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MAINE COUNTY GOVERNMENT

The Charter Alternative

A working paper

prepared by

Maine Municipal Association

*Bureau of Public Administration,
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Greater Portland Council of Governments

MAINE COUNTY GOVERNMENT

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INTRODUCTION

This paper on the county charter form of government in Maine is the result of a cooperative effort by the Maine Municipal Association, the Bureau of Public Administration at the University of Maine at Orono, and the Greater Portland Council of Governments. With the signing into law of LD 1038, "An Act to Provide for County Self-Government," in 1980, Maine's sixteen counties were provided with the opportunity to establish a charter form of government.

As a result, the organizations mentioned above perceived the need for a package of information on the county charter law. This document is intended only as a working paper for county officials and citizens. As a working paper, it is merely a guide to assist counties which choose to pursue a charter form of government.

The participants wish to thank Professor Thomas Taylor, Department of Political Science at the University of Maine at Orono, as well as Muriel Bonin for their assistance in the development of this working paper.

February, 1981

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WHAT IS A COUNTY CHARTER?

A charter, in classic terms, is a grant of authority from a higher governmental unit to a lower unit over which it has jurisdiction, enabling it to do certain things in certain ways. In a sense, a charter is the lower unit's "organic" or fundamental law which establishes and defines the organization of its government and, depending on the grant of authority, the extent of its powers. When the grant of authority from the higher unit is constitutionally founded and permits the local unit of government to draft and adopt a charter with few substantial restrictions or limitations, it is generally referred to as a "home rule" charter. With the approval of Amendment CXI to the Maine Constitution in 1969, municipalities were granted the power to "...alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character."

This is not true in the literal sense, however, with county government in the state. There is no constitutional basis for the adoption of county charters in Maine. Indeed, it was not until Chapter 486, Laws of 1977, was enacted was there even statutory authority for voter consideration of a charter for these units of government.

Because the grant of authority for county charters emanates from legislation which places limitations on the charter powers (30 M.R.S.A. § 1601), Maine counties cannot consider true "home rule" charters. This is generally consistent with the nature of county government in the New England states where historically the county was constituted to act as an agent of the state and administer state powers and authority.

Thus, the Legislature continues to be the "rule" maker and counties may only adopt charters within the strict parameters set by that body. Unlike municipalities, they may not consider a charter granting the county any power or function they wish. For example, the Legislature has not granted counties the power to levy taxes. Therefore, a specific home-rule charter could not extend this power to the county. One need only look to the "Purpose" section of the county charter law (30 M.R.S.A. § 1501) to see that the primary legislative intent was to provide for a mechanism whereby counties could determine the officers and administrative organization necessary to perform county functions, and not to provide authority for new powers to be exercised by the counties.

In a sense, the Legislature has already drafted specific limitations in the contents of county charters and county charter commissions, and, ultimately, county residents have the option of selecting county powers and functions from among those granted. The county charter further defines those powers and functions which the Legislature has granted.

A county charter is, therefore, a locally adopted document which:

1. - provides for the basic structure and organization of the county government;
2. - selects the powers and functions of the county government from among those granted by the State Legislature and allocates those powers and functions among the elements of the organization, so as to establish responsibility and accountability for the exercise of those powers; and
3. - prescribes certain procedures for the exercise of county powers.

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WHAT A COUNTY CHARTER MAY AND MAY NOT DO

L.D. 1038, an Act to Provide for County Self-Government, passed in the second regular session of the 109th Legislature and became Public Law Chapter 671 upon receiving Governor Brennan's signature. The Act amended county charter provisions under 30 M.R.S.A. § 1501, et seq. and added new provisions to the statutes.

Under 30 M.R.S.A. § 1601, as amended, a county charter may:

- 1, - provide for the organization of county government;
- 2, - provide for the election of a county legislative body from 3, 5, or 7 districts (one member per district) and establish the number of districts and boundaries of same;
- 3, - provide for the method of selecting officers, employees and officials;
- 4, - provide for the establishment of county departments, agencies, boards or commissions, and their description, powers and duties, and the power and authority of county officers or officials to direct, regulate, and control these agencies, departments, boards and commissions;
- 5 - provide for the internal activities of county government;
- 6 - provide for a method of appropriating money for county expenditures other than the present statutory method in 30 M.R.S.A. Sections 2, 252, and 253;
- 7 - provide for the establishment of a finance committee, consistent with the statutory options, as the alternative method for approving the county budget;
- 8 - provide those powers and functions it chooses to exercise from those granted to counties by the Legislature (see the Appendix).

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A county charter may not:

- (1) - grant a county any power or function which the Legislature has power to confer upon it and which has not been conferred either expressly or by clear implication of law (30 M.R.S.A. § 1601 (2)).
For example, the Legislature has not given counties the power to institute land use restrictions or zoning ordinances; therefore, a county charter cannot give a county the power to do so. Thus, the powers a charter may establish are limited to those conferred on that county either expressly or by clear implication by general law or specific statute;
- (2) - alter the statutory method of raising money for county expenditures.

THE CHARTER INITIATION PROCESS

The county charter adoption or revision process may be initiated by the county officers themselves or by county voter petition. In either case, the question of whether a charter commission shall be established to adopt or revise a charter must be submitted to a referendum.

