

Opinion

Christine O. Gregoire

Attorney General of Washington

COUNTIES – CHARTERS – FREEHOLDERS – Authority of county officials to submit alternative provisions for proposed county charter to voters.

When the state constitution authorizes alternative provisions of a new county charter to be submitted to the voters, it refers exclusively to charter provisions drafted and submitted by the freeholders who have prepared the proposed charter; the law does not permit the county commissioners or any other person to submit alternative provisions to be voted on with the original proposal.

August 4, 1999

The Honorable Bradley W. Anderson
Skamania County Prosecuting Attorney
PO Box 790
Stevenson, WA 98648

Cite As:
AGO 1999 No. 8

Dear Mr. Anderson:

By letter previously acknowledged, you have requested our opinion on the following paraphrased questions:

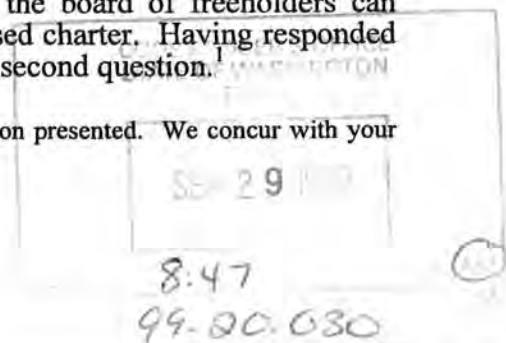
- 1. When a board of freeholders drafts and submits a proposed county charter, can any party other than the freeholders propose an alternative charter or alternative article to be submitted to the voters along with the charter proposed by the freeholders?**
- 2. If you conclude that someone other than the board of freeholders can submit alternative proposals, then a number of additional questions follow. First, how would these alternative proposals be submitted? Second, what would be the deadline for submitting alternatives? Third, if alternatives are permitted, how should the ballot be formatted? Fourth, how should votes be tallied?**

BRIEF ANSWER

We answer your first question by concluding that only the board of freeholders can propose an alternative charter or an alternative article for a proposed charter. Having responded to your first question in this way, it is unnecessary to address your second question.

¹ Your inquiry to us included your own analysis of your first question presented. We concur with your conclusion and with your well-reasoned analysis.

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ANALYSIS

1. When a board of freeholders drafts and submits a proposed county charter, can any party other than the freeholders propose an alternative charter or alternative article to be submitted to the voters along with the charter proposed by the freeholders?

The state constitution provides that the Legislature shall establish a uniform system of county government throughout the state. Const. art. XI, § 4. It also provides the people of each county with the ability to opt out of that uniform system by adopting their own "Home Rule" charter. *Id.* Your question concerns the process by which a proposed charter can be presented to the voters in a manner that allows them to choose from among alternatives.

Three provisions of the state constitution provide for local charters. Article XI, section 4 provides for the adoption of county Home Rule charters. Article XI, section 16 provides for the adoption of consolidated city-county charters in terms that vary somewhat from those set forth in section 4.² Some cities may also adopt charters pursuant to article XI, section 10. We understand your question to relate only to county charters proposed under section 4 and therefore limit our analysis to that section of the constitution. Because of its length, we attach a copy of section 4 rather than quoting it in the body of this opinion.

A brief summary of section 4 is necessary for this analysis. Its first paragraph states that the Legislature shall provide for a uniform system of county government throughout the state with a local option for organization on the basis of township. Const. art. XI, § 4.

The language most applicable to your question appears in the second paragraph of section 4. That paragraph begins by stating that a county may, at its option, "frame a 'Home Rule' charter for its own government subject to the Constitution and laws of this state". *Id.* It explains that the county legislative authority can begin the process of drafting and proposing a charter by causing an election to be held for a board of freeholders. The freeholders, numbering between 15 and 25 qualified electors who have lived in the county for at least five years, must convene within 30 days after they have been elected to begin drafting a proposed county charter. After they have completed their proposed charter, it shall be submitted to the voters of the county. If a majority approves it, the charter is adopted. After it has been adopted, "[s]uch charter may be amended by proposals therefor submitted by the legislative authority of said county to the electors thereof at any general election . . . and ratified by a majority of the qualified electors voting thereon." *Id.*

The second paragraph concludes by providing the following: "In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others." *Id.* Since this sentence does not explain who would propose such an alternative, you inquire as to whether anyone other than the board of freeholders can propose one.³

² See AGO 1994 No. 20.

