

Relations with Other Actors

by W. Peter Doren

Relations with Other Actors

The people who elected you don't realize the sacrifices along the way. We do because we are in the business of municipal government. Sometimes I just think it needs to be publicly said that it shows a tremendous amount of drive and public spirit for you people to show up here on a Saturday.

I am a lawyer. There are some lawyers in the audience. I will only quote one case. The quotation that I am going to mention is very brief, but I think it has applicability. I was the attorney for the city when we went through our charter revisions and I have got this written down on the inside of my dog-eared copy of Traverse City's charter. This is Justice Campbell writing in 1881 in *Torant v Muskegon*, 47 Mich 115. He said "Verbose charters create mischief by their prolixity." Attorneys hope that the Supreme Court would understand that they too can create mischief by their verbose opinions, but the charter is something that we can control. The briefer the better is the general rule. Obviously the charter revision commission does not act alone. There are relationships the charter commissioners must have or should have with other city officials and other persons. I am not going to talk about the media because others will cover that. But I do want to talk about some of the other players that you have to deal with in your goal to revise the charter.

There are some that are required or that are acknowledged in the statute and some that you just want to do. We'll go through the required ones very quickly. First of all, the city clerk. The city clerk by statute presides at the first meeting and administers the oath of office to members elected and acts as clerk of the commission. The city clerk may be a very political individual in relationship to the charter and have specific ideas about what the charter should say and should not say. Such a person could wisely step down and have another appointed as a special deputy city clerk. I just mention that to show that there is some flexibility. You can have a deputy clerk or you can have special deputy city clerks. You can be as creative as you'd like or as the charter revision commission and your city clerk can agree. If you're in a situation where you have a city clerk who wants

more involvement with the charter revision commission, you can define in the commission rules the degree of involvement of the city clerk as clerk of the commission.

One important thing that the city clerk can do is to identify the past city charters and the history and origins of these older city charter provisions. This can be very enlightening. For example, the current charter of Traverse City describes the jurisdiction of the city by metes, bounds, section lines, etc., extending one statute mile from the shores to Grand Traverse Bay, so that the jurisdiction as defined by the city charter extends out into the water one statute mile. Research traced that back to the original state legislation creating the City of Traverse City in 1895. You could say that the Legislature delegated that authority over the waters to the city, and, since Governors have approved all the revisions of the charter, we could arguably claim jurisdiction over a part of the bay based on that history. We certainly would not want to delete that provision, and indeed we kept it in the proposed revised charter. So the city clerk can helpfully identify the history of our various charter provisions.

The city commission or council by statute has some involvement. The city council must fix the budget and establish the meeting place in advance of the election. While I suspect that may happen in some cases, it is in my experience a rare occurrence.

It is more likely than not that you're going to seek funds from the city council after formation of the charter revision commission, especially funding for hiring experts. Remind the council when you do that, that the charter revision process is mandated by the people who have elected the commission. It is a process started directly by the voters of your city. Use that argument to persuade the council to provide budget support so that you are able to get the expert advice you need.

The statute wisely provides that other city officials are not eligible to serve on the charter revision commission. In Traverse City, we had a mayor and a city commissioner run for charter commission, and resign when they were elected so that they could take office as charter commissioners. However, even though the other city officials cannot serve on the revision commission, the commission is almost entirely dependent upon those individuals for information on what the city is doing and how it could be doing it better and what obstacles might exist to improving city operations in the charter. Despite this basic information dependency, you have to keep independence. That is designed into

the statute by preventing other city officials from being on the charter revision commission. You have to make sure that independence is maintained at all costs.

The Attorney General's office is a key player, one on the major components in the whole revision process. The Attorney General's office should be consulted even before the election for charter revision commissioners. The attorney who is representing the municipality should make specific contact with the Municipal Affairs Division to let them know what is going on and be in constant communication throughout the evolution of the charter language. This takes advantage of the expertise in that office as well as revealing what concerns that office has. My experience has been that the Attorney General's office appreciates the continual contact as opposed to suddenly being sent a document which then must be reviewed and analyzed from the very beginning. The Attorney General really reviews the charter for the Governor. The statute requires the Governor's approval but the Governor's office relies entirely on the Attorney General's office. When you read in the statute that the Governor's approval is necessary, that means the Attorney General's approval, and you should seek that early and often.

These relationships I described previously are all contained to some degree in statute. The other relationships I describe are simply ones that I think you should note. The relationship of the city attorney to the charter revision commission is also very important. The city attorney for your past charter, your existing charter, and for the one you're going to write, is the chief "corrupter" of that document. I am a city attorney and have been for almost 15 years. I have been the chief "corrupter" of the charter of the city of Traverse City since I have been there, and the person who held the job before me was the chief "corrupter" before that. We are constantly asked to look at the document and say what it means. It never ceases to amaze me that the city commission and others blindly accept that opinion. It is sometimes frightening. But in that sense, as interpreter, we are the chief "corrupters" and I want to quote to you from the Anglican Book of Common Prayer, the preface to the First Book of Common Prayer written in 1549. You might want to keep this in mind. "There was never anything by the wit of man so well devised or so sure established which in the continuance of time hath not been corrupted." So what you have in your city charter has been corrupted, because it was created by the wit of man. What you draft will also be corrupted. So try to involve the city attorney as the person who will be most immediately involved with that "corrupted" so that person understands what's going on and you can take advantage of that person's advice.

