

General Overview and Background *

Georgia Municipal Charters

Introduction

1. The 1933 Code of Georgia defined a municipal corporation as follows: "[a] public corporation is one having for its object the administration of a portion of the powers of government delegated to it for that purpose...."
2. Black's Law Dictionary defines it as "a city, town, or other local political entity formed by charter from the state and having the autonomous authority to administer the state's local affairs."
3. Finally, court cases recognize that a municipal corporation is a legal institution created by a charter granted by a sovereign power to a populous community of a designated area for the purpose of providing a subordinate self-governing body politic to solve local problems.
4. As a result, municipal corporations are public corporations, i.e., legal institutions, created for political purposes and endowed with political powers to further the interests of the public.
5. Municipal corporations are local governments which are governed by elected officials and which have the power of taxation and possess self-governing characteristics. One distinguishing characteristic of this form of government, however, is that it is created by a charter enacted into law by the state legislature.
6. The charter establishes the political structure or framework of the municipal corporation, contains a number of detailed provisions granting general or specific powers, divides powers and duties, establishes specific prohibitions, and proclaims general or specific guides to the proper conduct of local affairs. Since it is a legal creature of the state, the municipal corporation's nature and existence can be altered or terminated by the state.

Legal Controls

1. Municipal corporations in Georgia are governed by several levels of law: federal and state constitutions, general laws and local laws. The Constitutions of the United States and Georgia limit the powers of municipal corporations through protections for freedom of religion, speech and the press, the right to due process of law, and guarantees of equal protection. Municipal action is also limited by the federal Constitution with respect to interstate commerce. The Georgia Constitution is also an important source of authorizations and limitations for Georgia cities.
2. One oddity of Georgia law is that the 1945 and the 1976 Georgia Constitutions permitted local constitutional amendments. These were amendments to the state constitution that were applicable to one or just a few political subdivisions of the state and voted on by the people in those areas. The 1983 Georgia Constitution

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prohibited the enactment of future local constitutional amendments but provided a mechanism for continuing existing ones. Thus, some municipalities may be subject to local constitutional amendments which are not published as part of the Georgia Constitution.

3. Though municipalities are controlled by general state and federal laws, an important source of authorization and control over the operation of a municipal corporation is its local charter. In the past, the charter was a document of enumerated powers to which the city was limited, but since the acceptance of the "home rule" idea in Georgia, the charter can be an instrument that grants broad powers over local affairs.

Municipal Charters

1. The creative act establishing the municipal corporation is usually called the municipal charter. In English law, the municipal charter was a written instrument which contained a grant from the crown to a community of people specifying the corporate powers, privileges, rights and duties. Today, the charter is the organic law which governs and controls the municipality and may be enacted or repealed with or without requiring a referendum.
2. In order to be incorporated, certain minimum requirements dealing with the area and population must be met. Once a charter is granted, it may be amended in two ways: (1) by local act, or (2) by "home rule" charter amendment. However, changes "affecting the composition and form of the municipal governing authority, the procedures for election or appointment of the members thereof, and the continuance in office and limitation thereon for such members" may only be accomplished by action of the General Assembly.
3. Some of the features commonly found in municipal charters include:
 - Provisions governing incorporation, boundaries and powers;
 - Provisions governing the structure and form of the government;
 - Administrative organization and function;
 - Judicial powers and procedures;
 - Election procedures and regulations;
 - Financial procedures; and
 - General provisions.

Process

1. Having met the minimum legal requirements of incorporation and basic decisions about the name of the city, its boundaries, and general form of government, the special committee of the city must consult with the local legislative delegation. Our state legislator must sponsor an Act re-creating the municipal charter and must have a clear understanding of what is taking place so that it can be introduced into the legislative process in a timely manner.

