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PHILADELPHIA HOME RULE CHARTER

By

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INTRODUCTION

The Philadelphia Home Rule Charter has been the subject of many articles and speeches since the adoption of the First Class City Home Rule Act.¹ Most comment, however, has been focused upon the political science aspects of the Charter,² although there have been also several analyses of the Charter explaining its provisions, particularly with reference to the innovations and departures from the Charter³ of 1919.

Not to be overlooked is the fact that the new Charter, incorporates several features which will aid the busy lawyer in assisting his client not only to comply with municipal regulations, but also to protect against the infringement of personal rights and privileges.

It is the purpose of this article to focus attention upon certain of these provisions, some of which will take effect on January 7, 1952, others of which will come into force during subsequent years.

Sources of the Charter

Proper interpretation and construction of the Charter requires a reference to its sources. Article XV, § 1, of the Constitution⁴ of this Commonwealth provides, *inter alia*, that "Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general or municipal election in favor of the same. Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations, and regulations, as may be imposed by the Legislature." This provision was not, however, self-executing. A municipality still required an enabling act from the State Legislature to proceed with home rule.

With respect to Philadelphia the necessary legislation was long delayed. Finally, on April 21, 1949, the First Class City Home Rule Act was approved, and

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¹ Act of April 21, 1949, P.L. 665.

² The Charter was submitted to the voters on April 17, 1951, and overwhelmingly endorsed by the electorate.

³ Act of June 25, 1919, P.L. 581, as amended.

⁴ Amendment of November 7, 1922.

upon adoption by the electorate, the new Charter became the "organic law of the City".⁵

Powers of the City

The basic powers of the City have been broadly defined. The enabling act specifies that ". . . the City . . . shall have and may exercise all powers and authority of local self government and shall have complete powers of legislation and administration in relation to its municipal functions . . ." ⁶ This language was adopted *verbatim* in the Charter itself.⁷

Attorneys will be called upon to consider whether or not ordinances and other municipal rules and regulations fall within the ambit of the authority delegated by the Legislature to the City. In considering questions of this sort, it should be borne in mind that every determination must be consonant with the well-known rule that "A municipal corporation can function only through the powers granted by the legislature in its charter of incorporation, or those powers incident or related thereto as essential and necessary to carry out the declared objects contained in such express powers. Beyond such grant of authority, a municipality possesses no powers by implication. If there is doubt as to the existence of authority, or whether an act is fairly referable to any of the delegated powers, the doubt must be resolved against its existence. Further, the power which the city exercises must not contravene any constitutional limitations, either state or federal."⁸

It was for this reason that specific powers of the City were not expressly enumerated in detail.⁹

The enabling act furthermore expressly reserves from the purview of permissible municipal legislation certain areas of self-government.¹⁰ Such offices as City Treasurer, City Controller, County Commissioners, and the Board of Revision of Taxes, are continued until further enabling legislation will permit their

⁵ Act of April 21, 1949, P.L. 665, § 11; the effective date was established as of January 7, 1952. Provisions of the 1919 Charter and the Consolidation Act of 1854 (Act of February 2, 1854, P.L. 21) as well as certain other statutes and ordinances not inconsistent with the provisions of the new Charter are not superseded and remain in full force and effect.

⁶ *Ibid.*

⁷ Philadelphia Home Rule Charter (hereinafter cited as Charter) § 1-100.

⁸ American Aniline Products, Inc., Appellant v. Lock Haven, 288 Pa. 420 (1927).

⁹ Our courts have followed Dillon's rule which denies existence of a specific power where there has been a failure to provide for it when other powers have been enumerated. *Cf.* Lesley v. Kite, 192 Pa. 268 (1889); Pittsburgh Railways Co. v. P.S.C., 115 Pa. Super. Ct. 58 (1934).

