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### Home Rule Options in Maryland

Tervala, Victor K.

Authoritative, yet short and highly readable, this handy book fully explains county government options and details the history of efforts to change local governments in Maryland.

DVD 320.8 FOR

### Forms of County Government

Video of the first of three public information programs organized by the University of Maryland and sponsored by the Cecil County Commissioners. Held at the Elkton Central Library in September of 2007. Speakers include Dr. Jeanne E. Bilanin of the Institute for Governmental Service at the University of Maryland, Victor K. Tervala, Esq., author of *Home Rule Options in Maryland*, Harford County Executive David R. Craig, and Wayne Cooper, President of the Charles County Board of County Commissioners. Questions and answers follow the presentation.

DVD 320.8 FOR

### Forms of County Government III

Video of the third of three public information programs organized by the University of Maryland and sponsored by the Cecil County Commissioners. Held in Cecilton in November of 2007. Speakers include Dr. Jeanne E. Bilanin of the Institute for Governmental Service at the University of Maryland, Victor K. Tervala, Esq., author of *Home Rule Options in Maryland*, Jane Baynard, Dorchester County Manager for Dorchester County, and Charles C. Cawley, County Administrator for Caroline County.

# Forms of County Government in Maryland



Resources Available at The Cecil County Public Library and Frequently Asked Questions and Answers prepared by The University of Maryland, Institute for Governmental Service and Research

- 1. What forms of county government exist in Maryland?** The original form of county government in Maryland is the commission form. Eight of Maryland's 23 counties, including Cecil County, are commission counties. Other counties operate under one of the two home rule forms of county government, charter and code. There are nine charter home rule counties and six code home rule counties in Maryland.
- 2. Why does Maryland law provide for different forms of county government?** For commission counties, the General Assembly retains the power to legislate on all local issues. When all counties were commission counties, the number of local bills considered by the General Assembly was overwhelming. In 1915, the state created the option of charter home rule, which would shift some law-making authority and the associated workload from the General Assembly to the charter county. By 1966, only a few large counties had adopted charter government, so the General Assembly created another option, code home rule, as an easier way for counties to obtain home rule and relieve the General Assembly of some of the local workload.

# Frequently Asked

*Prepared by the University of Maryland Insti*

**3. What is Home Rule?** Home rule is a type of local governance under which some of the General Assembly's power to legislate on local issues is transferred to the local governing body. Maryland counties may operate under one of two forms of home rule: charter home rule or code home rule. Not all matters that might be considered by some to be local are home rule subjects. Power over local Boards of Education remains with the General Assembly, even for home rule counties. Similarly, power over the Sheriff's Office, State's Attorney, and the Courts continues to rest with the state.

**4. Does home rule make sense only for large counties?** The largest counties in Maryland were among the first to obtain home rule, but smaller counties, such as Kent, Caroline, and Talbot, have had home rule for decades.

**5. Who chooses the form of government for a county? Is there a default form of county government?** The form of county government is ultimately determined by a county's voters, although the County Commissioners have a role in the process. For a county to acquire charter home rule, the Commissioners must appoint a Charter Board, which drafts a charter for consideration by the voters. To acquire code home rule, the Commissioners must adopt a resolution, which is put before the voters at the next general election. If the Commissioners take no action or the voters reject a change, the county remains a commission county.

**6. What power does the Maryland General Assembly in Annapolis have over a county under each form of government?** *Commission* - The General Assembly has authority to pass laws for commission counties on any local issue. This authority gives state lawmakers virtually complete control over a commission county's affairs. The General Assembly may delegate authority on specific subjects to one or more commission counties, but state lawmakers may also withdraw the authority granted to a commission county at any time. *Charter* - Under charter government, the role of the General Assembly in local affairs is more limited. Article XI-A of the Maryland Constitution provides a county's voters authority to establish in a county charter the number, compensation, powers, and duties of the county council and to create a county executive. Because this authority is contained in the Maryland Constitution, it is outside the control of the General Assembly and cannot be changed or withdrawn without a Constitutional amendment. **QUESTION 6 CONTINUED IN NEXT COLUMN**

The Maryland Constitution provides the General Assembly with authority to grant to charter counties additional powers concerning local matters. Any power granted to charter counties by the General Assembly can be withdrawn. Unlike the situation for commission counties, however, the General Assembly cannot grant powers to an individual charter county or take powers away from an individual charter county. Any law enacted by the General Assembly that pertains to local matters of charter counties must be applicable to at least two charter counties. *Code* - Code Article XI-F of the Maryland Constitution provides broad authority to code counties to control local matters but reserves for the General Assembly authority to limit the indebtedness and tax rate of code counties. The Constitution also prevents code counties from levying new forms of tax or license fee unless the General Assembly authorizes the tax or fee for a class of code counties. The Maryland Constitution provides that any law pertaining to local matters of code counties must apply to all code counties within a class. The General Assembly has by statute created four classes of code counties: Central Maryland, Eastern Shore, Southern Maryland, and Western Maryland. Cecil County is included in the Eastern Shore class.

