

# CONCORD TOWNSHIP



## Government Study Commission

**Interim Report  
September 3, 2015**

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Rosemary Fiumara, Vice-Chairman  
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## Background

### a. **The creation of the Concord Township Government Study Commission.**

On November 4, 2014, the voters of Concord Township elected the members of the Concord Township Government Study Commission ("CTGSC" or the "Commission"). Specifically, the voters were posed with the following ballot question, and with the election of Commission members in the event of a favorable vote:

Shall a Government Study Commission of seven members be elected to study the existing form of government of the Township, 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?

The voters were in favor of the formation of a Government Study Commission by an almost 2 to 1 margin. The Commission members were elected the same date, and sworn in on November 25, 2014.

### b. **The Home Rule Charter and Optional Plans Law.**

The Commission exists pursuant to Pennsylvania's Home Rule Charter and Optional Plans Law (the "HRC Law"). A simple internet search reveals that law to be available in numerous locations on the internet, including through the Pennsylvania legislature at <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/53/00.029..HTM>. Its statutory citation is 53 Pa.C.S.A. §§ 2901 et seq.

The HRC Law sets forth the function of a government study commission:

The government study commission shall study the form of government of the municipality to compare it with other available forms under the laws of this Commonwealth and determine whether or not in its judgment the government could be strengthened or made more clearly responsible or accountable to the people or whether its operation could become more economical or efficient under a changed form of government.

53 Pa.C.S.A. § 2918.

Although it gives a government study commission a fairly broad function, the HRC Law goes on to permit a commission to take or recommend only certain actions:

The government study commission shall report and recommend in accordance with the question presented to the electorate as provided in section 2911 (relating to submission of question for election of government study commission):

(1) That a referendum shall be held to submit to the electors the question of adopting one of the optional plans of government authorized by this subpart to be specified by the commission.

(2) That a referendum shall be held to submit to the electors the question of adopting a home rule charter as prepared by the commission and as authorized by this subpart.

(3) That the form of government shall remain unchanged.

(4) Such other action as it deems advisable consistent with its function as set forth in this subpart.

53 Pa.C.S.A. § 2923. The question submitted to the electorate of Concord Township, set forth in subsection a. above, is the broadest form of question permitted under the HRC Law; the alternative questions would have limited the CTGSC's authority to considering the advisability of either a home rule form of government or optional plan form of government. As the question submitted to the voters of Concord Township permitted the CTGSC to consider the advisability of either home rule or optional plan, the Commission had the broadest scope of authority available to it under the HRC Law.

**c. The conduct of the CTGSC to date.**

The HRC Law provides only nebulous guidance on how a government study commission should conduct its analysis. It permits a commission to appoint and set compensation of personnel. 53 Pa.C.S.A. § 2919. As such, after its first meeting, the Commission appointed a solicitor. The HRC Law also encourages government study commissions to solicit public participation:

The government study commission shall hold one or more public hearings, may hold private hearings and sponsor public forums and generally shall provide for the widest possible public information and discussion respecting the purposes and progress of its work.

53 Pa.C.S.A. § 2920. As indicated above, the members of the CTGSC were sworn in on November 25, 2014. Since that date, the Commission has held fifteen (15) public meetings and one (1) public hearing. At the public meetings, the CTGSC accepts public comment on agenda items at the beginning of each meeting, and public comment on any other items of interest at the end of each meeting. The Commission held the public hearing for the purpose of accepting public input on the Township's government

structure. All CTGSC meeting minutes and the transcript of the public hearing are available online at <http://townshipofconcord.com/home-rule-info/>. In addition to its meetings, committees of the CTGSC have held forums at Fox Hill Farms and Maris Grove. The CTGSC has offered to send committees to address and accept input from other communities and community groups, but has not been approached to do so at this point.

The CTGSC has studied the government structure of Concord Township, the First Class Township Code, the Second Class Township Code, Home Rule and each of the available Optional Plans. The Commission received public presentations from the following experts on the following topics:

| <b>Date</b> | <b>Presenter</b>   | <b>Topic</b>   |
|-------------|--|--|
| 1-8-15      | Elam Herr<br>Pennsylvania State Association<br>of Township Supervisors                                 | Comparison of First Class Townships,<br>Second Class Townships, Home Rule<br>Municipalities and Optional Plans |
| 1-29-15     | Marita Kelly<br>Local Government Policy<br>Manager, Governor's Center<br>for Local Government Services | Home Rule and Optional Plans   |
| 4-16-15     | Jerry Cross & Harry J. Miller<br>Pennsylvania Economy League   | Home Rule and Optional Plans for<br>Pennsylvania Second Class Townships  |

Each expert's presentation to the CTGSC is linked to the website address set forth above.

