

Beginning Government Study Commission Process

The decision of whether or not to study a municipal government and consider the advisability of change is made by the voters. At the same time this decision is made, the voters elect a group of citizens to conduct the study and report their recommendations back to the electorate for final decision. The entire process can be begun either by the governing body of the municipality, or by a group of citizens through the initiative process.

Placing the Government Study Commission Question on the Ballot

The Home Rule Law provides two alternate methods for placing the question of having a government study commission on the ballot. The question may be initiated either by (1) an ordinance of the municipal governing body or (2) a petition of the registered voters of the municipality. The ordinance or petition must designate one of the three questions permitted by the Home Rule Law.

Government Study Commission Questions. The Home Rule Law contains three questions — one must be selected to be placed on the ballot in drawing up the ordinance or petition. The choice of the question will restrict the government study commission to a consideration of an optional plan, a home rule charter, or allow it to choose either an optional plan or a home rule charter. The text of the questions as set forth in the Home Rule Law follows.¹

- (1) “Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government and to recommend whether or not an optional plan of government should be adopted?”
- (2) “Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of a home rule charter; and if advisable, to draft and to recommend a home rule charter?”
- (3) “Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government or a home rule charter; to recommend the adoption of an optional form of government, or to draft and recommend a home rule charter?”

In addition to choosing one of the three questions, the petition or ordinance must designate whether the proposed government study commission is to have seven, nine or eleven members.

Initiation by Ordinance. An ordinance to place a government study commission on the ballot must be adopted by the governing body of the municipality, that is, the county commissioners, city council, borough council, or township commissioners or supervisors. There is no required form for the ordinance. However, it must specify one of the three questions to be placed on the ballot and designate the number of members to be elected to the government study commission.

Within five days after the final enactment of an ordinance, the municipal clerk or secretary must file a certified copy of the ordinance with the county board of elections, together with a copy of the question to be submitted to the voters. The county board of elections will submit the question to the voters at the next primary, municipal or general election occurring not less than the thirteenth Tuesday after the ordinance is filed. The deadline for filing an ordinance to appear on the next election is thirteen weeks before the date of the election.²

Initiation by Petition. The question of having a government study commission may also be put on the ballot by petition. The petition must specify one of the three questions provided in the Home Rule Law and designate the number of members for the proposed government study commission. The petition must be signed by a sufficient number of registered voters of the municipality to equal at least five percent of the number of persons voting for the office of governor in the last gubernatorial general election within the municipality.³ No petition may be signed or circulated prior to the twentieth Tuesday before the election.⁴

After the petition has been properly signed by one third of the number of registered voters required, written notice of this fact should be filed by the circulators in the office of the county election board and the office of the municipal secretary.⁵ A copy of the notice is then posted in each of these offices.

Individuals signing the petition must give their occupation, place of residence and the date of signing.⁶ Petitions may be composed of more than one sheet of paper. Each sheet must be accompanied by an affidavit of the circulator.⁷ The referendum petition must be filed by the thirteenth Tuesday prior to the primary, municipal or general election where the question is to appear on the ballot.⁸

When Question Prohibited. No question for election of a government study commission may be initiated either by ordinance or by petition while proceedings are pending under any other ordinance or petition filed subject to the Home Rule Law. Proceedings are considered to have begun on the date of the governing body's final vote passing the ordinance or when one third of the required number of signatures for the petition have been obtained.⁹

A referendum on a question for election of a government study commission cannot be held on the same question within four years after the question has been defeated.¹⁰ However, referendum on one of the other two questions may be held within the four year period. Also, a government study commission can be elected within five years after a proposed charter or optional plan proposed by a preceding government study commission was defeated at the polls.¹¹

References

1. 53 Pa.C.S. 2901(a); Home Rule Charter and Optional Plans Law.
2. 53 Pa.C.S. 2911(e); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2911(b); Home Rule Charter and Optional Plans Law.
4. 53 Pa.C.S. 2911(e); Home Rule Charter and Optional Plans Law.
5. 53 Pa.C.S. 2911(c); Home Rule Charter and Optional Plans Law.
6. 25 P.S. 2868; Pennsylvania Election Code, Section 908.
7. 25 P.S. 2869; Pennsylvania Election Code, Section 909.
8. 53 Pa.C.S. 2911(e); Home Rule Charter and Optional Plans Law.
9. 53 Pa.C.S. 2927(b); Home Rule Charter and Optional Plans Law.
10. 53 Pa.C.S. 2927(a); Home Rule Charter and Optional Plans Law.
11. *Commonwealth ex rel. Baker v. Lackawanna County Board of Elections*, C.P. Lackawanna Co., No. 316, March Term, 1975.