COUNTY OFFICER INITIATIVE

4/5/88

The county officer may determine that the adoption of a county charter should be considered or that revision of a county charter already adopted should be considered. The county officers must then submit the question for the establishment of a charter commission to adopt or revise a charter to the voters of the county in the next regular or special statewide election.



County of Aroostook, COMMISSIONER'S OFFICE

COURT HOUSE • POST OFFICE BOX 846 • CARIBOU, MAINE 04736 • (207) 493-3318

COUNTY COMMISSIONERS

PETER S. KELLEY, CHAIRMAN
CARIBOU

KEITH LAMBERT
FORT KENT

PAUL J. ADAMS
HOULTON

COUNTY ADMINISTRATOR

ROLAND D. MARTIN

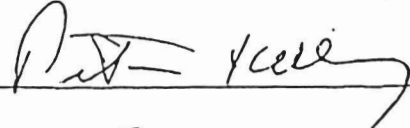
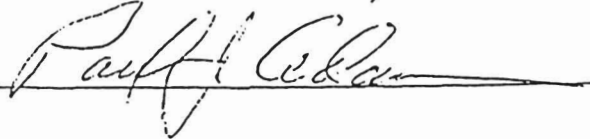
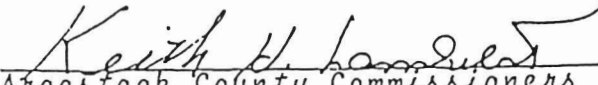
ORDER OF THE COMMISSIONERS OF AROOSTOOK COUNTY RELATIVE TO THE ESTABLISHMENT OF A CHARTER COMMISSION

WHEREAS, 30 M.R.S.A. §1501 et seq. provides that county commissioners may determine that the adoption of a county charter should be considered; and

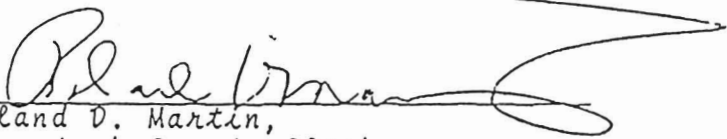
WHEREAS, at a meeting of the Commissioners of Aroostook County held on April 5, 1988, with three commissioners present and voting in the affirmative, it was determined that the adoption of a county charter for Aroostook County should be considered;

It is hereby ORDERED that the adoption of a county charter for Aroostook County be considered; that the question for establishment of a charter commission be submitted to the voters of Aroostook County at the next regular statewide election to be held on November 8, 1988; and that the election of voter members to said commission shall be held at the same election as provided by law.

Dated: April 5, 1988




Aroostook County Commissioners

A true copy attest:


Roland D. Martin,
Aroostook County Clerk

VOTER INITIATIVE

Under the procedure set out in 30 M.R.S.A. § 1551(2), the voters of a county may petition the county officers to provide for the adoption or revision of a county charter. The petition must be signed by qualified voters equal in number to at least 10% of the votes cast in the county at the last gubernatorial election.

In response to such petitions, the county officers are required by law to submit to a referendum the question of whether a charter commission be established for the purpose of revising the county charter or preparing a new county charter. Within thirty days after receipt of a sufficient petition, the county officers must submit this question to the county voters at the next regular or special statewide election.

COMPOSITION OF THE CHARTER COMMISSION

P. L. 671 provides that counties may ask the voters to approve the creation of a charter commission and at the same time to elect six of the nine commission members. In any event, if the establishment of a charter commission is approved, the election of its members must be held within sixty days of the referendum vote. Of the nine commission members, two shall be elected from each county commissioner district without party designation. The remaining three charter commission members are appointed by the county officers within thirty days after the six voter members have been selected. No more than two appointive members may be members of the same political party. One appointive charter commission member shall be a county officer, one shall be a municipal officer, and one shall be a State Senator or Representative. Appointive members shall also be residents

of the county but, no person shall be appointed who is a resident of a municipality in which another charter commission member resides.

Seven days' notice shall be given by the county clerk to the clerk of each municipality within the county and each State Senator and Representative residing in the county, as to the date, time, and place of the meeting at which the appointive members will be selected. The date, time, and place shall also be fixed by the county officers.

Vacancies occurring on the commission shall be filled by vote of the commission from the voters of the county and, when the vacating member was elected by a district, the replacement shall be from the same district.

WHY ADOPT A COUNTY CHARTER?

Maine counties have had the option to establish charters since the inclusion of Section 1551 in Title 30 M.R.S.A. in 1977. However, it was not until the addition of Section 1604 in 1980 that county governments expressed an interest in establishing charters.

30 M.R.S.A. § 1604 grants counties the option of providing an alternative method of appropriating money for county expenditures and approving county budgets. Until the addition of this section, the law required that the county commissioners submit the budget to the county's State legislative delegation and then to the entire legislature for final approval (30 M.R.S.A. § 252, 253).

Counties now have the option of creating a finance committee which must approve the county budget submitted by the county legislative body. The finance committee is composed of either municipal officers appointed by county commissioners or of representatives of municipalities elected by

county municipal officers. A majority of the finance committee members must approve the budget estimates prepared by the county legislative body.

