

# Publicizing the Work of the Charter Commission

by Thomas M. Donnellan

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## Publicizing the Work of the Charter Commission

Each home rule city or village should put together a charter that reflects the unique needs of that community, otherwise home rule is not working as it was intended. The Charter Commission cannot do its job without the suggestions of its citizens and the citizens cannot make suggestions unless they are kept informed of the proposals the commission has under consideration. This means two way communication. Citizen comment must be allowed at the start of each meeting. This does not slow down the work of the charter commission; this is the work of the charter commission. I recommend, in addition, involving as many citizens on advisory committees as possible. As a demonstration, please mark your preference 1, 2, 3 or 4 to participate in one of these advisory committees. The committee will meet for 10 minutes and then report to the full group.

### Media Committee

Is the chair of the commission the spokesperson for the commission?

Should a commissioner be designated as press person?

Should you send out copies of minutes or prepare news releases with ready made quotes?

Will the media give you the coverage you need?

We must not overlook \_\_\_\_\_

### Publications Committee

Should you print and distribute drafts of proposals?

At what stage in the process? How many copies and to whom?

Do you print and distribute summaries of proposed changes?

How do you "publish" the proposed charter before adoption?

We must not overlook \_\_\_\_\_

### **Liaison with Interested Groups Committee**

How do you approach these groups?

How can you mine their fund of knowledge of what the problems are?

How do you gain their support?

We must not overlook \_\_\_\_\_

### **Citizen Input Committee**

How do you get ordinary citizens to make suggestions?

What about opinion polls?

What about reaction panels?

Is the commission obligated to accept the majority opinion of the citizen group?

What type of background material should be supplied so that the citizen group can make an informed decision?

We must not overlook \_\_\_\_\_

A final note. Like all public bodies in Michigan, the charter commission must comply with the Open Meetings Act and let the public know what it doing. To be successful, the charter commission must let the public know what it is thinking of doing.

In 1787 about 55 people got together in Philadelphia to draft a constitution for the United States. They put it together in about four months and during that time, they kept complete secrecy, with one exception. There was a rumor that was being circulated that they were preparing to offer the throne, the kingship, to one of the members of the royal family in England. The constitutional convention did authorize a statement denouncing that rumor. But that was the only publication of the deliberations of the constitutional convention until the completion of the work. Even at that, the actual proceedings of the convention were not publicized until some 40 years later.

Now, I use that as an example of what we cannot do in today's society. Let me grant you this – that I could accept an argument that we should do that if you can put together a charter commission made up of George Washington, Alexander Hamilton, James Madison, George Mason, and James Wilson, but I don't think you can do that. I think that we're going to have to deal with our present society the way it is and start with the assumption that, that would not be an acceptable way to deal with the process of developing a charter in 1991 or 1992 or thereafter.

If any of you do not believe that in our present society that we live in public life in a fishbowl, then obviously you did not watch the confirmation hearings of Clarence Thomas. I want to talk about a two-way information plan and pick up from the concept of "we" knowledge, which was a phrase that I hadn't come across before. This starts with the election itself, the election of the charter commissioners. For example, there is no particular violation of the open meetings act if the people who are elected and who have not yet taken office, meet together and talk about whatever they want to talk about, because at that time, they are not yet public officials. But I think it is a very, very bad idea. It's not illegal; it's just a bad idea.

Right from the very beginning, you want to make sure that you have a contract with the public, the public at large, the public of your community, that they are going to be involved in your proceedings. That means that all of the meetings would be open to the public and the news media with very limited exceptions, and there would be public comments at every meeting of the commission. There should be coverage of the meetings of the committees and subcommittees by what we generally refer to as media, although I hate the word. By that, we mean nowadays radio and television – that's the ordinary commercial stations, the public broadcasting stations, the cable access

stations, the local newspapers including the specialized newspapers, the union newspapers, the minority group newspapers, community newspapers, newsletters put out by banks, and downtown development associations. All of those organizations should be supplied with some form of information. The type of information they should be supplied with depends upon what it is they want and what they want to publish. Anything they are willing to publish of yours, you should try to get them to publish.