Electing Members of the Government Study Commission

At the same election where the question of having a government study commission is on the ballot, voters are also asked to elect the designated number of members for the commission. Even voters opposing having a government study commission are to vote for members of the commission.

The Home Rule Charter and Optional Plans Law establishes a detailed procedure for simultaneously presenting to the electors two related questions – the first, whether a home rule study should be undertaken and secondly, the election of members to a study commission if the vote is favorable to such a study.¹

Eligibility. The only eligibility requirement for candidates for the office of study commissioner is that they be registered voters of the municipality.² Current officeholders, including local, school, county and state officials are eligible to serve as members of government study commissions. As the office is nonpartisan, persons covered by local or state civil service regulations are also eligible to serve.

Nomination Papers. Candidates are nominated by filing nomination papers. The nomination papers must include the name and address of the candidate, identify the person as a candidate for the office of government study commissioner, and state the signers are legally qualified to vote for the candidate.³ The nomination papers may not carry any political party designation or slogan.⁴

Nomination papers may be circulated and signed within a time period between the thirteenth and the tenth Tuesday before the election. Candidates must obtain signatures of registered voters equal to at least two percent of the number of votes cast for governor in the last gubernatorial general election within the municipality, or two hundred registered voters whichever is less.⁵ Each voter signing a nominating paper must list their occupation and residence, including street number and post office address. Each voter may sign nominating papers for as many candidates as the number of members proposed for the government study commission.⁶

Each nomination paper must be accompanied by an affidavit of one or more of the signers, affirming the paper was signed by each signer in their proper handwriting, that to the best of the signer's knowledge all signers are registered voters of the municipality, and that the purpose of the paper is to endorse the candidate named for the office of government study commissioner.⁷

Filing Nomination Papers. Nomination papers must be filed no later than the tenth Tuesday prior to the date of the election.⁸ Each nomination paper must have attached an affidavit signed by the candidate, consenting to stand as a candidate at the election, and promising to take office and serve, if elected.⁹ Candidates filing nomination papers for government study commissioner do not have to pay a filing fee since they serve without compensation.¹⁰

Ethics Law Disclosure Statement. The State Ethics Commission has ruled candidates for government study commission must file ethics law disclosure statements.¹¹ Forms are available from the county board of elections.

Campaign Finance Reports. Candidates for government study commissioner are subject to campaign finance reporting requirements.¹² Most candidates for government study commission will have minimal, if any, campaign receipts or expenditures. Candidates spending less than \$250 are required only to file a notarized statement attesting that fact with the county board of elections. When candidates file their nomination papers, they will be given the appropriate form by the board of elections.¹³

References

1. 53 Pa.C.S. 2914; Home Rule Charter and Optional Plans Law; *Reese v. County Board of Elections of Lancaster County*, 308 A.2d 154, 10 Pa.Cmwlth, 448, at 453, 1973.
2. 53 Pa.C.S. 2913(a); Home Rule Charter and Optional Plans Law.
3. 53 Pa.C.S. 2913(b); Home Rule Charter and Optional Plans Law.
4. 53 Pa.C.S. 2912(b); Home Rule Charter and Optional Plans Law.
5. 53 Pa.C.S. 2913(a); Home Rule Charter and Optional Plans Law.
6. 53 Pa.C.S. 2913(c); Home Rule Charter and Optional Plans Law; 25 P.S. 2911(c). Pennsylvania Election Code, Section 951.
7. 53 Pa.C.S. 2913(d); Home Rule Charter and Optional Plans Law.
8. 53 Pa.C.S. 2912(b); Home Rule Charter and Optional Plans Law.
9. 53 Pa.C.S. 2913(b); Home Rule Charter and Optional Plans Law.
10. 25 P.S. 2873; Pennsylvania Election Code, Section 913.
11. 65 Pa.C.S. 1104(b); State Ethics Commission Opinion #80-029.
12. 25 P.S. 3246; Pennsylvania Election Code, Section 1626.
13. 25 P.S. 2912; Pennsylvania Election Code, Section 952.

