

- (4) Congress would then have to pass by majority vote an act admitting the new state into the Union.

FRANK J. KELLEY,
Attorney General.

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CITIES, HOME RULE: Charter Revision

A change in a home rule city charter that constitutes a change in the form of government may only be accomplished by a revision of the charter and may not be accomplished by a charter amendment.

A proposal to change a home rule city charter from a city-manager form of government to one in which the office of mayor will be a full-time office with power to appoint all department heads, including the city manager, is a charter revision rather than a charter amendment.

Opinion No. 4916

January 22, 1976.

Honorable Charles O. Zollar
State Senator, 22nd District
P. O. Box 240
Lansing, Michigan 48902

You have requested an opinion of this office on the following question:

"May the charter of the City of Benton Harbor be amended, without revision through a charter commission, to provide a strong mayor form of government where presently there is a council-manager form of government, pursuant to an 'Initiatory Petition' (enclosed) which purports to affect this change?"

The initiatory petition states:

"We, the undersigned registered and qualified voters of the City of Benton Harbor in the County of Berrien, and State of Michigan, hereby propose that the Charter of the City of Benton Harbor, Michigan, adopted June 21, 1921, Amended September 4, 1923, Revised April 5, 1945, be amended to make the position of Mayor a FULL-TIME salaried position; and to make the Office of the Mayor responsible for the proper administration of the affairs of the City and to that end the Mayor shall have power to appoint the heads of all Departments, including the City Manager; all such appointments by the Mayor must be confirmed by the Commission, however, the heads of any Department, including the City Manager, may be dismissed for cause at anytime at the will of the Mayor or at such time as otherwise provided by Civil Service ordinance to be voted for at the Primary Election to be held on the 5th day of August 1975."

Your letter also refers to several pieces of correspondence which pertain to the issue. This correspondence indicates that an opinion to the city attorney and an opinion of the city attorney advise that further action should not be taken by city officials in furtherance of the petitions.

The Home Rule Cities Act, 1909 PA 279; MCLA 117.1 *et seq*; MSA 5.2071 *et seq*, provides a procedure by which charters may be "revised" by a charter revision commission. 1909 PA 279, § 18; MCLA 117.18; MSA 5.2097. It also provides for a procedure by which charters may be "amended" either by action of the legislative body of the city. 1909 PA 279, § 21; MCLA 117.21; MSA 5.2100, or by initiatory petition, 1909 PA 279, § 25; MCLA 117.25; MSA 5.2104.

The distinction as to whether a charter change must be by revision or may be by amendment has a great deal of practical importance since the charter revision process is long and costly involving the election of a charter commission and an overall analysis of the charter, while charter amendments can be made much more quickly. In *Kelly v Laing*, 259 Mich 212; 242 NW 891 (1932), the Supreme Court defined the difference between revision and amendment as applied to city charters:

"Revision implies a re-examination of the whole law and a redraft without obligation to maintain the form, scheme, or structure of the old. As applied to fundamental law, such as a constitution or charter, it suggests a convention to examine the whole subject and to prepare and submit a new instrument, whether the desired changes from the old be few or many. Amendment implies continuance of the general plan and purport of the law, with corrections to better accomplish its purpose. Basically, revision suggests fundamental change, while amendment is a correction of detail." 259 Mich at 217; 242 NW at 892.

In *Kelly v Laing*, *supra*, the Supreme Court found that charter changes that constitute a change in the "form of government" may be accomplished only by a revision of the charter as distinguished from an amendment of it. The court found in *Kelly* that a charter change which would abolish the office of the city manager and transfer his powers and duties to the city commission constituted a change in the form of government.

My predecessor has held that a change in the charter of a city, so as to return the city to a fourth-class city form of government, as previously existed in the city, was a change in the form of government which could be accomplished only by the charter revision process. See OAG 1955, No 2159, p 390 (July 25, 1955).

In *Midland v Arbury*, 38 Mich App 771; 197 NW2d 134 (1972), the Court of Appeals said:

"If the proposed change only amends, alters, or improves within the lines of the original charter, it is an amendment and the passage by the city electorate was valid. But, if the proposed change totally disrupts, cancels, abrogates, or makes inoperable the original charter, it is a revision and the amendment procedure and vote is subject to reversal." 38 Mich App at 774; 197 NW2d at 135.

In *Midland* the court held that a charter amendment providing for the recall of the city manager would effectively destroy the city manager form of government; it would result in more than an amendment of the charter and would constitute a substantial revision of it.

According to the petition attached to your letter to this office, the proposed amendment would:

1. Make the mayor a full-time salary position;
2. Make the office of the mayor responsible for the proper administration of the affairs of the city; and
3. Give the mayor the power to appoint the heads of all departments, including the city manager, subject to the confirmation of the city commission, to serve at the will of the mayor except as provided by the Civil Service ordinance.

These changes would necessarily mean wide-ranging modifications of the relationships between the mayor, the city commission, the city manager, and the department heads. Increasing the powers of the mayor to this degree with a consequent diminution of the powers of both the city commission and the city manager would be a fundamental change. It is my opinion that the proposed amendment may be accomplished only through the charter revision process.

FRANK J. KELLEY,
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760126-2

MAPS AND PLATS: Construction of apartment buildings, townhouses or duplexes.

MAPS AND PLATS: Leases for more than one year.

WORDS AND PHRASES: "Subdivision"; "partition"; "divide".

Multi-building apartment, townhouse or duplex developments are not "subdivisions" within the meaning of the Subdivision Control Act if the development is owned as a single unit and the residential units are leased.

A "lease of more than one year" within the meaning of the exemption from the Subdivision Control Act does not mean that the developer, to enjoy the exemption, must lease a residential unit for only a single term of less than one year.

Opinion No. 4912

January 26, 1976.

Honorable William L. Jowett
State Representative
The Capitol
Lansing, Michigan 48901

The Michigan Department of Treasury Land Subdivision Information Bulletin No. 11 dated January 1975 contains the following interpretation of § 102(d) of the Subdivision Control Act, 1967 PA 288, MCLA 560.102(d); MSA 26.430(102)(d):

" . . . The construction of each townhouse or apartment building constitutes a parcel of land for the purpose of building development whether the living units are sold or leased." [Emphasis added; p 3]