BUREAU FOR RESEARCH IN GOVERNMENT OF THE UNIVERSITY OF MINNESOTA

Publications, No. 1

CITY CHARTER MAKING IN MINNESOTA

BY

WILLIAM ANDERSON, PH.D.

Associate Professor of Political Science
and Director of the Bureau

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Published by the University of Minnesota
Minneapolis, April, 1922

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FOREWORD

This little book is the first in a series of publications which the Bureau for Research in Government hopes to bring out dealing with various political problems in the field of state, local, and municipal government and administration in Minnesota. The primary object of this series is to furnish much needed information in respect to the organization and workings of the political institutions of the state. In the operation of democratic institutions, as the late Viscount Bryce has pointed out, "It is facts that are needed; facts, facts, facts!." But unfortunately, many of our officials, together with the general body of citizens, have not the necessary sources of information at their command, nor do they know where to look for the same. This is the age of propaganda, good, bad, and indifferent. Every party, faction, and interest is striving desperately to gain the ear of the public. Fact and fancy, rumor and falsehood are bandied about in hopeless confusion until the puzzled electorate is prone to ask in the words of Pilate, "What is truth?."

Here, indeed, it is submitted, is an excellent opportunity for the University to perform a valuable public service. A spirit of scientific research on the part of the members of the faculty may be combined with the function of public education. Science may be made the "handmaiden of politics." In short, the University, through its trained investigators, can furnish much of the data which will enable the electorate to pass an intelligent and independent judgment upon questions of the day. In this coöperation lies the hope of democracy. "After bread," as Danton has well said, "education is the greatest need of the people."

The director of the bureau has selected as the first of these studies a topic in the field of municipal government, the central problem of which is that of charter-making. In this state, city charters are no longer a voluntary concession handed down by the legislature to the municipalities. Each city is now free to frame its own local constitution. In a very direct sense, it is the local voters who make as well as adopt the city charters. Home rule charters are essentially homemade charters and it must be confessed they often exemplify many of the defects as well as the merits of their local origin. For this very reason the advice or

suggestion of an expert draftsman may often prove of great assistance to a local community. It is the purpose of this little handbook, therefore, to put together, in as brief a compass as possible, all the information which may be found necessary to the intelligent drafting, adoption, and amendment of home rule charters in Minnesota. In brief, it is designed to be a handy manual for the public-spirited citizens of the state who may be wrestling with the problem of reorganizing their municipal governments. It is hoped in course of time that this and similar manuals may supplant the scissors and mucilage bottle in the formation of our political institutions.

C. D. ALLIN, *Chairman*
Department of Political Science

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CITY CHARTER MAKING IN MINNESOTA

CHAPTER I

THE DEVELOPMENT OF CITY GOVERNMENT IN MINNESOTA

1. **City growth in the United States.** As the number of people living in cities increases, the problems of city government draw closer to all of us and become more numerous and important. At the time of the Revolutionary War (1776-83) less than four persons in every hundred in the thirteen colonies lived in cities. The largest city then was Philadelphia, with 28,522 white inhabitants in 1780, and as late as 1800 there were only five other cities having over 8,000 people each. In 1790, out of 3,929,214 people in the United States, only 131,472 lived in places having over 8,000 people each. As a contrast with these figures, let us look at the 1920 census. In that year 54,304,603 persons were found living in cities (i.e., in incorporated places having 2,500 or more population) and 51,406,017 living in smaller towns and in rural districts. To put it in another way, more than half of the American people are now living in cities and either suffering from the ills or enjoying the benefits of city government. In 1920 New York City with over 5,600,000 population had almost twice as many people as the whole United States in 1780. Minneapolis alone had in 1920 three times as many inhabitants as the six leading cities of 1790.[1]

2. **Growth of cities in Minnesota.** Minnesota was established as a territory in 1849, sixty years after the establishment of our national government under its present constitution. Even at that late date this region was practically a raw wilderness. The first regular Federal census in 1850 enumerated only 6,077 people (not counting the Indian tribes) in the whole of Minnesota Territory. The incorporated town of St. Paul, the largest single white community in Minnesota, had only 1,112 people, which was approximately four times as many inhabitants as it had in 1849, one year

[1] *Fourteenth Census*, 1920, Volume I, Population 1920, pp. 43, 44, 76.

earlier. St. Anthony and Stillwater were petty hamlets; Minneapolis was not yet indicated on the map. But things have moved rapidly in Minnesota. The 1920 Federal census shows that Minnesota has grown to a population of 2,387,125, of which number 44 per cent or 1,051,593 live in cities and 1,335,532 live in so-called "rural territory," including under that designation cities, villages, and boroughs of less than 2,500 inhabitants, and all townships and unincorporated territory.[2] Indeed, the real story is that in strictly rural territory are to be found only 40.5 per cent of the people in the state, as the following figures show:

Minnesota: Distribution of Population, 1920	No. of Places	Population	Per Cent
In cities and villages of 2,500 and over	59	1,051,593	44.1
In cities, villages, and boroughs of less than 2,500	633	368,269	15.4
Total, cities, villages, and boroughs	692	1,419,862	59.5
In strictly rural territory	..	967,263	40.5
Grand total	..	2,387,125	...