Election Procedures

All elections held under the authority of the Home Rule Charter and Optional Plans Law are to be conducted in accordance with the Pennsylvania Election Code.¹ Provisions of the Election Code are to be followed unless specifically superseded by the Home Rule Law.

Advertising Elections. Both the county board of elections and the municipal clerk or secretary must legally advertise the election on the question of a government study commission. The county board of elections must include the question in its official notice of the election.² In addition, the municipal clerk or secretary must post a notice of the election in each polling place on the day of election and publish a notice in at least one newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of 30 days prior to the election.³

Courts have held notice requirements in election laws are mandatory rather than directory. In a case involving Unity Township, the Westmoreland County Court of Common Pleas held failure to give notice as required by the Home Rule Law constituted sufficient grounds for striking a question on electing a government study commission from the ballot.⁴ A referendum on a government study commission in the City of Meadville was invalidated for failure to give proper notice. In this case, the court directed the question to be placed on the ballot at the next available election without the need to recirculate and refile petitions. However, candidates interested in serving on the commission were required to refile nominating petitions.⁵ The Pennsylvania Supreme Court has upheld the right of courts to keep questions off the ballot for failure to comply with advertising and notice requirements.⁶

For each referendum appearing on a county or municipal ballot, the county board of elections is to prepare an explanation of the ballot question.⁷ This statement must be in plain English. It is to indicate the purpose, limitations and effects of the ballot question to the people. The statement is to be included in the notice of the election and three copies are to be posted at each polling place.

Ballot Instructions. Voters are to be instructed to vote for members of the government study commission, regardless of how they voted on the question of having a study commission.⁸ Each voter is to vote for the designated number of members of the commission. The Commonwealth Court has held placing these instructions on the ballot is a mandatory procedure. Because of the failure of the board of elections to put required instructions on the ballot, it invalidated the election of a government study commission in Lancaster County.⁹

Election Contests. The Commonwealth Court also held that elections of government study commissioners are subject to election contests under the Pennsylvania Election Code.¹⁰ No contest provision exists for a referendum question, but the validity of a referendum may be challenged in equity if some material requirement of the law is ignored.

Results. Results of the voting are canvassed in the same manner as for other municipal offices and questions. If a majority of those voting on the question of having a government study commission approve the proposal, then the designated number of commissioners receiving the largest number of votes are elected and constitute the government study commission. If two or more candidates for the last seat draw an equal number of votes, then they must draw lots to determine whom is elected. If the voters do not approve the question of establishing a government study commission, then no study commissioners are elected and the procedure is ended.¹¹

If an insufficient number of persons have filed nominating papers by the deadline to fill all the positions on the government study commission, the question is still placed on the ballot. However, if additional persons are not elected to the study commission by receiving at least as many write-in votes as signatures required for the nomination paper, then the question is deemed to be defeated.¹² Even if a majority approve having the commission, a full slate of commission members must be elected before the question is considered approved.

Certification. The county board of election must certify the results of the election to the municipal governing body, the Secretary of the Commonwealth and the Secretary of Community and Economic Development.¹³

References

1. 53 Pa.C.S. 2912(b); Home Rule Charter and Optional Plans Law.
2. 25 P.S. 3041; Pennsylvania Election Code, Section 1201.
3. 53 Pa.C.S. 2952; Home Rule Charter and Optional Plans Law.
4. *Chenet v. County Board of Elections of Westmoreland County*, 56 West. 195, 1974.
5. *Early v. Board of Elections of Crawford County*, 3 D.&C.4th 98, 1988, C.P. Crawford Co.
6. *Mount Lebanon v. County Board of Elections of Allegheny County*, 368 A.2d 648, 470 Pa.317, 1977.
7. 25 P.S. 2621.1; Pennsylvania Election Code, 201.1.
8. 53 Pa.C.S. 2911(c); Home Rule Charter and Optional Plans Law.
9. *Reese v. County Board of Elections of Lancaster County*, 308 A.2d 154, 10 Pa.Cmwlth. 448, 1973.
10. *Ibid*, at 455.
11. 53 Pa.C.S. 2914; Home Rule Charter and Optional Plans Law.
12. 53 Pa.C.S. 2912; Home Rule Charter and Optional Plans Law.
13. 53 Pa.C.S. 2951; Home Rule Charter and Optional Plans Law.