The principal daily newspaper is extremely important. We were fortunate in Flint in 1974 that the Flint Journal assigned a full-time reporter to the charter commission. This was not because the charter commission was big news, but because the newspaper had decided that it was important to them to have a high degree of publicity for the charter commission. The paper was eager to see the City adopt a new charter.

The reporter assigned to it was a law student who did an excellent job of reporting on the work of the charter commission. In fact, his first story was a story criticizing the hiring of the attorney for the charter commission, myself, which I respected because he had a number of questions he didn't get answered the way he thought they should be answered. I point that out simply to show that he was not a tame reporter. The fact that he was providing an extra effort and tried to make sure that there was a lot coverage in the paper about the work of the charter commission did not make him someone who was under the control of the charter commission. He did an independent job as a news reporter, but he covered it in detail because the newspaper wanted him to cover it in detail.

In order to gain that type of coverage, you're going to have to meet with the local paper and try to work out some understanding. Use whatever influence you can have on the newspaper, because the simple fact that someone is assigned to cover a particular activity does not mean that person either has an interest or a background in what they are going to cover. Quite frankly, if they don't have those things, then the type of coverage and the type of story might become more of an embarrassment than a help to the commission in trying to explain its work to the public.

In addition, it is your responsibility to contact neighborhood groups. Have meetings in different portions of the community. Distinct neighborhoods: at the Northend Senior Citizens Center, the Westside Neighborhood Center, the J. Danforth Quayle Junior High School.

There should be an agenda for those meetings in which there would be some presentation of some proposals that the charter commission is considering. But what you really want out of that meeting is the public input --the public getting up and stating something as to what they think they want from their city government. Try to get them to commit themselves in some way. Have some short evaluation form for the people to fill out. Now these are people who simply drift in off the street, so the type of evaluation that they would be willing to fill out should be fairly short. I am going to cover something similar to that in a few minutes, but this is a simplified evaluation simply to get people to express an opinion. Because I can tell you if people express an opinion at all, it's easier for you to get them to swing around to support whatever different proposition, if it is different, that the charter commission comes up with, than it is to get them to move to a position when they never expressed anything at all before. Committing themselves and thinking about it and saying something means that at least they are involved. Just like the salesman who will say anything to get your interest, and once he has your interest, then he can start negotiating. But until he has your interest, there is just a wall between the salesman and the customer. And you are selling something.

I believe in the New Testament where it tells you about the rich man who had a wedding feast and no one showed up. He directed the servants to go out into the highways and byways and make them come in. I think you have to do this. People don't necessarily show up to deal with governmental questions. But they will respond to a kind of a draft -- if they are drafted by people who they feel some obligation to. You should try to get every public official to nominate one, two, three, four, five citizens to serve on a charter advisory committee. Every public interest group that has some interest or involvement should be required or told they have to nominate several people. The charter commissioners themselves should recruit influential citizens and put together a total group of about 100-150 people so that you can put together a panel which will eventually turn out to number something in the range of 75. You have to expect at least half the people who agree to serve will find some reason not to be available on whatever date that you set.

This, of course, is in addition to the other suggestion that was made for contacting certain people in the drafting process. People who are told that they are being involved or being asked about the proposed language of a certain section are going to feel more involved than if they just get it presented to them together with 75 other people. What you

want the group to do when they get together as a reaction panel is to make decisions on proposals.

I have a form prepared that shows some of the things we would try to do. This is my two-way information plan. I would ask them to rate the various provisions, give it a “2”, “1”, “0”, “-1”, “-2”. “2” would be strongly support, “1” would be support, “0” would be neither support nor opposed, “-1” would be opposed, and “-2” would be strongly opposed. Actually you want to discover the strong reactions. Strongly opposed is very, very important – much more than the weight that we give it. We are not interested particularly in a numerical summary. We want to know which are the flashpoints in the charter proposal.