In addition to the experts, members of the Board of Supervisors attended a Commission meeting to report on their governance of the Township. The CTGSC also held public interviews with the Township's key administrative staff members. Township Manager Brenda Lamanna, Township Treasurer/Finance Director JoAnne Demnicki and Township Director of Code Enforcement Manos Kavadias all provided the Commission with their thoughts on the Township's governmental structure, including areas where the current structure could be improved for efficiency. A committee of the Commission also held an information gathering session with former Township Manager Robert Willert, who provided his view on the strengths and weaknesses of the current structure. Committees of the Commission met with the administration of Middletown and Cheltenham Townships, and reported to the public on those communities' home rule charters.

Although the CTGSC cannot create a referendum regarding a change in the form of government to a Township of the First Class, it has been sensitive to the sentiment of some residents that such a change would be appropriate. As such, it conducted an in depth comparison of the differences between the First Class Township Code and the Second Class Township Code, and presented its findings at one of its public meetings.

## **Findings and Actions to Date.**

### **a. Forms of Government**

It is important to emphasize that the voters charged the CTGSC with the study of the existing form of government of Concord Township. It has not been charged to analyze the decisions of the governing body or its appointees. A limited number of residents have attended CTGSC meetings and expressed criticism of certain actions of the Board of Supervisors. While the form of government may affect who has the power to make certain decisions, our charge was not to analyze particular actions. It is worth noting further that the vast majority of the Board's actions criticized by members of the public in attendance at CTGSC meetings pertained to land use, and were thus governed by Pennsylvania's Municipalities Planning Code (the "MPC"). The MPC is a law of general applicability throughout Pennsylvania, and this applies throughout the Commonwealth without regard to form of government. Thus, the scope of duties of a planning commission, zoning hearing board and elected governing body with regard to land use would be unaffected by a change in form of government.

The May 13, 2015 public hearing evidenced a broad misunderstanding by the public of the various forms of government. As such, the Commission encourages interested residents to review the materials posted on its website. A broad overview is included here.

### **b. Concord Township - a Township of the Second Class**

Concord Township is presently a Township of the Second Class. That class designation is based upon population at the time the designation is made, and does not carry the connotation of being somehow inferior to any other class of municipalities. Second Class Townships are governed by Boards of Supervisors. Each Supervisor is elected at large. An "at large" position is eligible to be voted upon by all registered voters in the Township. An alternative form of voting for members of an elected body is by region, in which case a representative is elected by only one area of the Township, but still has an equal say with regard to all decisions of the governing body, regardless of the area of the Township those decisions affect. Some forms of government also offer the possibility of a hybrid means of electing the governing body, with some members elected at large and others elected by region. A Township of the Second Class can have 3 or 5 Supervisors. Concord Township currently has 5, and cannot increase the membership of the Board of Supervisors within the constraints of the Second Class Township Code. Supervisors serve for six (6) year terms.

Townships of the Second Class also have a Tax Collector and a Board of Auditors consisting of three (3) members. The elected Tax Collector serves for a four (4) year term and the elected members of the Board of Auditors serve for six (6) year terms. Like the Supervisors, the Tax Collector and members of the Board of Auditors are elected at large. The Commission notes that many grant programs and other

Township financial functions require that the Township be audited by an independent CPA firm, a function related to but distinct from that of the Board of Auditors.

**c. Townships of the First Class**

Townships of the First Class are governed by Boards of Commissioners. The Courts, upon petition, have the power to divide a Township of the First Class into wards, which are regions within the Township. If a Township of the First Class is not divided into wards, its Board consists of five (5) Commissioners, each elected at large. If a Township is divided into fewer than five (5) wards, then each ward elects a Commissioner, and a number of Commissioners equal to the difference between five (5) and the number of wards are elected at large. If a Township of the First Class is divided into five or more wards, each ward elects a Commissioner. A Township of the First Class may be divided into up to fifteen (15) wards. Commissioners of a Township of the First Class serve a four (4) year term. Townships of the First Class also elect a Treasurer at large for a four (4) year term.

One of the major differences between First and Second Class Townships is the provisions relating to law enforcement. The First Class Township Code states:

The board of township commissioners **shall**, subject to the civil service provisions of this act, appoint and fix the number, rank and compensation of the members of the township police force.

53 P.S. § 56401 (emphasis added). While it appears that the commissioners are able to set that number at zero, we note that every First Class Township in Delaware County has a full time police force. The following corollary language of the Second Class Township Code provides Supervisors with more flexibility:

The board of supervisors **may** by resolution create or disband a police force within the township or, upon the petition of not less than twenty-five registered electors or taxpayers of the township, appoint police officers.