The addition of this alternative method of approving county budgets is one of the main reasons why a county may wish to adopt a charter. It offers the county government more autonomy and control over county fiscal matters. *There are more reasons for county*

The prior method which requires state legislative approval of the budget gives taxpayers and municipal officials little control over county budgets. The alternative finance committee removes the Legislature from the county operation and relieves the county delegations of the responsibility for budget reviews.

There are other reasons why a county may wish to adopt a charter. The formation of a charter commission and the development of a charter can serve to modernize the structure and function of county government. County voters may wish to limit the scope of county government actions and a charter can do this. The county voters may also wish to expand the membership of the county's legislative body in order to promote more representation. A charter could increase the size of the county legislative body from three to seven members. Another reason for adopting a charter may be to review the services a county presently provides and analyze their cost-effectiveness. Furthermore, county voters may permit the county to enter into contractual agreements with municipalities for certain services which the county has authority to provide.

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SELECTING A FINANCE COMMITTEE


Charter Commissions that choose to establish a finance committee as an alternative method for approving a county budget, must specify the number, term, and method of selection of the committee members in the charter. 30 M.R.S.A. § 1604 states that there shall be equal representation from each commissioner district on the finance committee. One of the following methods of selecting members shall be used:

- (1) Appointment by county commissioners. Each county commissioner shall appoint the finance committee members from that commissioner's district from among the municipal officers of that district.
- (2) Selection by municipal officers. The municipal officers within each commissioner district shall caucus and elect the finance committee members from that district. The principle of proportional representation shall be followed in the election of the finance committee.

If a charter commission chooses to adopt the second method of selecting a finance committee, the charter must prescribe how members shall be elected. 30 M.R.S.A. §¹⁶⁰⁴ states that the principle of proportional representation shall be followed in the election of the finance committee. To provide for proportional representation, the charter commission may recommend one of the following finance committee election processes:

- (1) The county commissioners could make nomination papers for the finance committee available to each municipality. Individuals who wish to be candidates to the committee would be required to have the majority of the municipal officers of that

community sign his/her nomination papers. The signed papers could be sent back to the county commissioners for the purpose of making ballots with the candidates listed. Each commissioner district would require a separate ballot. Municipal officers would vote for only the candidates within their district. The ballots would specify how many committee seats need to be filled from that district. The ballots could be collected and counted at a meeting of the district's municipal officers. A municipal officer's vote would be weighted according to his/her municipality's population as a portion of the district's total population.

- (2) All the municipal officers in each commissioner district would meet to elect the finance committee. Nominations could be received from the floor. Each municipality would be allowed one vote for each of the committee seats available. Municipal officers from the same community at the caucus would have to reach a consensus and cast one vote for each seat. Again, each municipality's vote would be weighted according to the proportion of that community's population to the district's total population.
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THE CHARTER COMMISSION AT WORK

Before a county charter can be drafted or revised, a substantial amount of preliminary research and investigation is necessary. To ensure that such work is conducted in an orderly, comprehensive, and timely manner, the commission should first consider its own organization, rules of operation, staffing, and financial needs.

CHARTER COMMISSION ORGANIZATION AND OPERATION

Once the nine members of the charter commission are seated, the county clerk is required to set a date, time, and place of the organizational meeting of the charter commission.

The charter commission must organize during the first commission session by electing from its members a chairman, vice-chairman, and a secretary. A committee structure may also be set up once a work plan has been developed.

Other issues that may be considered at the first meeting are:

- how often and where the commission will meet;
- whether it will establish its own set of rules or operate under general parliamentary rules (particular attention should be given to defining a quorum); and
- how decisions will be made (by simple or extraordinary majority vote or by consensus) on both procedural and substantive matters.

STAFFING AND FINANCING A CHARTER COMMISSION

A thorough charter study usually entails a significant amount of data gathering and administrative analysis as well as legal interpretation of

proposed organizational and procedural provisions to be incorporated in the charter document. A charter commission may, therefore, need clerical, management, and legal assistance.

A charter commission may be staffed in a number of ways. The county itself may contribute clerical and other assistance to the commission. Thus, legal expertise might be provided by assigning the county attorney to serve as an advisor to the commission. Secretarial help may be provided by assigning a current county employee to work with the commission. Persons with special competence in government organization, administrative operations, and public administration can be found in universities, government agencies, regional planning agencies, municipal associations, and, in certain cases, the business community. Former or present local government officials may be available and willing to assist the charter commission.

The charter commission will need some money to conduct its work. The amount required will depend heavily on the extent to which outside consultants are used. Regardless of whether consultant expenses are to be incurred, the commission will require funds to pay for supplies, postage, phone, printing, and perhaps a small travel budget and funds for disseminating information to the public.

The county is required to provide the commission with office space and \$500 following its formation. A county may also, from time to time, transfer additional funds to the charter commission account from surplus or from other accounts in the county budget. The basic need to retain an attorney to render a legal opinion on the proposed charter, as required by the Act, would dictate additional costs. In addition, the charter commission may receive funds from any other sources, public or private.

