

J B G & H
MEMORANDUM

TO: County Commissioners and Charter Commission Candidates
FROM: Ken Cole
RE: Charter Commission Questions
DATE: August 5, 2003

The charter commission candidates requested an overview of their authority, should the formation of a Charter Commission be approved in November, 2003. I enclose an outline based on what was done 23 years ago. The current statute, Title 30-A of the Maine Revised Statutes at Section 1351, provides that the Charter of any county shall address the following:

1. The organization of county government.
2. The election of a county legislative body and the method of selecting the officers, officials and employees.
3. The establishment of county departments, agencies, boards and a description of their powers.
4. The internal activities of county government and
5. The provisions required for the transition to the new form.

Although this may seem incredibly broad, there are then limitations such as that a county adopting a charter may provide for the election of county officers from three, five or seven districts and establish the boundaries of those districts so that the idea of a county legislature with numerous members would not be permitted. Similarly, the statute indicates that the county may only exercise those powers specifically set forth in the charter but in no event may a county through a charter exercise any power that the legislature has not conferred on the county either expressly or by clear implication—such as the method of raising money for county expenditures. Further, Section 1352 makes it clear that the charter must designate who will carry out the duties of the existing county commissioners and makes it clear that at least as to registers of deeds and county treasurers, that those offices may be abolished. As to the sheriff, register of probate, probate judge and district attorney, those offices are included in the Maine Constitution and, absent an amendment permitting those offices to become appointive, they must remain elected.

Finally, as to the finance committee, the general statute at this point provides for a nine member committee, three from each of the three commissioner districts which is advisory only. The charter statute at Section 1553 provides that the budget must first be approved by a vote of the finance committee and leaves open to the charter the number,

term and method of selection of its members only requiring that each commissioner district be represented, but then allowing only two alternatives for the selection of members, one being the appointment by the county commissioner for the particular district and two being election at a district caucus.

An additional issue that was discussed related to the timing of the commission report. The statute, at Section 1322(5)(b) requires that the commission will within nine months submit their preliminary report to the county clerk and within 12 months submit a final report to the county commissioners. It then goes on to indicate that the election in regard to the adoption of the charter cannot be held for at least 60 days thereafter. Given the formation of the commission on this November ballot, that would basically mean that either this commission works incredibly rapidly in order to have a completed preliminary report done within well under nine months of their election so that a final report can be submitted well within 10 months of their election for a ballot in November of 2004 or they will be forced to adopt the allowed two year extension and look to the November 2005 referendum election date.

Finally, the only other open question I believe from Monday, August 4th's meeting was the filling of vacancies. Commissioner Feeney correctly described the provision at Section 1322(2) which states that vacancies occurring among the elected commission members are filled by the commission from the voters within the district that the vacancy had occurred. Vacancies from within the appointed members are filled by the county commissioners.

I look forward to working with the charter commission once it has been elected and duly formed and would be happy to provide any practical and/or legal advice requested by either them or the county commissioners thereafter.