53 P.S. § 66901 (emphasis added). The civil service provisions of the First Class Township Code, referenced in the section quoted above and set forth in detail at 53 P.S. §§ 55625 et seq. restrict a First Class Township's flexibility in hiring, discipline and termination of police officers. Corollary provisions applicable to Townships of the Second Class apply only to discipline and termination, not hiring.

**d. Optional Plans**

The CTGSC found difficulty with each of the Optional Plan forms of government. The primary concern with each of the mayor/council plans was the placement of too much control in the hands of one person. Similarly, the council/manager plan places

day-to-day control in the hands of the appointed manager. While this is not dissimilar to Concord Township's current structure, the constraints put on the dismissal of the appointed manager contrasts with the at-will nature of the current manager's employment.

**e. Home Rule**

Home rule is more of a blank slate. Because the limitations on home rule powers are important for Township residents to understand, the section setting forth such limitations is attached verbatim as Appendix A to this report. With the exception of those limitations, home rule provides the opportunity to tailor a structure that best fits the needs of a particular municipality.

**The CTGSC's initial vote on Concord Township's government structure.**

On July 16, 2015, the CTGSC voted to proceed to draft a home rule charter that it will recommend to the voters of Concord Township. As indicated above, the Commission was able to dismiss the Mayor/Council optional plans rather easily based on its members' opinions that those plans rested too much power in the hands of one person. The Commission dismissed the Council/Manager optional plan with some more difficulty. That plan is relatively similar to the current structure of Concord Township. However, it makes it difficult for the elected governing body to dismiss its appointed manager. The Commission feels that with the high level of responsibility vested in the manager for the day-to-day operation of the Township, the governing body must have more control over that person's terms of employment than are afforded by the Council/Manager plan.

The Commission strongly considered maintaining the current government structure. Since its inception, the CTGSC has received relatively little criticism of the current form of government under the Second Class Township Code. The majority of resident complaints to Commission members pertained to decisions made by the Supervisors, rather than being germane to the form of government. However, a number of residents indicated a desire for some form of regional representation. Others suggested term limits for the chairmanship of the governing body. While those were the most common, the exclusion from this report of other comments made to the Commission with regard to the Township's governmental structure is for the purpose of brevity only. Residents are encouraged to review the transcript of the public hearing, available at the website set forth above, as well as the minutes of the CTGSC's meetings, to get a fuller understanding of the comments presented to the Commission. In addition, the Commission believes that there are some inefficiencies in the Second Class Township Code that it can address through a home rule charter.

**CTGSC's review of the First Class Township Code.**

While the HRC Law does not provide the CTGSC with the option to create a referendum on whether the Township should become a Township of the First Class, the

Commission remains cognizant of the petition to place that question before the voters and the ensuing litigation. As one of the Commission's functions is to comment upon other available forms of government, the Commission undertook a study of the First Class Township Code, and contrasted it to the Second Class Township Code. In doing so, the CTGSC formed the opinion that were it within the Commission's purview to recommend a referendum as to whether to adopt the First Class Township Code in Concord Township, it would nevertheless still have chosen to recommend that the voters consider a home rule charter.

The Commission strongly believes that representation on a governing body exclusively by region would not be beneficial to the residents of the Township. Rather, the CTGSC believes that each elector should have the chance to vote for at least a majority of the Township's governing body.

The CTGSC is also concerned with the complete lack of any continuity in the transition from a Second Class to a First Class Township. The transition to a Township of the First Class would be sudden rather than gradual, with all current Supervisors' terms ending the first Monday in January succeeding a vote to change the Township's classification. At that point, the courts, rather than the voters of Concord Township, would appoint a governing body of five (5) members and a treasurer for the Township. The individuals appointed by the court would hold office until the first Monday of January after the next municipal election following their appointment; a period that could be up to two (2) years.

The possibility that five (5) people not accountable to the voters for their decisions could be placed in control of the Township for up to two (2) years is disconcerting. The possibility that the court could appoint a treasurer likewise unaccountable is equally troubling. While the Township is optimistic that the court would appoint people who would look out for the best interests of the Township, the actions these court appointed individuals take have the potential to be long-lasting and not in the direction desired by Concord Township voters. The Commission is aware that elected officials can be subject to the same flaws as appointed officials. But, it believes that the Township residents, rather than the courts, should have the opportunity to vet and decide upon the members of their governing body.