DEVELOPING A WORK PLAN

Once the charter commission has defined its organization, adopted its rules for operation and provided for necessary staff assistance, it can get down to substantive work. This is the time for commission members to become familiar with those provisions of the State Constitution and other laws that relate to county government, county charters, and to the work of charter commissions. The commission may want to invite an authority on the law to speak at a commission meeting.

The commission will then want to examine the existing organization and operational arrangements of the county government. A specially designed questionnaire, to be completed by county officers, can be an effective means for gaining information about the way in which legislative, executive, and judicial functions are performed and about their operational interrelationships and administrative organization and procedures. Questionnaire responses can then be supplemented by personal interviews and examination of a variety of county-wide and departmental documents such as budgets, annual and interim reports, and legislative proceedings. An outline of topics that may be included in interviews is provided in the Appendix.

One common practice is to divide charter commissions into subcommittees to design, administer, and analyze the questionnaires and also to interview county officers. The number of subcommittees designated will relate in some degree to the total membership of the commission, but it is probably a good practice to assign related functions to one subcommittee. For example, one committee might take responsibility for such functions as social services, youth services, and other human services. While another subcommittee might concentrate on public works, parks, sewers, and physical services. Other

subcommittees might look at public safety functions, legislative and Intergovernmental relations, finance and budget, and other support functions such as personnel, purchasing, and data processing.

An analysis of questionnaire responses, personal interviews, and a review of documents will assist the charter commission in identifying existing practices, procedures, and relationships that appear to be functioning satisfactorily and in perceiving problem areas requiring resolution.

Once the charter commission has completed the study of the county, the membership may want to visit other counties or to invite officials from similar counties to speak to them of their operations. In this manner and through the independent study and professional experience of commission members, a set of alternative organizational and operational arrangements may be designed for those areas of county government previously identified as needing improvement.

The commission is then ready to evaluate the alternatives that have been established with regard to management theory and practice, legal considerations, cost factors and, with special attention to public acceptance of its recommendations, to make basic decisions as to the substantive content of the charter.

TERMINATION

The charter commission will continue in existence for thirty days after it has submitted its final report. However, if judicial review is sought, the commission will continue in existence until the review and any further proceedings are completed.

ADOPTING AND IMPLEMENTING A CHARTER OR CHARTER CHANGES

The county commissioners may determine that the adoption of a county charter should be considered, or that the revision of a county charter already adopted should be considered and provide for the establishment of a charter commission to carry this out.

An alternative method for adoption of a charter or making changes to a charter is through petition. Upon the written petition of a number of voters equal to at least ten percent of the number of votes cast in the county at the last gubernatorial election, the county officers are directed to provide for the revision of the county charter.

See the Appendix.

ADOPTING A COUNTY CHARTER

Within nine months after its election, the charter commission must prepare a preliminary report, including the text of the charter or charter revision for circulation throughout the county.

Within twelve months after its election, the full draft of the proposed new charter or charter revision must be submitted to the county officers. This final report is usually in the form of a majority or unanimous report, but one or more minority reports may be attached.

The county officers may extend the time limits on the preparation and submission of both the preliminary and final reports of the charter commission up to twenty-four months after the election of the charter commission.

A proposed county charter or charter revision must be submitted to the voters of the county at the next regular or special statewide election held at least thirty days after the filing of the final report.

For adoption, a proposed charter or charter revision must be approved by a majority of those voting in the county.

CHARTER AMENDMENTS

The county officers may determine that amendments to the county charter should be considered and provide for proper notice and hearing on them as prescribed in the law. Also, on the written petition of a number of voters equal to at least ten percent of the number of votes cast in a county at the last gubernatorial election, proposed amendments to the county charter can be placed on a ballot.

A proposed charter amendment must be submitted to the voters of the county at the next regular or special statewide election held at least thirty days after the filing of the final report. For adoption, the proposed amendment(s) must be approved by a majority of those voting in the county.

INFORMING THE PUBLIC--THE CHARTER COMMISSION'S ROLE

Whether it wishes to do so or not, a county charter commission inevitably finds itself engaged in various kinds of public education efforts. Depending on how it conceives its role, the charter commission may find that conducting an effective public education program is one of the most important aspects of its many activities. Its relationship with the public should be a matter or primary concern from its first meeting to its last. This is true for several reasons:

- (1) the public has a right to know what the charter commission is doing;
- (2) the charter commission will benefit from early and ongoing public participation in the identification of specific local issues and from the discussion of alternative solutions; and
- (3) it is the public to which the results of the commission's work are submitted for final judgment.

PUBLIC EDUCATION

In certain circumstances, it is difficult to keep a new charter from becoming a conflict-oriented issue. Political opponents may be critical of a charter commission's efforts to educate the public both during the commission's deliberations and after the conclusion of its work. This is likely to be particularly true if the charter commission makes an active effort to advocate adoption of its proposed charter.

Whatever the case, the charter commission is in a good position to conduct a public education program. The earlier this process is started the greater are the chances for generating widespread interest in the community in the efforts of the commission and in the results of its work. A broad-scale educational program may permit the charter commission to test public reaction to differing viewpoints and proposals which it is considering. An education process can help to prepare the electorate to cast more fully informed votes on the charter question when it is presented to them.