3. Importance of good city government. It is not easy to exaggerate the importance to the people of good city and village government. It is in these communities that most of our citizens get their training, their practical experience, in self-government. If a city or village has high standards of integrity and efficiency, the young people who grow up in it will unconsciously learn those standards and transmit them to other communities, to the state and to the nation. The governments of cities and villages daily touch the lives of the great majority of our people. It is conservative to say that if all their expenditures are added up, including school expenses, the cities and villages of Minnesota would be found to be laying out each year not less than $40,000,000.[3] If this money could all be expended to the best possible advantage through effi-

[2] *Fourteenth Census,* 1920. Bulletin, Population: Minnesota, Number of Inhabitants, by Counties and Minor Civil Divisions, pp. 1, 2, 23-28.

[3] Expenditures in 1920 and 1921 were higher than in 1919. In the latter year Minneapolis, Duluth, and St. Paul alone expended over $23,500,000. *Financial Statistics of Cities,* 1919, pp. 121, 125.

cient and wise local administration, it would be impossible to reckon in money terms the great benefits which the state and its people would derive.

4. Beginnings of local government in Minnesota. When the government of the Territory of Minnesota was established in 1849, there were scarcely five thousand white inhabitants throughout the entire area, including parts of North and South Dakota. Practically all of these people were to be found east of the Mississippi, for west of that river the Sioux and Chippewa Indians still held sway. Agriculture was not yet well established; the whites were not distributed evenly over the land but lived in hamlets and lumber camps scattered up the St. Croix and Mississippi rivers from their junction. The Federal government having made no regulations on the subject, the territorial authorities were free to set up such local governing bodies as they saw fit. The first need was for county governments, with sheriffs, constables, and justices of the peace to keep order on this wild frontier. Naturally with our pioneers, the second thought was of school districts to provide at least elementary education. Both of these needs were met by legislation at the first session of the territorial legislative assembly.[4] One community, St. Paul, with its two or three hundred inhabitants, was not content with these forms of government. It asked for and received a separate status, being created "a town corporate," or, differently phrased, "a body corporate and politic, with perpetual succession, to be known and distinguished by the name and style of 'The Town of St. Paul.'"[5] Just why the name "town" was chosen it is hard to say; the townsmen as such had no other power than that of electing the local officers, namely a president, recorder, and five trustees who, as the council of the town, were empowered to appoint officers and employees, to enact by-laws, to levy a tax for local purposes, and generally to do the business of the town. Further description is hardly needed of this first incorporated municipality in Minnesota; it was, in fact, very much the same as a village of to-day.

5. The first incorporated cities. As St. Paul was the first incorporated town in the territory, so also was the first independent school district organized therein under the name of "The St. Paul

[4] *Laws* 1849, chs. 3, 5, 6, 19, and 7.

[5] *Ibid.*, ch. 40.

Institute."[6] The town was growing rapidly; its limits were early extended;[7] and in 1854 it was incorporated as a city.[8] Stillwater was also incorporated as a "city" in 1854, but its charter was shorter and its organization much simpler than that of St. Paul; indeed, it was to be a village rather than a city.[9] St. Paul, on the other hand, was divided into three wards, with three aldermen, one assessor, one constable, and one justice of the peace to be elected from each ward, and a mayor, a treasurer, a marshal, and a justice of the peace to be elected at large. The charter was long and somewhat complicated, with a detailed enumeration of the council's powers and full descriptions of procedure to be followed in particular cases.

6. First towns and cities west of the Mississippi. The region west of the Mississippi was partly cleared of the Indians as early as 1852, but it was not until about 1854 that matters were so adjusted as to permit the beginning of extensive settlements. At the same time the first railroad was opened from Chicago to the Mississippi River, and there began a large new movement of immigration from the eastern states. In 1855 the town of Henderson, the home of the industrious J. R. Brown, received the first town charter to be conferred on any community in Minnesota west of the Mississippi. The next year six towns were incorporated, namely St. Cloud, Minneapolis, Monticello, Little Falls, Greenwood, and Clarkesville, all west of the river. At the two sessions in 1857, four cities, namely Red Wing, Hastings, Winona, and Shakopee, and one hundred and six towns, practically all west of the Mississippi, received charters of incorporation. Among the towns chartered were Duluth and Fond du Lac. The demand for town charters was merely one evidence of the boom times at the beginning of the year 1857; before the year had closed the crest of the wave of fictitious prosperity had passed and the people had been plunged back into the trough of depression and hard times.