**7. What form of government currently exists in Cecil County, and what powers do county and state lawmakers have under this form of government?** Cecil County has the commission form of government, which is the original form of county government in Maryland. The County Commissioners can take action only to the extent the General Assembly has authorized them to do so. The General Assembly enacts laws concerning local matters, and the County Commissioners carry out those laws. The General Assembly may delegate authority on specific subjects to Cecil County, in which case, the County Commissioners can pass ordinances concerning those subjects. However, at any time, the General Assembly may withdraw authority that has been given to the County Commissioners. The General Assembly may also refuse to grant Cecil County powers that have been granted to other commission counties. This usually occurs if the county delegation (State Senators and Delegates representing the Cecil County) oppose giving the Commissioners the authority they seek.

# Questions (FAQs)

*Institute for Governmental Service and Research.*

## **8. What powers do counties have under each form of government?**

**Commission** - While the General Assembly has full power to legislate for commission counties, it has delegated some of that power over the years. For example, commission counties have authority for planning and zoning under Article 66B of the Annotated Code of MD. Under Article 25 of the Annotated Code, all counties, including commission counties, are given authority to conduct programs of public recreation and parks. Elsewhere in Article 25, Cecil Co. is given authority to acquire real property for any public purpose and to sell real property no longer needed for public use. The same law requires the Cecil Co. Commissioners to hold an advertised public hearing between 6-10 p.m. before contracting to sell real property. The authorities granted to groups of commission counties are generally found in the Annotated Code. The authorities granted to individual commission counties may appear in the Annotated Code, but usually are codified in the Public Local Laws of the particular county.

**Charter** - Article XI-A of the MD Constitution provides a county's voters authority to specify in a county charter the number, compensation, powers, and duties of the County Council and to create a County Executive. For counties in which voters have adopted a charter, the General Assembly has granted more than 30 statutory powers, enumerated in Article 25A of the Annotated Code. These powers encompass local administrative affairs, county services, borrowing and bond issuance, planning and zoning and more. The General Assembly withheld from charter counties the power to levy new forms of tax. For example, transfer taxes, impact fees, and excise taxes, which have been authorized for code counties as a group, are not available to charter counties without General Assembly action. However, charter counties can create new license fees or franchise fees, which code counties cannot. **Code** - The General Assembly has interpreted the scope of authority provided to code counties in the MD Constitution by enacting express powers codified in Article 25B of the Annotated Code of MD. These statutory powers are similar, but not identical, to the powers granted to charter counties. For example, the General Assembly requires code counties, like commission counties, to conduct planning and zoning in accordance with Article 66B of the Annotated Code, while charter counties are free to enact their own planning and zoning laws and are exempt from most elements of Article 66B. The General Assembly authorizes all code counties to levy a tax of up to ½% on the transfer of real property, and an impact fee to finance improvements needed to accommodate new development. Code counties that do not impose an impact fee may levy an excise tax of up to \$5,000 per lot for Eastern Shore code counties and \$2,000 per lot for other code counties to finance capital costs for expanded schools and an excise tax up to \$750 per lot to purchase development rights on agricultural land.

## **9. What are the forms of government of other Maryland counties?**

Besides Cecil, the other commission counties in Maryland are Calvert, Carroll, Frederick, Garrett, St. Mary's, Somerset, and Washington. The charter counties are Anne Arundel, Baltimore, Dorchester, Harford, Howard, Montgomery, Prince George's, Talbot, and Wicomico. There are six code counties, including four in the Eastern Shore class of code counties: Caroline, Kent, Queen Anne's, and Worcester. Allegany is the only code county in the Western Maryland class of code counties. Charles is the only code county in the Southern Maryland class of code counties. There are no counties in the Central Maryland class of code counties.

## **10. Is code home rule a stepping stone to charter home rule?**

Code home rule is an alternative to charter home rule with powers that are similar, although not identical. Voters in only one code county, Caroline, have considered adopting charter home rule. That effort failed in 1996. In contrast, charter home rule with a Council but no Executive may be a stepping stone to a County Executive. Two counties have made that change. In 1970, Montgomery County swore in its first County Executive, 22 years after adopting a charter that gave both legislative and executive authority to the County Council. A similar transition occurred in Wicomico County in 2006, after 42 years of charter government.

## **11. What happens to the current County Commissioners when home rule takes effect?**

The deliberations of a Charter Board during the charter-writing process include the transition from the current form of government to charter home rule. The proposed charter may provide for the current Commissioners to remain in office as members of the new County Council. Alternatively, the proposed charter may provide for the new Council to be elected at the same time the charter is adopted or after a transition period. Code home rule retains the Board of County Commissioners as the governing body. Whichever candidates are elected Commissioners in the general election at which code home rule is considered will serve as Commissioners whether or not code home rule is adopted.