Successful public education programs may be conducted by a variety of techniques. Early in the charter commission's work, a member or sub-committee should be made responsible for posting and publicizing an agenda

prior to all meetings and for issuing complete and accurate press releases promptly following each meeting. Members of the charter commission may make themselves available for interviews and public appearances to explain the purpose of the charter commission and to urge citizen input to its work. It should be made clear from the start that the public is welcome to attend all commission sessions and that the commission will conduct executive sessions only if and when the most urgent circumstances so require.

The charter commission is required to hold at least three public hearings for the purpose of receiving information, views, comments, and other pertinent material relative to its functions. The first hearing must take place within thirty days after the charter commission's organizational meeting. Although only three hearings are required by law, public hearings throughout the charter drafting process can be an effective way to increase both citizen awareness of the charter commission and its work and also to obtain citizen input.

The commission should also consider consulting publicly with county officials and employees in addition to soliciting their views through questionnaires and other surveying efforts. By turning to these officials and carefully considering their views, the commission is more likely to gain the support of this influential group for many proposals which might otherwise be the object of intense opposition.

The foregoing comments largely relate to educational programs which should be undertaken during the course of the charter commission's work. It is after the proposed charter has been drafted and presented to the county legislative body that the most active phase of public information efforts can begin.

The traditional public information techniques such as brochures with brief questions and answers, open letters to the editor with endorsements published in newspapers, interviews on radio and television news programs, public service announcements ⁱⁿ the media are equally applicable to county charter adoption efforts.

One approach which has been found especially effective is for the charter commission members to make themselves available to explain the new charter in public speaking engagements at meetings of various organizations throughout the county.

Still another activity which a Charter Commission should undertake is the preparation and publication of a narrative final report of findings, along with a complete draft of the proposed charter. The narrative can be a statement to the voters in easily understood language spelling out the main features and merits of the new charter and explaining why each provision was proposed. It can help to ensure that the impressions and interpretations made are accurate.

If its purpose is to gain approval of its charter, the charter commission will want to keep in mind yet another dimension of its program. Regardless of the thoroughness of the public education program, it will still not be possible to reach and inform every voter who can be expected to vote in the referendum. Many votes are certain to be determined on the basis of comments expressed and positions taken by community opinion leaders. Three more steps in the educational program are therefore advisable:

- (1) the help and support of influential citizen groups should be sought;

- (2) the editorial support of local newspapers and radio and television stations should be solicited; and finally,
- (3) efforts should be made to gain the endorsements of prominent citizens, county officials, municipal officials, and political party leaders.

Experience has indicated that the outcome at the polls of a referendum on a county charter can be heavily influenced by the support or opposition of any one or all of these groups.

Finally, if a proposed county charter is defeated at the polls, it may be possible to identify specific charter provisions which the voters found unacceptable, to make appropriate changes, and to resubmit the charter at a subsequent election, with resulting success.

IMPLEMENTING THE CHARTER

Voter approval of a county charter sets in motion the all-important process of implementing the transition from the old county government to the new. If the new charter is one which substantially modifies the existing county governmental structure and functions, the implementation should be carefully planned and phased to minimize operational disruptions.

Although the charter commission has no formal role in the implementation process in most cases, its proposed charter should lay a well-thought-out groundwork for the transition. For example, a charter commission can provide valuable help to officials responsible for implementation by preparing outlines of major changes the charter would require and by providing a schedule for accomplishing those changes. Such an outline need not be a

formal part of the charter but can be submitted as a supplement to the charter draft, since it both identifies what needs to be done and proposes a schedule for doing it.

The charter commission should give careful thought to the effective date of the new charter. A number of steps will be involved in the transition, and sufficient time should be provided for their accomplishment. For example, if offices are abolished or powers transferred from one officer to another, consideration should be given to phasing out the old offices at the end of terms.

Second, if the charter provides for new elective offices, the schedule of county elections must be taken into account.

If the charter contains extensive fiscal procedures, it will be necessary to consider the taxpaying schedule, the budget-making schedule, and, in some cases, the inclusion in a transition budget of sufficient funds to cover new positions called for by the charter.

Charter commissions often find it appropriate to include in their charter drafts separate transition articles. These articles apply only to the implementation of the charter in the first instance, and contain such items as the proposed effective date, specific provisions for transfers of personnel where agencies or offices are moved or abolished, and any other provisions designed to facilitate the changes to be brought about by the charter.

THE BASIC DECISIONS

A county charter commission is a decision-making body which must investigate, research and assess any and all issues relating to the structure and functions of government in that county for the purpose of preparing a charter document for submission to the voters.

SCOPE OF CONCERN

Maine's county charter commissions are a new entity. Prior to the enactment of the enabling legislation in 1977, counties had no authority to undertake this activity and, consequently, developed an organizational structure in response to legislation as adopted. The charter commissions will have reasonable flexibility within the parameters of the law, but must be cognizant in its deliberations of the strictures of 30 M.R.S.A. § 1601.

