked extensively on structural studies dealing with the organization and form of county and municipal government. The Commission also engages in functional studies that are focused upon the services that local governments provide or should so provide. These intergovernmental functional studies have included examinations of solid waste, water supply, sewerage, roads, open space, judicial, human service, and redevelopment programs. In addition, a series of informational periodicals and handbooks are published for the use of officials, administrators and other interested in New Jersey government.

The newly enacted legislation expands the Commission’s duties to include the examination of the relationship between local government and the federal government. The legislation also explicitly authorizes the Commission to study the transfer of functions from one level of government to another, the purchase of services on a contractual basis, the establishment of regional special districts, authorities and commissions, and the merger of autonomous agencies into the existing structure of county and municipal government.

While the Commission’s research efforts are primarily directed toward continuing structural and functional studies, its staff is often asked to assist in the drafting of legislation and regulatory action based upon Commission recommendations. Numerous legislative bills have been enacted to implement Commission recommendations. The Commission also serves as a general resource to the legislature, executive agencies, local government officials and civic organizations, as well as to related activities at the national level.