¹⁰ The First Class City Home Rule Act, § 18, which reserves to the State Legislature the right to (1) provide for the filing and collection of municipal and tax claims or liens and for the sale of real or personal property in satisfaction thereof; (2) provide for the exercise of the power of eminent domain and the procedure for the condemnation of property for public purposes; (3) provide for the assessment of damages and benefits for property taken, injured or destroyed; (4) provide methods for the incurring or increasing of indebtedness; (5) provide for the annexing, exclusion or detachment of territory; (6) regulate public schools; (7) provide for the personal registration of electors; (8) limit rates and fix subjects of taxation; (9) provide for the assessment of real or personal property and persons for taxation purposes.

consolidation into the framework of the municipal government.¹¹ It is to be hoped that the future will see most, if not all of these restrictions abolished.¹²

Revision and Codification of City Ordinances

Frequently as lawyers we are called upon to construe various municipal ordinances. Historically, it has been almost impossible to collate all ordinances relating to any given subject. The simple fact remains that no one can turn to a code or even an index which contains a record of all presently subsisting municipal legislation in the City of Philadelphia.

The Charter wisely provides that this situation be promptly remedied. The Department of Law is directed within two years from the effective date of the Charter to submit to the City Council a *comprehensive revision and codification of all of the general ordinances* of the City which are still in effect.¹³ As promptly as possible thereafter "the Council shall consider and act upon such a code and revision . . . (and) shall cause the code to be published . . . and distributed".¹⁴ All subsequent measures of general application are to be ordained as amendments of or as additions to the code. The measure of the difficulty of this task will be surpassed only by the usefulness of its consummation.¹⁵

Public Records

Undoubtedly you have been or will be called upon to seek out and examine some specific municipal record affecting some client's rights, duties and liabilities. Such records are scattered now among the city's vast number of sprawling Departments and Bureaus. Endless hours are frequently consumed tracking down the item necessary to your particular matter. The new Charter seeks to remedy this situation. The Department of Records has been created.¹⁶ Chief among its clearly delineated functions is that of collecting and maintaining and making available for public inspection the originals or duplicates of all City records maintained for that purpose.¹⁷

The right of public inspection is not, however, absolute. The Charter recognizes that certain records should be privileged in that their disclosure would subvert well established principles of an individual's right to privacy, might hinder

¹¹ Charter, § 11-103.

¹² Space limitations preclude a more comprehensive analysis of the area of municipal government yet reserved to the State Legislature and of the totality of power now delegated to the municipality.

¹³ Charter, § 4-400(e). Italics added.

¹⁴ Charter, § 2-304.

¹⁵ Additionally, the Department of Law is charged with the burden of assisting the Board of Health with the preparation of a "comprehensive Health Code" (Charter, § 5-301) and the Fire Department with the preparation of a comprehensive Fire Code (Charter, § 5-401, both of which are to be submitted to City Council for adoption. A special section of the Charter covers the problem of municipal regulations which are to be filed with the Department of Records and made available for public inspection. (§ 8-407).

¹⁶ Charter, § 3-100(d).

¹⁷ Charter, § 5-1101(b). Cf. National Archives Act, 44 U.S.C. 300, 300(c); The Administrative Code of 1929, Act April 9, 1929, P.L. 177, § 2801-A, as amended.

law enforcement, endanger the public safety or breach a legally recognized duty of confidence. It is provided, therefore, that records of this nature shall remain inviolate by public inspection.¹⁸ Which documents fall within the purview of these restrictions will be administratively determined in the first instance, but presumably will be subject to judicial review if necessary.¹⁹

All administrative rules and regulations promulgated by "any office, department, board of commission of the City, and all documents required to be filed with the City for public recordation" will be maintained by the Department of Records in a central depository.²⁰ Ultimately, upon the consummation of City-County Consolidation this Department will incorporate the recordation functions now performed by the offices of the Register of Wills and the Recorder of Deeds.

Civil Liberties.

The tyranny of social and economic discrimination because of race, color, creed or national origin is equally as reprehensible as the tyranny of absolute dictatorship. The draftsmen of the Charter recognized that the preservation of civil liberties and the proscription of intolerance should necessarily be embodied in the organic law of the City. Not content with a mere prohibition against discrimination in the selection of City employees²¹ and the requirement that all contracts with the City contain a provision that in the performance of the contract the contractor will not discriminate nor permit discrimination against any person because of race, color, religion or national origin,²² there has been established a Commission on Human Relations.²³ This replaces the Fair Employment Practice Commission established by the Ordinance of March 12, 1948. The new Commission will contain nine members, as against five on its progenitor. Charged with the duty of administering and enforcing "all statutes and ordinances prohibiting discrimination", the Commission is also directed to "institute and conduct educational program to promote equal rights and opportunities of all persons".²⁴ It may on its own initiative investigate complaints and practices of discrimination. Similarly, it may, upon request or upon its own initiative, hold public hearings for such purposes and make public its findings.