The charter commissions will be faced with many basic decisions such as:

- the organization of county government;
- the election of a county legislative body;
- the method of selecting officers, officials, and employees;
- the establishment of county departments, agencies, boards or commissions and defining their powers and duties;
- the power and authority of county officers or officials to direct, regulate, and control these agencies, departments, boards, and commissions;
- the power and authority to direct and regulate the internal activities of county government; and
- the provisions required for the transition to the new form.

The charter commission will be faced also with conducting its own studies and research in an effort to equip itself with a variety of information to assist in substantive decisions, keeping in mind the special needs and requirements of the particular county and its citizens.

Each county charter commission member must bring to the group his or her own best judgment as to the kind of charter which is best suited to that county.

EXECUTIVE-LEGISLATIVE SEPARATION--FINANCE COMMITTEE

Under present county law, county commissioners serve as the executive/administrative branch of county government, with final approval of county budgets resting with the Legislature. A charter commission, however, may exercise its authority to change this process by providing for a finance committee with the number, term, and method of selection of members being specified in the charter.

A charter commission must ensure that there be equal representation on the finance committee from each commissioner district, with one of the following methods of selection followed:

- (1) appointment by county commissioners from that commissioner's district OR
- (2) selection by municipal officers from within each commissioner district by caucus and election from that district, with the principle of proportional representation followed in the election of the finance committee.

Provision is made that each finance committee shall select its own chairman each year, with no members serving ex-officio and with terms covering at least one full budget cycle.

There is a requirement which must be included in the charter--the county officers (legislative body) must hold one or more public hearings in the county on the budget estimates prior to October 1st. A copy of the final budget estimates must be filed, on forms approved by the Department of Audit, with the State Auditor, who must retain them for a period of three years.

A charter commission in preparing the charter has the option of providing for the election of county officers from 3, 5, or 7 districts, with one officer elected from each district. Again, the charter must specify the number and establish the boundaries of each district.

A basic question to be answered by the charter commission is the area to be served within the county and the advantages and disadvantages of having a larger or smaller number of districts representing the population. There should be a rational basis on which to rest this decision.

EXECUTIVE/ADMINISTRATIVE OPTIONS

A charter commission considering the establishment of a separate office with general administrative powers has two major options: an elected or an appointed position (executive-administrator/manager).

ELECTED COUNTY EXECUTIVE

It is possible to specify that a county executive (administrator/manager) be elected by popular vote. This would make a county executive directly responsible to the voters who elected him and not to the county legislative body. Although this role is somewhat new in county government, it has been adopted in some counties in other states. The elected position is considered comparable to the elected mayor of a city, and specific ingredients may include:

- term of office (usually four years);
- many of the powers and responsibilities outlined in the following section on appointed administrator/manager systems.

The county executive's role may be strengthened if appointments and dismissals of department heads are not made subject to approval of the county legislative body within the framework of the county charter.

It is possible for a charter commission to provide for a certain amount of administrative assistance by establishing variously titled appointed or elected administrators, however, the final responsibility for acts of such administrators, if appointed, would rest with the county commissioners. Such appointments may carry out only the duties and assume only those responsibilities outlined in the body of the charter or delegated by the commissioners.

The duties and authority to perform such duties would technically remain the responsibility of the county commissioners, with the administrator, however designated, functioning solely on their behalf.

The charter would designate the authority to carry out such duties as are normally designated to county commissioners and other county officers, but none would have power or authority beyond that expressly granted, subject to the limits of the State Constitution.

One principal reason for interest in developing a county charter is to provide some form of executive or administrative direction to the business of county government where such need may be adjudged desirable in the opinion of the charter commission and the citizenry.

While the areas of concern are similar whether the county administrator/manager is elected or appointed, there are questions which will have to be answered in the body of the charter as they might apply to the particular county.

Traditionally, in most Maine counties, the county commissioners have held regularly scheduled meetings at which most of their hearings and business transactions take place, with emergency meetings scheduled as required by circumstances. However, there are counties such as Aroostook which encompasses 6,453 square miles, one city, forty-nine towns, and twenty-one plantations. The vast land area of this northernmost county has required that one county commissioner be named to administer the business of the county on a part-time basis.

County clerks have historically handled the clerical work of the county commissioners on a day-to-day basis.

It would be possible, under the terms of a charter, to designate a county administrator to serve in place of the current county treasurer. In this event, the necessary deputies would be responsible for supplementary assistance to the county administrator/treasurer, as outlined in the charter.

APPOINTED ADMINISTRATOR/MANAGER

An appointed administrative director may be called a county manager, administrator or by another appropriate title. The duties and responsibilities to be carried out by a person so designated must be clearly and specifically outlined in the body of the charter. A commitment by the county legislative body to the mandates of the county charter is the key to effective county government under the charter system.

There is a natural comparison between a city or town manager system with an appointed administrator/county manager, because this change could allow for a professionally trained, experienced administrator to carry out the duties of county government, as outlined in the charter. It also removes the administrator/manager from the elected political process, if he/she is named by the county legislative body.

