

Chapter 28

HOME RULE CHARTER

GENERAL

Article X, Section 6 (the Home Rule Amendment) of the New Mexico Constitution, adopted on November 3, 1970, makes any municipality which has adopted a charter since that time a "Home Rule" municipality. Only two municipalities with charters (Las Vegas and Silver City) are not "Home Rule" municipalities because their charters were adopted before the Constitutional amendment and new charters have not been adopted since.

WHAT IS HOME RULE?

Home Rule reverses the general rule, called "Dillon's Rule," regarding municipal powers (with some exceptions which are explained in the publications referred to in the next paragraph). Dillon's Rule says that a municipality is considered a creation of the state and, if it does not have Home Rule, a municipality has only those powers either granted by specific statutory authority, implied from some specific statutory grant, or essential to the objects and purposes of a municipality. On the other hand, if a municipality adopts a Home Rule charter, it may, in general, exercise any power or perform any function not expressly denied by statute or its own charter. Thus, the functions and duties of the Municipal Clerk in a Home Rule municipality may vary significantly from those of a Municipal Clerk in the statutory (non-Home Rule) municipality, and some portions of this manual may not be applicable.

What Home Rule authority means to a municipality, including exceptions, is explained in an out-of-print New Mexico Municipal League publication. The short brochure is entitled "Home Rule in New Mexico," and provides a concise and simplified explanation of Home Rule for the general information of mayors, governing body members, appointed officials, and interested citizens. Copies of this publication are available from the League office.

ADOPTING A CHARTER

Since any municipality in New Mexico may adopt a charter, every Municipal Clerk should have at least a general acquaintance with the charter adoption process, and with the Municipal Clerk's duties in relation to that process. The Municipal Charter Act (§§ 3-15-1 through 3-15-16) specifies the procedure to be followed.

Action toward adopting a municipal charter may be started either by receipt of a petition signed by 5% of all qualified electors (registered resident voters) or by action of the governing body, presumably by resolution. Either way it is started, the governing body appoints a charter commission to draft a proposed charter. The charter commission shall consist of not less than seven members and no more than a simple majority may belong to the same political party. The charter commission must file a proposed charter with the Municipal Clerk within 180 days of the date of its appointment (§ 3-15-5) and a municipal election on the proposed charter must be held within one year after the appointment of the charter commission (Article X, Section 6, NM Constitution).

The charter commission will file a draft charter with the municipal clerk for approval by the governing body. If the governing body disapproves the proposed charter, it is returned to the charter commission, who must revise it to meet the governing body's requirements and file the revised charter with the Municipal Clerk within 60 days. This procedure continues until the governing body approves the proposed charter (§ 3-15-9).

Once the governing body has approved the proposed charter, the mayor must, within five days after approval, issue a proclamation calling a special election on the question of charter adoption (§ 3-15-9). The election is conducted in the same manner as other special municipal elections, and the choices on the ballot must be "In favor of adoption of the charter" and "Against adoption of charter" (§ 3-15-10). Additional requirements include publication of the proposed charter once each week for four consecutive weeks, and distribution of at least 1,000 copies of the proposed charter at least three weeks before the election (§ 3-15-15).

If the majority vote at the election is in favor of adoption of the charter, the mayor must issue another proclamation calling for the election of any elective officers provided for in the charter. This election is to be held at least 10 days before the effective date of the charter, and is to be conducted in accordance with the provisions of the charter (§ 3-15-11). To the extent the charter does not provide election procedures, the election procedures in the Municipal Election Code must be followed.