## **12. What effect does each form of county government have on local taxes?**

Levels of spending and taxation are determined by the size and wealth of a county and the services it provides, not by the form of government. The 10 Maryland counties with the highest property tax rates include three commission counties, four charter counties, and three code counties. The 10 Maryland counties with the lowest property tax rates include two commission counties, five charter counties, and three code counties.

### **13. What are the strengths and limitations of each form of county government?**

**Commission** - The MD counties that operate under the commission form of government have been doing so for hundreds of years. In all but one commission county, voters have periodically considered and rejected the option of acquiring home rule. These results suggest that the commission form of county government is meeting residents' needs. In each of these counties, the commissioners have acquired from the General Assembly the necessary powers to operate the county to residents' satisfaction. Retention of some powers by the General Assembly and the ability of state lawmakers to withdraw authority are viewed as important checks and balances by those voters who are unsure that local officials will always act in the county's best interests if given broader powers. Because the General Assembly traditionally relies on the local delegation (State Senators and Delegates that represent the county) when considering legislation on local matters, requests by the delegation for changes in county authority are very likely to be enacted. Reliance on the General Assembly to address local issues slows the process of resolving these issues. In some cases, the slow process may be viewed as a strength, because there is ample time to scrutinize changes before they are enacted. Often, however, the slow process is a limitation. A critical local issue outside of the Commissioners' authority must be brought to the General Assembly for action during its 90-day session between January and April. If an issue arises late in the session, it probably will not be addressed until the following year. When a bill is enacted by the General Assembly, the new law does not take effect until July 1 or October 1. If the local delegation is unwilling to support a change sought by county officials, issues may remain unresolved for even longer.

**Charter** - A distinguishing feature of charter counties is that their structure is controlled by the voters through the charter adoption and amendment process. The fact that the structure of charter governments cannot be changed by county officials may be viewed as either a strength or a limitation. Only in charter counties do voters have the choice of maintaining a single body with both legislative and executive responsibilities or creating separate executive and legislative branches. Seven of MD's 9 county charters provide for a County Council responsible for legislation and an executive branch headed by a County Executive. Two county charters (Dorchester and Talbot) provide for a County Council with both legislative and executive authority. Charter government without a County Executive is structurally very similar to commission government and, therefore, may enable a smoother transition. Charter counties have authority over a broad range of local matters, but do not have authority to impose new taxes or fees, other than license and franchise fees, without General Assembly approval. Thus, charter counties as a group do not have authority to enact transfer taxes, impact fees, or excise taxes on new development. The local powers granted to charter counties cannot be withdrawn for an individual charter county.

**QUESTION 13 CONTINUED IN NEXT COLUMN**

If a charter county seeks to acquire a local power not currently available to charter counties, the county must team up with at least one other charter county in its request to the General Assembly.

**Code** - A noteworthy strength of the code form of government is the simple process for adopting code home rule. Once code is adopted, the Commissioners can easily change the government's structure, although they probably do not have authority to create an elected executive. Code counties have been granted some taxing and fee authority not granted to charter counties, including authority to impose impact fees or excise taxes on new development. Code counties have a stronger hold on delegated powers than do commission counties. The General Assembly cannot change the local authority for an individual code county. Any local law must be applicable to an entire class of code counties. If a code county seeks to acquire a local power not currently available to code counties, the entire class of code counties must support the request to the General Assembly. All legislation enacted by the Commissioners of a code county is subject to referendum. It appears that code counties have powers comparable to those of charter counties, and code counties have operated as though this is the case. Some experts question that interpretation of MD law, however, and it is possible that a Court might construe the powers of code counties more narrowly.

### **14. What is the procedure for changing the commission form of county government to charter or code home rule?**

The MD Constitution provides 2 processes for adopting charter home rule. The original procedure, not used in recent attempts to adopt charter government, requires 20% of voters to file a petition requesting the election of a Charter Board at the next general or congressional election. The County Commissioners nominate 5 individuals to serve on the Charter Board, and the electorate votes on whether to go forward with preparation of the charter. If approved, the Charter Board has 18 months to prepare a charter, which is voted on at the next general or congressional election. If the charter is adopted, home rule takes effect in 30 days. Under the alternate procedure for adopting charter home rule, the County Commissioners, either by choice or upon receipt of a petition signed by 5% of the voters, appoint a Charter Board comprising 5, 7, or 9 members. If county voters are unhappy with the Commissioners' appointees, they may demand an election on the membership of the Charter Board by filing a petition signed by at least 3% of eligible voters. The Charter Board has 18 months to prepare a charter, which must be published twice in 30 days. Voters decide whether to approve the charter at a special or general election held 30-90 days after publication of the charter. If the charter is approved, home rule takes effect in 30 days. The process for adopting code home rule is much simpler. The County Commissioners adopt a resolution proposing to become a code county, and the proposal is put before the voters at the next general election. If the proposal is accepted by a majority of those voting on the question, code home rule becomes effective in 30 days.