There can be wide variances in the powers and duties of an appointed administrator/manager within each county electing the charter form of county government, but there are still certain basic areas which should be addressed. Some of these are as follows:

- the power to appoint and remove department heads (If confirmation of appointments and dismissals is to be reviewed and confirmed by the county legislative body, this must be spelled out in the charter.);
- authority to prepare the preliminary budget, subject to the approval of the finance committee, as outlined in Title 30, § 1604;
- if the legislative body is to function as the policy-making body and the supervisors of the administrator/manager, this, too, must be clearly stated in the charter;
- a clear understanding on the part of both the county legislative body and the county administrator/manager of the duties and responsibilities of each;
- the powers of the county administrator/manager must be derived from the charter and must not exceed that which the charter establishes and permits; and

- the term of office of a county/administrator may also be established by the county charter, or, alternatively, the office may be limited to service at the pleasure and discretion of the county legislative body.

REAPPORTIONMENT

; In the event of changes in population, as might occur in future U.S. censuses, what provisions should the charter include to provide for reapportioning and redistricting seats within the area covered by the county charter?

There is no example to be used within the charter framework, but careful consideration should be given to this question when the charter is drafted, and a specific plan should be proposed.

THE LEGISLATIVE BODY

Many of the other important decisions that a charter commission will make depend on whether it provides for a county executive or administrator. If there is to be an elected executive, certain arrangements are appropriate to that decision. If on the other hand, there is to be an appointed manager, and the ultimate authority to choose and employ the manager is to reside in the county legislative body, the question to be resolved will be different. In general, however, the areas of concern are similar. Among the most important is a group of issues relating to the structure and operation of the county legislative body.

COMPOSITION

There are several questions which a county charter commission should consider in regard to the formation of the county legislative body:

- Does the proposed composition of the county legislative body meet the federal principle of proportional representation?
- Will the county legislative body have 3, 5, or 7 members?
- How long should the terms of office be?
- Should the members' terms of office be staggered to provide continuity or should all members stand for election at the same time?
- What amount of compensation should members receive for their services?

LEGISLATIVE-EXECUTIVE RELATIONSHIPS

The successful operation of county government under a charter providing for an executive/administrative branch depends in good part on amicable and effective working relationships between the two branches. For this reason, it is important that the charter, by clear allocations of powers and duties, eliminate as many potential friction points as possible.

County legislators should recognize that an elected executive is, in fact, expected to be a leader in matters of policy as well as administration. The executive, in turn, should respect the fact that each legislator has responsibilities in his own constituency and is expected by the voters who elected him to respond to their views and wishes.

Legislative-executive problems often develop because of inadequate flow of information. If legislators are expected to refrain from direct contacts with department heads, it should be clear from the charter that the executive

or manager is to provide requested information promptly and completely. For example, the charter can include provisions requiring the executive to present an annual "state of the county" message to the legislative body and to provide monthly or quarterly reports on the fiscal condition of the county.

A frequent point of legislative-executive friction involves appointments and removals. The charter should clearly identify the appointing and removal authority for each county office. If legislative confirmation is to be required for all or some appointments and removals, that requirement also should be straightforward and clear.

DEPARTMENTS, AGENCIES, BOARDS, COMMISSIONS-- THE ADMINISTRATIVE STRUCTURE

A county charter commission has considerable latitude in restructuring the administrative operations and organization of county government. With the authority to abolish such offices as county treasurer and register of deeds, the charter commission has the opportunity to review a county's present structure, its functions and performance, and alternative administrative functions.

The charter commission will also want to bear in mind that there is no need for the charter to spell out in minute detail either the organization or operating procedures of each department. This can often be accomplished in an administrative code to be adopted later by the county legislative body.

In many cases, it may be enough for a charter to establish a department or agency, specify a method for selecting its head and enumerate in broad terms its powers and functions.

LONG-FORM OR SHORT-FORM CHARTER

Along with other basic decisions, the charter commission will have to determine how much detail it wishes to include in the charter. The question is presented as a choice between a "long-form" or a "short-form" approach.

As might be expected, the choice in fact is rarely so sharply defined, and is more likely to be made between "longer" or "shorter" forms. Many charter commissions which opt for a short form, are likely to find that the results of their work are longer than they had expected.

The essential difference between long and short forms is that the short-form charter contains less detail concerning organizational arrangements and operational procedures. For this reason, the short-form charter usually is accompanied by an administrative code, enacted by the legislative body after the charter is adopted to spell out the necessary details of organization and procedures.

It is sometimes said that a charter specifies "what is to be done and who has authority to do it" and the administrative code spells out "how it is to be done." One advantage of the short-form approach is that it permits the separation of the essentials of county organization and allocation of powers and duties from voluminous administrative detail.

The short-form charter makes it possible to present to the voters in a referendum a relatively simple, more easily understood document in which only essential organizational matters are covered, along with basic allocations of powers, duties, and authority.

Summary of Existing Statutes Relating to County Government

The following is a listing of the various statutory provisions relating to the county form of government. Statutory references are to sections of Title 30 of the Maine Revised Statutes Annotated, unless otherwise noted.

Those sections marked with an asterik (*) would become inapplicable to the county upon the adoption of a county charter and, hence, would be controlled by provisions of the new charter.