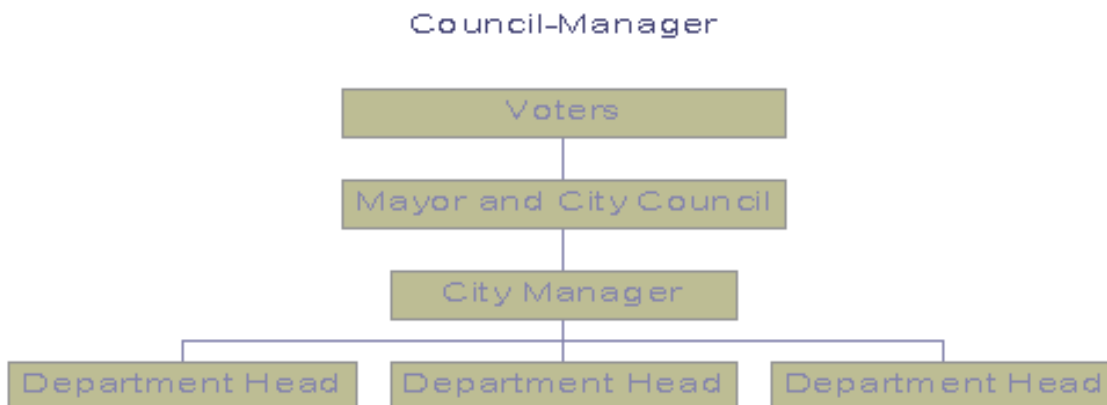
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2. After the city develops and approves a draft charter, it is provided to our legislative delegation, which in turn provides our approved draft to the office of legislative counsel. This office will prepare a final draft of the Act to incorporate and then our legislative delegation will send the draft Act back to the city for final approval.
3. When the final draft Act is approved by the city, the local delegation reviews and signs off on it and places it on the consent agenda for consideration by the general assembly. Typically, such local Acts are handled as a common courtesy and are routinely approved without opposition from other delegates.

Specific Forms of Government

1. In Georgia, there are three basic forms of municipal government: the council-manager form; the weak mayor-council form; and the strong mayor-council form. These are basic, broad categories only and within each of these forms of government there are many variations.
2. The three forms represent a continuum dividing powers and duties between the mayor and the council. Under the council-manager form of government, typically the mayor is primarily a councilmember who is first among equals and who serves as ceremonial leader of the city.
3. In the weak mayor-council form, the mayor has some administrative tasks but is primarily involved as a member of the council. A clear separation of powers, as in our national government, comes into operation under the strong mayor-council form of government.

A. Council-Manager Form of Government



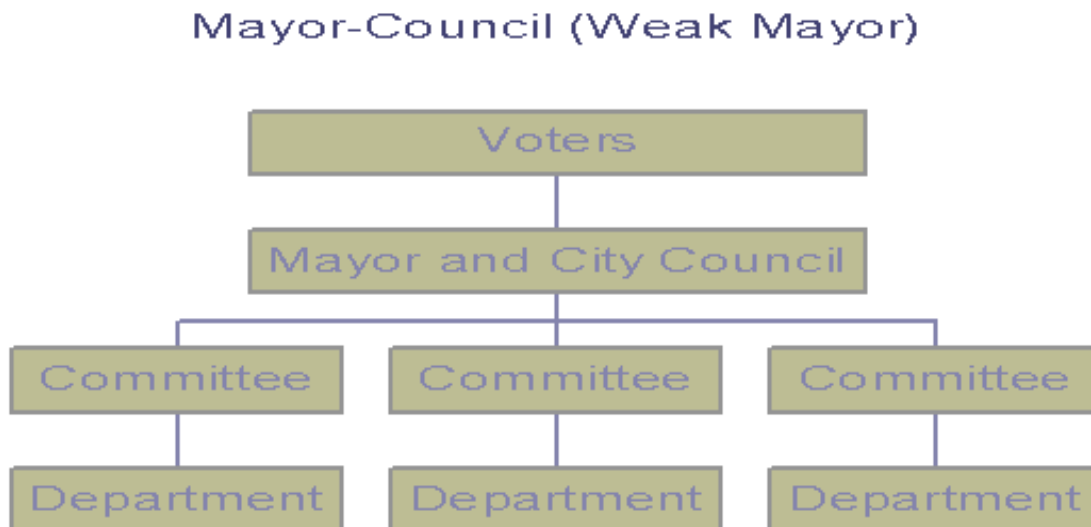
1. The council-manager form of government first appeared on the local government scene in the early 1900's. This particular form of government derives its name from the fact that a professional city manager is hired to administer the daily affairs of the city with the oversight of the city council. The councils are usually small in size, and

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are responsible for establishing governmental policy and for supervising the city manager. The council-manager approach is a very popular form of government in a number of our nation's medium-size cities.

2. One of the favorable characteristics of this form of government is the fact that all of the administrative authority is concentrated in one individual. This person is usually much more qualified to manage the day-to-day affairs of the city than the average city official because of specialized experience and training in the area of city management. In addition, if the manager is found to be incompetent or inefficient, the council has the power of appointment and removal.
3. The council-manager plan also serves to separate politics from actual administration of government. Although this seems to be an obvious advantage, it leads to a major criticism of this system. Some people feel that a person who is not elected by the people should not be given such enormous responsibility and authority. Usually, a separate charter article or group of sections outlines the various powers, duties and prohibitions of the manager.