³ Section 4 continues for seven more paragraphs after the provisions that have already been summarized. Those paragraphs do not relate to the questions you have posed, although they do include additional details regarding the scope and provisions of a county charter, the election of freeholders, and the transition to implementation of the charter.

Consideration of the role played by the board of freeholders dictates the conclusion that they are the sole body that can propose an alternative to a proposed charter or article. The deliberative process afforded by the freeholders is a key component of the constitutional structure surrounding the proposal of a charter. The freeholders can consider competing ideas and synthesize them into a document that can be more readily presented to the voters. If any alternative idea could simply be presented directly on the ballot, without the orderly mechanism of the board, then chaos would become the hallmark of the process. See Ford v. Logan, 79 Wn.2d 147, 157, 483 P.2d 1247 (1971) (recognizing that the constitution has assigned to the freeholders the task of formulating charter proposals for consideration by the voters).

At no point does section 4 mention anybody other than the freeholders in the context of proposing a new charter or alternatives to the freeholders' proposal. Additionally, when the voters approved the current language of section 4 in 1948 (as Amendment 21), the argument in favor of the amendment observed that charters were to be written by citizens elected for that purpose. Voters Pamphlet 32 (1948). We see no support, either in the text of the constitution or in the purpose of its provisions, for the contention that another party could formulate proposals outside the constitutionally-established deliberative process by proposing an alternative when it comes time to present the charter to the voters. Ford, 79 Wn.2d at 157.

The context of the sentence permitting alternatives provides additional support for our analysis. A constitutional provision must be read in its entirety to give effect to its entire text. See Farris v. Munro, 99 Wn.2d 326, 333, 662 P.2d 821 (1983). "The text necessarily includes the words themselves, their grammatical relationship to one another, as well as their context." Malyon v. Pierce Cy., 131 Wn.2d 779, 799, 935 P.2d 1272 (1997).

The sentence in question provides the option of presenting a charter or amendment along with an alternative. It appears at the end of a paragraph in the constitution that says a county can adopt a Home Rule charter by electing freeholders. It then goes on to explain the role of the freeholders in drafting and proposing a charter and sets forth the procedure for conducting an election for voter approval or rejection of the charter. The same paragraph then explains that after a charter is enacted, it may be amended through proposals referred to the ballot by the county legislative authority. Only after providing an amendment process does the constitution mention alternative proposals. Const. art. XI, § 4 (second paragraph).

The sentence providing for alternative proposals clearly encompasses both the initial approval or rejection of the charter by the voters and the voters' approval or rejection of a subsequent amendment. The freeholders draft the original proposal, while the county legislative authority can later propose amendments to a charter that has already been adopted. Id. It is therefore not surprising that the sentence does not state who proposes an alternative, because the sentence covers both situations. In context, it seems plain that the freeholders would propose an alternative to a proposed charter, while an alternative to an amendment would originate with the legislative authority.

Finally, the words chosen in framing this provision support this conclusion. The constitution provides the following: "In submitting any *such* charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others." Const. art. XI, § 4 (emphasis added). The word "such" can only reasonably be construed as referring back to the proposed charter described earlier in the paragraph, drafted by the freeholders. Black's Law Dictionary 1432 (6th ed. 1990) (defining "such" as referring to that which has already been mentioned).

ATTORNEY GENERAL OF WASHINGTON

Honorable Bradley Anderson

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For these reasons, we answer your first question by concluding that only the board of freeholders can propose an alternative to a proposed charter or an alternative article or proposition for a proposed charter.

Your second question, repeated for ease of reference, inquired:

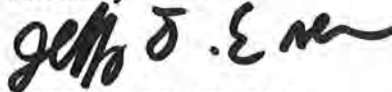
- 2. If you conclude that someone other than the board of freeholders can submit alternative proposals, then a number of additional questions follow. First, how would these alternative proposals be submitted? Second, what would be the deadline for submitting alternatives? Third, if alternatives are permitted, how should the ballot be formatted? Fourth, how should votes be tallied?**

Our answer to your first question makes it unnecessary to respond to your second question.

We trust that this analysis will be of assistance.

Very truly yours,

CHRISTINE O. GREGOIRE
Attorney General



JEFFREY T. EVEN
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JTE:pmd

Article XI Section 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION. The legislature shall establish a system of county government, which shall be uniform throughout the state except as hereinafter provided, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general law.