<u>A. County Officers and Employees</u>	<u>Section</u>
1. (a) Elections for 4 year terms with districts established by legislature.	101*
(b) Salaries established by legislature.	105-R* 2*
2. <u>District Attorney</u> : Elected for 4 year terms with salary established by legislature.	451, 553-B
3. <u>County Clerk</u> : Appointed by county commissioners.	201*
4. <u>County Sheriff</u> :	
(a) Elected for 2 year term.	State Consti.
(b) Salary established by legislature.	2*
5. <u>Deputy Sheriffs</u> : Appointed by sheriff with approval of county commissioners or personnel board.	951
6. <u>Treasurer</u> :	
(a) Elected for 4 year term.	601*
(b) Salary established by legislature.	2*
7. <u>Register of Deeds</u> :	
(a) Elected for 4 year term.	Title 33, Sec. 601*
(b) Salary established by legislature.	2*
8. <u>Register of Probate</u> :	
(a) Elected for 4 year term.	State Consti.
(b) Salary established by legislature.	2*
9. <u>Probate Judge</u> :	
(a) Elected for 4 year term.	State Consti.
(b) Salary established by legislature.	2*
10. <u>County engineer</u> : Appointed by County commissioners.	
11. Approve appointment of deputy treasurer.	651*
12. Authority to appoint county clerk.	201*
13. Authority to appoint county administrator in lieu of county clerk.	202*

1. Budgetary responsibilities:

(a) Prepare budget estimates; hold public hearing; transmit to legislative delegation and Secretary of State.

252, 253

(Note: Charter commission can propose alternative method involving finance committee).

(b) Cause taxes to be assessed to various municipalities.

251

(c) Authority to accept and expend federal and state grants.

255

2. Financial responsibilities:

(a) May borrow in anticipation of taxes and issue notes and securities.

401-A

(b) May establish various reserve accounts.

403

(c) May obtain loans of less than \$10,000 without going to county-wide vote.

404

(d) Approve County treasurer's deposits of funds in banks.

701

(e) Approve salaries of clerks working in various departments, office hours and fringe benefits.

801*

(f) Provide District Attorney with sufficient funds for clerk hire, travel and office expense.

555-A

(g) May borrow under Municipal Bond Bank Act.

5161

(h) May participate in and expend funds for food stamp program (County pays 1/3 of Administrative cost).

416

Title 22, § 3104

(i) May expend funds for "priority social service programs" or other non-welfare programs as authorized by the legislative delegation.

420

(j) May expend up to \$5,000 annually to promote natural resources of county.

Title 10, § 2

3. Property

(a) Provide and maintain courthouse and jails.

301

(b) Inventory all property owned by county on Jan. 1.

303

(c) Use competitive bidding system for construction over \$2,500, and services and purchases over \$500.

304

(d) Maintain public records under "Public Records Law".

(e) Authority to lay out, alter, close for maintenance and discontinue highways in unincorporated areas.

Title 23, § 2051

(f) Authority to acquire lands for development or enlargement of airports.

Title 6, § 121

(g) Condemnation powers relating to:

(1) grounds around courthouse;

301

(2) airports; and

Title 6, § 121

(3) highways.

Title 23, 2051

Section

- | | | |
|-----|---|------------------|
| 4. | Authority to enter into cooperative agreements with municipalities and other political sub-division ("Interlocal Cooperation"). | 63 |
| 5. | Required to set "publication of notice" rates for Register of Deeds and Register of Probate. | 65 |
| 6. | May operate solid waste collection and disposal service or contract for such services. | 413 |
| 7. | Required to establish and maintain true meridian line for use by surveyors. | 1151 |
| 8. | May expend funds to purchase accident and disability insurance for paid or volunteer firefighters. | 1205 |
| 9. | May provide civil defense activities (civil emergency preparedness). | 1251 |
| 10. | May become a member of a regional planning commission. | 1301 |
| 11. | May participate in community mental health program. | Title 34, § 2051 |
| 12. | May participate in county extension service program (commissioners must appropriate funds). | Title 7, § 191 |
| 13. | May participate in soil and water conservation program. | Title 12, § 1 |
| 14. | May establish County Personnel Board. | 1131 |
| 15. | May review function in condemnation actions of U.S. Government. | Title 1, § 20 |

C. County Law Enforcement Functions

- | | | |
|----|---|--------------|
| 1. | <u>Sheriff's Office:</u> | |
| | (a) Approve the appointment of deputy sheriffs. | 951 |
| | (b) Review operation of sheriff's department on regular basis. | 1001 |
| | (c) Authority to file complaint for removal with Governor if sheriff is not faithfully or efficiently performing duties. | 1111 |
| 2. | Under the 1977 legislation county governments were empowered to perform the following functions: | 1121 et seq. |
| | (a) Patrol throughout the county and enter into contracts with municipalities to provide specific patrol functions for a fee. | |
| | (b) Establish a communications center separate from that of sheriff's department and capable of serving communication needs of county and municipalities wishing to use it. | |

- (c) Provide detention facilities (mandatory).
- (d) Provide investigation, intelligence and laboratory services within sheriff's department.
- (e) Provide rescue services through sheriff's department.
- (f) Provide ambulance service:
 - (i) to all municipalities in county wishing to participate; or
 - (ii) by municipal-county contract. (No county tax revenues can be used for this service).
- (g) Provide juvenile services.