The CTGSC is also troubled by the possibility of six (6) appointed officials with no knowledge of the Township's operation being charged to suddenly take that operation over without any current officials remaining. The laws applicable to the election of municipal governing bodies consistently stagger the terms of their members, so that municipalities are not faced with people who have no knowledge of governance suddenly being forced to govern without any guidance. The transition to a Township of the First Class is an exception to that rule, and in the Commission's opinion that exception is ill-advised.

The Commission is also troubled by the fact that each and every Township of the First Class in Delaware County has a police force, and concerned that Commissioners

would be pressured into creating one in Concord. Residents who spoke to CTGSC members on this issue consistently expressed their satisfaction with the current policing of the Township. And, the fiscal effects of a police department, with the costs of salaries, benefits including pensions, equipping and housing a police force would be staggering. The Commission believes that the decision to establish a police force is one that should be in the hands of Township Supervisors or the voters via referendum.

## **Conclusion.**

The CTGSC has put a great deal of effort into studying the various forms of government that could be available to the residents of Concord Township. It believes that the development of a home rule charter can address the growth of the Township and the concerns of its residents. Home rule provides more flexibility to tailor the structure of the government to the needs of its residents than any other form of government in Pennsylvania.

Over the coming months, the Commission will study each of the comments and concerns expressed to it by Township residents and attempt to develop a governmental structure that provides for the Township's and its citizens' needs and operates in the most efficient manner practical, while still giving the governing body the authority and flexibility it needs to make the operational decisions set before it.

Residents are encouraged to attend Commission meetings and future forums. Residents may also address Commission members via e-mail. Each Commission member has an e-mail address in the format (first initial)(last name)@[concordgsc.org](mailto:concordgsc.org).

## APPENDIX A

### Section 2962. Limitation on municipal powers

**(a) Powers granted by statute.** – With respect to the following subjects, the home rule charter shall not give any power or authority to the municipality contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable to a class or classes of municipalities:

- (1) The filing and collection of municipal tax claims or liens and the sale of real or personal property in satisfaction of them.
- (2) The procedures in the exercise of the powers of eminent domain and the assessment of damages and benefits for property taken, injured or destroyed.
- (3) Boundary changes.
- (4) Regulation of public schools.
- (5) The registration of electors and the conduct of elections.
- (6) The fixing of subjects of taxation.
- (7) The fixing of the rates of nonproperty or personal taxes levied upon nonresidents.
- (8) The assessment of real or personal property and persons for taxation purposes.
- (9) Defining or providing for the punishment of any felony or misdemeanor.
- (10) Municipal planning under the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code.

**(b) Taxing power.** – Unless prohibited by the Constitution of Pennsylvania, the provisions of this subpart or any other statute or its home rule charter, a municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body. No home rule municipality shall establish or levy a rate of taxation upon nonresidents which is greater than the rate which a municipality would have been authorized to levy on nonresidents but for the adoption of home rule charter. The governing body shall not be subject to any limitation on the rates of taxation imposed upon residents.

**(c) Prohibited powers.** – A municipality shall not:

- (1) Engage in any proprietary or private business except as authorized by statute.
- (2) Exercise powers contrary to, or in limitation or enlargement of, powers granted by statutes which are applicable in every part of this Commonwealth.
- (3) Be authorized to diminish the rights or privileges of any former municipal employees entitled to benefits or any present municipal employee in his pension or retirement system.
- (4) Enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods, or services subject to any Commonwealth statutes and regulations unless the municipal ordinance or regulation is uniform in all respects with the Commonwealth statutes and regulations thereunder. This paragraph does not affect the power of any municipality to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulation pertaining thereto.
- (5) Enact any provision inconsistent with any statute heretofore enacted prior to April 13, 1972, affecting the rights, benefits or working conditions of any employee of a political subdivision of this Commonwealth.

**(d) Reduction of police force.** – Notwithstanding any provision of this subpart or any other statute to the contrary, any municipality that is or was a city of the second class A may reduce its police force or its firefighting force for economic reasons, as determined by ordinance.

**(e) Statutes of general application.** – Statutes that are uniform and applicable in every part of this Commonwealth shall remain in effect and shall not be changed or modified by the subpart. Statutes shall supersede any municipal ordinance or resolution on the same subject.

**(f) Regulation of business and employment.** – A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities. This subsection shall not be construed as a limitation in fixing rates of taxation on permissible subjects of taxation.

**(g) Regulation of firearms.** – A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

**(h) Levying taxes.** – This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.

**(i) Establishment of rates of taxation.** – No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).

**(j) Retroactive fee increase prohibited.** – A municipality which adopts a home rule charter may not retroactively increase any fee or charge for any municipal service which has been provided.