Any county may frame a "Home Rule" charter for its own government subject to the Constitution and laws of this state, and for such purpose the legislative authority of such county may cause an election to be had, at which election there shall be chosen by the qualified voters of said county not less than fifteen (15) nor more than twenty-five (25) freeholders thereof, as determined by the legislative authority, who shall have been residents of said county for a period of at least five (5) years preceding their election and who are themselves qualified electors, whose duty it shall be to convene within thirty (30) days after their election and prepare and propose a charter for such county. Such proposed charter shall be submitted to the qualified electors of said county, and if a majority of such qualified electors voting thereon ratify the same, it shall become the charter of said county and shall become the organic law thereof, and supersede any existing charter, including amendments thereto, or any existing form of county government, and all special laws inconsistent with such charter. Said proposed charter shall be published in two (2) legal newspapers published in said county, at least once a week for four (4) consecutive weeks prior to the day of submitting the same to the electors for their approval as above provided. All elections in this section authorized shall only be had upon notice, which notice shall specify the object of calling such election and shall be given for at least ten (10) days before the day of election in all election districts of said county. Said elections may be general or special elections and except as herein provided, shall be governed by the law regulating and controlling general or special elections in said county. Such charter may be amended by proposals therefor submitted by the legislative authority of said county to the electors thereof at any general election after notice of such submission published as above specified, and ratified by a majority of the qualified electors voting thereon. In submitting any such charter or amendment thereto, any alternate article or proposition may be presented for the choice of the voters and may be voted on separately without prejudice to others.

Any home rule charter proposed as herein provided, may provide for such county officers as may be deemed necessary to carry out and perform all county functions as provided by charter or by general law, and for their compensation, but shall not affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts.

Notwithstanding the foregoing provision for the calling of an election by the legislative authority of such county for the election of freeholders to frame a county charter, registered voters equal in number to ten (10) per centum of the voters of any such county voting at the last preceding general election, may at any

time propose by petition the calling of an election of freeholders. The petition shall be filed with the county auditor of the county at least three (3) months before any general election and the proposal that a board of freeholders be elected for the purpose of framing a county charter shall be submitted to the vote of the people at said general election, and at the same election a board of freeholders of not less than fifteen (15) or more than twenty-five (25), as fixed in the petition calling for the election, shall be chosen to draft the new charter. The procedure for the nomination of qualified electors as candidates for said board of freeholders shall be prescribed by the legislative authority of the county, and the procedure for the framing of the charter and the submission of the charter as framed shall be the same as in the case of a board of freeholders chosen at an election initiated by the legislative authority of the county.

In calling for any election of freeholders as provided in this section, the legislative authority of the county shall apportion the number of freeholders to be elected in accordance with either the legislative districts or the county commissioner districts, if any, within said county, the number of said freeholders to be elected from each of said districts to be in proportion to the population of said districts as nearly as may be.

Should the charter proposed receive the affirmative vote of the majority of the electors voting thereon, the legislative authority of the county shall immediately call such special election as may be provided for therein, if any, and the county government shall be established in accordance with the terms of said charter not more than six (6) months after the election at which the charter was adopted.

The terms of all elective officers, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, who are in office at the time of the adoption of a Home Rule Charter shall terminate as provided in the charter. All appointive officers in office at the time the charter goes into effect, whose positions are not abolished thereby, shall continue until their successors shall have qualified.

After the adoption of such charter, such county shall continue to have all the rights, powers, privileges and benefits then possessed or thereafter conferred by general law. All the powers, authority and duties granted to and imposed on county officers by general law, except the prosecuting attorney, the county superintendent of schools, the judges of the superior court and the justices of the peace, shall be vested in the legislative authority of the county unless expressly vested in specific officers by the charter. The legislative authority may by resolution delegate any of its executive or administrative powers, authority or duties not expressly vested in specific officers by the charter, to any county officer or officers or county employee or employees.

The provisions of sections 5, 6, 7, and the first sentence of section 8 of this Article as amended shall not apply to counties in which the government has been established by charter adopted under the provisions hereof. The authority conferred on the board of county commissioners by Section 15 of Article II as amended, shall be exercised by the legislative authority of the

county.[AMENDMENT 21, 1947 Senate Joint Resolution No. 5, p 1372.
Approved November 2, 1948.]

Original text – Art. 11 § 4 COUNTY GOVERNMENT AND TOWNSHIP ORGANIZATION – *The legislature shall establish a system of county government which shall be uniform throughout the state, and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county voting at a general election shall so determine, and whenever a county shall adopt township organization the assessment and collection of the revenue shall be made and the business of such county, and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.*