B. Mayor-Council Form of Government (Weak Mayor)

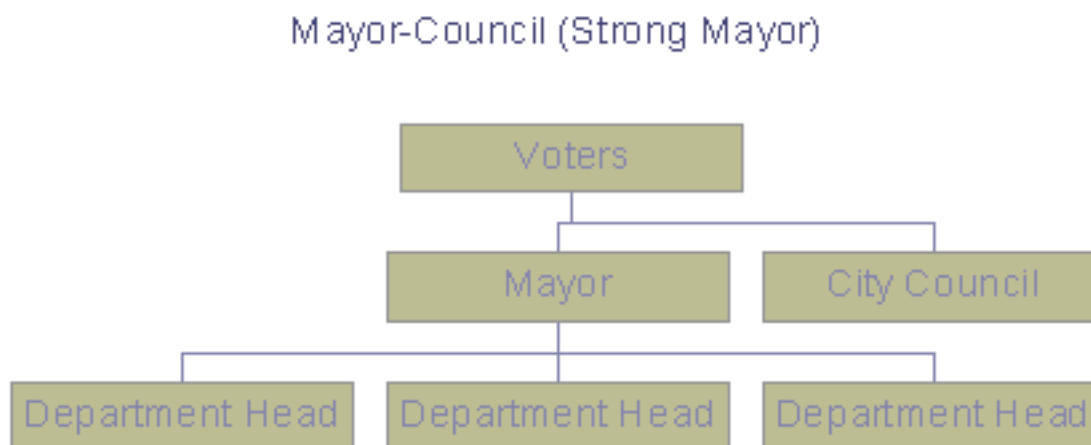


1. In the past, many Georgia communities have made use of the weak mayor form of government. In this form of government the majority of executive powers, as well as legislative powers, are vested in the city council. Numerous disadvantages of this plan are the reason for its decline in popularity and use.
2. The governmental power is vested in a city council instead of a mayor. Major decisions must be made by these people, all of whom have different views and interests. Different factions on the council may make efficient decision-making rather difficult.

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3. The main advantage of this system is that it keeps control of the government out of the hands of any single person, so a corrupt or inept individual could do little to harm the city and its citizens.

C. Mayor-Council Form of Government (Strong Mayor)



1. Some Georgia cities have what is called the strong mayor form of government. This plan usually provides for an elected mayor for a fixed term with appointive and removal powers over department heads, powers over financial affairs, and some control over the budget.
2. The city council remains responsible for enacting municipal legislation in the form of ordinances and resolutions and has the role of enacting municipal policy, while administrative and operational responsibilities are retained by the mayor. Normally, there is a sharp separation of powers between the mayor as the chief executive and the council as the legislative branch.
3. Often, there is a limited system of checks and balances similar to our national government such as mayoral veto power and the council's ability to override vetoes.
4. Under the strong mayor form of government, the powers of the mayor generally include strong financial and appointive powers. The mayor is not only chief executive in form but also in substance. The mayor is the administrative head of the executive branch as well as the ceremonial representative of the government.

D. City Commission

1. The city commission is a fourth form of municipal government similar to the weak mayor-council plan. A typical city commission consists of three to nine members, each of which also serves as a director of one of the city's administrative departments.

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2. A mayor is selected from the membership of the commission and serves as the presiding officer and the ceremonial head of the city, but the mayor typically has no further executive duties. The benefit of such a plan is that it divides duties so that no one person becomes too powerful and allows the mayor to focus on being responsive to citizens. The disadvantage to this form of government is similar to that of the weak mayor, in that the lack of a central decision-maker makes coming to a resolution more difficult.
3. Additionally, this form of government has been criticized for placing direct management of city departments in the hands of individual elected officials who usually are not experts trained in the field they are supervising.

Preclearance

Finally, Section 5 of the Voting Rights Act of 1965 must be mentioned. This Act requires federal preclearance whenever Georgia or one of its political subdivisions enacts or seeks to administer "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972". A city may either obtain a declaratory judgment in the United States District Court for the District of Columbia that such action does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or have the chief legal officer or other appropriate official of such state or subdivision submit the action to the Attorney General of the United States for approval by the United States Department of Justice. Thus, almost every action by a city in the election area, whether by charter or ordinance, is subject to prior approval under the Act.

* Redacted from the GMA Model Municipal Charter, Fourth Edition (2007)