There was a mention of opinion polling. I am not a particular fan of opinion polling in something like this, because, once again, you have to go out of your way to get people to think about the topic and to give their opinion. The subject has what the pollsters call soft opinions; very susceptible to change, very susceptible to the way it is presented, so mere opinion polling of a particular charter section or particular form of government by itself may not give you useful information. It also gives the impression to the public that you are only interested in finding out which way the wind blows and then preparing the charter to conform to that. You can also put these forms in the newspapers and solicit people to fill them out and indicate their belief. Once again, this is not an opinion polling. This is people coming in and writing something down, and taking a detailed analysis, trying to tell you what they think of the particular proposals. Whatever it is that you put together, whatever it is that you send out, you should follow the rule that is called KISS, Keep it simple, stupid. It is necessary to almost any presentation to try to make sure that the people are not bogged down with extraneous material and can focus on the material that you want to present to them. You do want to have vigorous debate at actual live sessions, because they’re the most useful when people persuade themselves and start coming together with that “we” knowledge that we were talking about. Certainly you do want to encourage people, if they can’t be present, to fill out one of these forms and to give their opinion in writing.

At some point you’re going to have at least partial drafts for distribution to various interested persons including the charter advisory committees. After you rework those drafts, you’re going to present a final charter and you’re going to send it to the Governor.

I believe that you should print up handouts containing the entire charter equal to about one-third or slightly more of the likely voters. That's quite a few charters. But the statute, section 23 of the home rule cities act, does indicate that the issue of publication is up to the charter commission and I think those documents are very useful in promoting the charter.

During the period of time that you are waiting for the action of the Attorney General's office, it would be a good idea to use that time in planning for the future and also in preparing a running commentary to describe how the charter will work. There are many things that people want to see in writing that probably are not a good idea to put in the charter. Some of those things can be accomplished by putting them in some form of commentary.

The people who put together this program did a very good thing in distinguishing between the material that I would cover and the question of the campaign activity. Let me just mention in terms of the campaign activity that the campaign people should be separate from the charter commission, although obviously the people who have put together the charter will be interested in the campaign. But the purpose of having an independent campaign committee would be to have an objective view on what's necessary to sell the charter.

Let me go back over what we covered from my summary.

This is a form of planning guide. First, you would define the problem. Second, you would state what outcome you want. Third, you'd have to list the activities that would have to take place to do that, and you'd have to assign responsibilities. At this point I'd like to make a recommendation to do something that not too many charter commissions do. Right from the beginning, assign someone the responsibility of being a public information officer of some kind. You don't have to use that phrase. But as I have described to you in my outline, that is the activity that you want to accomplish. You want to have a two-way communication with the people, and in order to do that, you want to have somebody who is responsible for that, no matter what you call that person.

The fourth is some type of feedback system. I mentioned the charter advisory committee. You could have whatever system you want, but you have to have some type of feedback system other than getting voted down at the polls. Finally, you'll have to

have some type of policy statement describing to the public what it is you are doing. Anytime you are communicating with the public, you should state in writing in a clear form what it is you are trying to do.

In summary, develop a two-way information plan.

- 1 Plan to integrate all the publicity with the actual work of the commission. Budget for it. Have somebody who is some type of public information officer, no matter what you call that person.
2. Do everything in public and try to get the maximum coverage of what you do.
3. Reach out and appear to reach out to every group and individual in the community.
4. Form some type of impact panel. I suggest calling it a charter advisory committee. It sounds good. I have seen that title come up over and over again. People I have never heard of, have come up with some public office, and it says: (I see on their resume) that they were on the Flint Charter Advisory Committee.
5. Provide copies of the charter.
6. Campaign committee should be a separate activity and should be run independently of the charter commission.