Psychologists and sociologists readily admit the beneficent effects of widespread education and publicity as practical methods of mitigating racial and religious discrimination. For the first time so far as I know a municipal charter gives recognition to this fact and provides a public body to program its execution. Equally desirable is the creation of a public authority to which the private citizen and his counsel may turn when faced with a problem in this field.

¹⁸ Charter, § 5-1104.

¹⁹ Cf. Charter of the City of New York, § 894.

²⁰ Charter, § 5-1101(e).

²¹ Charter, § 10-110.

²² Charter, § 8-200.

²³ Charter, § 3-100.

²⁴ Charter, § 4-700.

Councilmanic Investigations

One day you may receive a call from an anguished client who feels he has been impugned at a councilmanic hearing, investigation or inquiry. He demands a right of redress independent of the lengthy, cumbersome and expensive delays afforded by the laws of defamation. Fortunately he will be able to command the same forum as your client's detractor. Your client "shall be given the opportunity to appear *with or without counsel* to present evidence, to cross-examine any person who may have impugned his character and to call witnesses of his own" backed up by the Council's power of subpoena if necessary.²⁵

The very inclusion of this provision in the Charter should serve the efficacious purpose of minimizing the abuse of the process of legislative inquiry so prevalent elsewhere.

Licenses and Inspection-Collections

Owners and operators of real estate for housing, commercial and industrial uses, and their counsel, have long been plagued by the numerous licenses and permits required from the municipality for the conduct of their enterprises.²⁶ To eliminate this chaotic situation, a Department of Licenses and Inspections has been created.²⁷ Henceforth, all licenses required by the City shall be issued by this agency, upon applications duly filed, and all inspections shall be performed by employees of this Department.²⁸

Appalled by the recent revelations of graft and corruption among employees of agencies formerly performing these services, the Charter Commission provided that all fees and charges due the City in connection therewith shall be collected by the Department of Collections,²⁹ through employees who will be furnished office space and facilities within the Department of Licenses and Inspections.

Of equal importance to the attorney and his client is the right to have the primary administrative determination granting or refusing the issuance, or transferring, suspending, revoking, cancelling or renewing any license or permit. A Board of License and Inspection Review has been established to furnish the aggrieved party³⁰ with a written statement of the reasons for the action taken and to afford him a hearing upon which evidence shall be taken. Thereafter the

²⁵ Charter, § 2-405.

²⁶ Not infrequently has it been necessary to secure licenses from one or more of the bureaus within each of the following agencies: Zoning Board, Department of Public Safety, Department of Public Health, Department of Public Works and the Board of Plumbing Supervision. Failure by the bureau responsible to notify the Board of Revision of Taxes of the issuance of the License or permit, or the failure to acquire it, has resulted in new construction of substantial improvements to ancient buildings going tax free for periods of a year or more.

²⁷ Charter, § 3-100(f).

²⁸ The aim is to train a force of inspectors, each of whom shall be competent to make a single inspection to determine compliance with all statutes, ordinances and regulations of the City, thus relieving the citizen of the necessity of having a multiplicity of inspectors examine his property.

²⁹ Charter, § 6-200(d).

³⁰ He must be *affected directly* by the decision.

Board is to make findings of fact and render a written opinion.⁸¹ Presumptively, the decisions of the Board may be the subject of further appeal to the Courts within the confines of present legal limitations though the Charter is silent upon this question.

Conclusion

Limitations of space preclude a more exhaustive analysis of all the features encompassed by the new Charter which will aid the lawyer in the conduct of his and his client's affairs with the City and within the purview of municipal regulation. Although I have spotlighted certain specific items, you should recognize that the Charter in general provides for more centralized responsibility in the day to day administration of City affairs and more clearly delineates the lines of authority of municipal officers and employees. Thus, the solution of specific problems will be facilitated because they can be considered and reviewed and, if need be discussed with one agency without the need of seeking out a half dozen or so as was formerly the case.⁸² Simplified, more efficient and more economical municipal administration will be the inevitable concomitant.

⁸¹ Charter, § 5-1005.

⁸² The Mayor is directed to establish an agency within his office to receive and answer all requests for information and to receive and investigate complaints concerning the operation of the City government. (Charter, § 4-106).