I have served both as the city attorney and as the attorney for the charter revision commission simultaneously. That does not have to be the case. We are in a more northern area where there are many attorneys, but attorneys involved in different specialties are less available than in other areas of the State. So I served the charter revision commission, and hired other attorneys to do some of the general city work that I was unable to do because of the additional duties. The city attorney can smoke out problems in the existing city charter and can be advantageous to the city if he or she drafts the revised charter when some of those charter provisions are later attacked. It is a good idea to have him or her involved.

The city manager also needs to be involved if you have the city manager form of government. But it depends on the city manager's personality and how the manager interprets his or her subscription to the manager's code of ethics which forbids the manager's involvement in any political or quasi-political activities. The city manager may be very stoic about what is occurring with the charter revision commission, accepting whatever comes about, or he or she may be energetic about what is occurring and try to influence how the charter is drafted. But the charter revision commission officers have to be sensitive to the city manager and involve the manager and develop their own working relationship because the commission is information-dependent upon city department heads who are generally all responsible to the manager.

The city auditor or the firm that does the auditing of city finances, should also be consulted, paid a fee, and be asked for advice. The auditors have looked at your charter and at how it affects the ability to handle and invest money. I found our auditor to be an excellent source of advice.

Other commissions, boards and officials of the city may also be involved to some degree, especially if they are authorized in the current charter. Some officers and boards are based upon charter provision and some are not. If charter-based, of course, they will generally want to be involved and you will need to accommodate them in some fashion.

The last group to be mentioned which deserves a lot of thought are the municipal employee groups. If the goal of the charter revision commission is to make the city more efficient and able to provide more cost effective municipal services, that will impact employee groups. They may also be the most interested group at the public hearings and influential when the time comes for the election to vote on the charter. So they have

to be acknowledged and consensus has to be sought. Try to achieve consensus in a way that does not put you in a negotiating posture, because it is not the charter commission's role to negotiate with employee groups regarding wages, hours, and conditions of employment. That is the role of the city manager and the administration. If you adopt a new charter provision affecting bargainable matters, it may have to be negotiated later. (For example, an employee residency provision in the charter may be nullified by a later collective bargaining agreement.) But if the employee groups through their elected officers or bargaining agents, are brought into the charter revision process, with some involvement in the drafting stages, that will help achieve consensus.

And consensus is, after all, what you are trying to achieve throughout this whole process. You're trying to achieve consensus because no matter how good the charter, if it doesn't pass, then nothing has been changed for the good. I am speaking from experience. The City of Traverse City went through the revision process, put the charter the first time to the people and it was rejected. We modified it, put it to the people a second time and it was rejected. We modified it again and put it to the people who rejected it a third time. We had excellent help through the various advisers we had retained and excellent cooperation from the Attorney General's office. Nevertheless, we had not given any thought to consensus building, to involving any of these groups in the drafting process. When they were involved through the election process, they looked at it as an opportunity for them to reject it and did so.

Of course, while you are busy building consensus, you cannot expect to have perfection in your document, the final product. We have to revisit the fundamental rights, because the wisdom of our constitutional authors is worthwhile looking at. When you are involved in the local charter process you are doing exactly what they did in 1787 and you are faced with exactly the same problems. You can read James Madison in the Federalist Papers and see that he faced the same problems that we faced in Traverse City with our little municipal charter. Alexander Hamilton said, "I never expected to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound as well as the errors and prejudices as of the good sense and wisdom of the individuals of whom they are composed. The compacts which are to embrace 13 distinct states in a common bond of amity and union must necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?" Don't expect too much. Try to get the best product that you can.

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W. Peter Doren has been practicing law since 1973. He has an a.v. Martindale-Hubbell rating and has extensive local government experience.

He was the Senior Assistant Ingham County Corporation counsel before leaving in 1977 to become the City Attorney for Traverse City, which position he has held since then. He has been general counsel for the Traverse City Light and Power Board and Department since its creation in 1979. He was instrumental in the creation of the Traverse City Downtown Development Authority, Grand Traverse Commons Redevelopment Corporation, Traverse Area District Library, Grand Traverse Area Zoological Society, Friends of Con Foster Museum, Cherry Capital Cable Council, Rental Housing Commission, Historic Districts Commission, and many other groups and endeavors which performed or assisted a governmental function. He has represented Grand Traverse County in certain real estate and financial matters and has done legal work for many local townships, villages and cities, as well as the Michigan Municipal League and the Michigan Townships Association.

Mr. Doren has been Chairman of the Public Corporation Law Section of the State Bar of Michigan (1982-83), and a board member of that Section approximately four years prior to being Chairman. The Section is composed of most of the local- government attorneys in the State of Michigan. Mr. Doren has served as President of the Michigan Association of Municipal Attorneys (1985-86) and Chairman of the Michigan Municipal League Legal Defense Fund (1985-86).

The Michigan state courts and the United States District Court for the Western District of Michigan recognize Mr. Doren as an approved mediator for general civil cases. He has lectured at seminars on advanced mediation techniques and has conducted over 100 mediations of litigated cases.