### **Discussion**

**Question:** How have you seen in practice the advocacy process in terms of this charter advisory committee, particularly with regard to people like elected officials?

**Answer:** Elected officials tend to shy away from being just a member of the charter advisory committee. Some will. Some people like to express themselves.

But you will not have the entire city council participating. They want to be removed and have you come to them as the city council. One or two of them might show up, but they would be willing to designate their supporters and people who feel the same way they do, to participate, and to bring those ideas out. It does work very well because by having such large numbers, you reduce the chances of anybody being overwhelmed by one influential or persuasive person. If anybody can swing 75 people, then maybe they have good ideas. With a smaller group, then the prestige and influence of the person who is

doing the talking might be greater. Of course, that person doesn't necessarily reflect the interest of the electorate as a whole. You're lessening the impact of individuals and increasing the chances that you're hearing the voice of the voters themselves. There's no guarantee of that because most voters are simply not interested at all.

**Question:** What if you have a very serious objection to a part of the revised charter that might jeopardize the whole thing? Has anybody experienced where there might be alternative proposals on the charter revision ballot, so that you have a basic charter revision but with some alternative proposals for the voters to choose from?

**Answer:** Yes, Detroit tried it on two issues, including the question of the make-up of the city council. The charter as a whole was defeated. But they took the majority view when they went back. They took the majority view on that position and did not give alternatives the second time. They figured that the majority view was the one that would still be the majority view on the second vote on the charter revision. It has been tried. It does create uncertainty and that's the only draw back I would see. It would have to be a very, very strong issue in order to have a separate vote on it, because any confusion like that draws down the entire charter.

**Question:** We have had in the past a proposal on the ballot on a two year/four year term. The four-year term was always defeated. In our revision process now, we're getting back to the four year term in the charter. If that is a weak point, is a separate proposal for two year or four-year term (which would not alter the whole charter) in the charter revision a good idea?

**Answer:** The question was, do we give an option in the charter for a two year term or a four year term? I'd be very hesitant, because the people who don't like politicians staying in for a full four years would vote against the entire charter just in case that would pass. You have to decide in advance how powerful that sentiment is and whether it countervails your desire to have a more stable government. It's a dangerous thing to do.

**Question:** Are you aware of any charters with term limit provisions that have legal impediments to it?

**Answer:** I'm not aware of any legal impediments to the term "limit". I think there are some charters with term limits. I just can't think of any.

**Comment:** In Marquette if you serve two full terms, you have to be out for two years before you can run again.

**Question:** What percentage of proposed charters pass on the first time around?

**Answer:** I think more charters pass the first time, than pass the second or third time. If it doesn't pass the first time, there is a very good chance that it won't pas the other times, either.

**Sinclair Powell:** About two-thirds to three-quarters of charters submitted to the voters pass on the first go round. I would agree that if it doesn't pass, then the chances are cut way, way down on the next.

**Question:** If it doesn't pass on the first, you have to wait two years?

**Answer:** No. That is the limit on charter amendments. You have three shots in three years, whichever comes first. If you use up the three years and don't take the three shots, you're finished, and if you take three shots in less than three years, you're finished, if it doesn't pass. If it does pass, you're finished anyway.

### **Thomas M. Donnellan**

Thomas M. Donnellan has had a richly diverse experience having served as judge of the 68<sup>th</sup> District Court in Flint, from 1983 to 1990, as chief judge 1984 to 1987, and as an instructor in the paralegal program at Mott Community College. When in private practice from 1971 to 1983, he drafted new charters for Flint and the City of Lansing. His practice is principally municipal and administrative law. Prior to private practice, he served as executive director and attorney for the Genesee County legal services program. Among many community activities, he has served as president of the Urban League of Flint, chair of the Flint Civil Service Commission, and has headed the legal aid society and the criminal justice study committee for Genesee County. He is a graduate of Queens College of the City University of New York and Fordham University School of Law. He is currently working under contract with the Flint office of the City Attorney.