7. The general township laws, 1858-60. Throughout the territorial period (1849-57), all of the cities and nearly all of the towns incorporated by the legislative assembly consisted of relatively small areas already platted, or which were to be platted, into town

[6] *Laws* 1851, ch. 4.
[7] *Ibid.*, ch. 15.
[8] *Laws* 1854, ch. 6.
[9] *Ibid.*, ch. 52.

building lots. The land speculators who promoted them were interested primarily in enriching themselves from the development of sites for future cities. The crash of 1857 very nearly destroyed this business; most of those who were not bankrupted outright were, in any event, doomed to ultimate disappointment. On the other hand the towns which they were developing, being fundamentally mere land selling adventures upon the sites of prospective cities, were of little value in solving the problems of rural local government which were then confronting the people. Over many thousand square miles of rich agricultural land in the southern and central portions of Minnesota a new farming population had spread itself thinly but uniformly after 1854. By 1857 the counties had been much reduced in size and increased in number to meet the needs of these people for local government, but the counties were too large, after all, and their organization not adapted for purely local purposes. The people needed a township system, and it was such a system to which most of them, coming from New England, New York, and the Old Northwest, were accustomed. The problem was new and distinctive, and too big to be handled any longer by special laws or even by such omnibus incorporation acts as were passed in 1857. Furthermore the new constitution of the state, adopted in 1857, clearly pointed the way to a general township law. For these and other reasons the first state legislature enacted in 1858 the first general laws for establishing a general system of town or township government.[10] First enacted and then subsequently amended in the first state legislature, this law was materially changed by the second legislature.[11]

8. The constitution and local government. The years 1857 and 1858 saw the transition of Minnesota from a territorial status to statehood. In the two wings of the constitutional convention in 1857 there was much discussion of the problems of local government. There were those in both wings who wished to prohibit every form of special legislation, even for the incorporation and regulation of local governments. Railroad corporations, plank roads, boom companies, bridge companies, and even manufacturing businesses had been chartered, and a large number of laws passed granting special privileges to particular persons by special enactments. The

[10] *Laws* 1858, ch. 75; also appendix to said laws, pp. 311-34.

[11] *Laws* 1860, ch. 14.

evil was undoubtedly great, and was being extended into the fields of local government. As one member put it, "The whole territory is flooded with these special charters." The provision written into the constitution, however, permitted special legislation for local government, providing that "No corporation shall be formed under special acts except for municipal purposes."[12] There was no further prohibition against special legislation until 1881. The original constitution contained some general provisions as to counties and townships, but nothing directly about cities or villages except that cities of 20,000 inhabitants might be organized as separate counties without reference to geographical extent.[13] Except as to counties and towns, therefore, the legislature was by implication given a perfectly free hand to make such provisions as to local government as it saw fit, and to do so either by general or by special laws; for a state legislature has all legislative powers not clearly denied to it.[14] In the absence of restrictions it may set up local governments and it may destroy them; it may give them one form or another, as it sees fit; it may add to their powers or limit them at will.[15] In no field

[12] *Minn. Const.*, art. 10, sec. 2.

[13] *Ibid.*, art. 11, sec. 2.

[14] "We must not forget that the voice of the legislature is the voice of the sovereign people, and that, subject only to such limitations as the people have seen fit to incorporate in their constitution, the legislature is vested with the sovereign power of the people themselves. In other words, the provisions of a state constitution do not and cannot confer upon the legislature any powers whatever, but are mere limitations in the strict sense of that term, and the legislature has all the powers of an absolute sovereign of which it has not been divested by the constitution." State *ex rel.* Simpson *v.* City of Mankato, (1912), 117 *Minn.* 458, 136 *N. W.* 264.

[15] "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations of the state, and the corporations could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature." U. S. Supreme Court, in Atkin *v.* Kansas, (1903), 191 *U. S.* 207, 24 *S. C.* 124, 48 *L.* ed. 148, quoting from Judge Dillon's opinion in City of Clinton *v.* Cedar Rapids and Missouri River R. R. Co., (1868), 24 *Iowa* 455, 475. A few courts deny this proposition, but they are distinctly in the minority.

has it more extensive powers; but, as we shall see, the fact that it was practically unrestricted during the years 1858-81 led to serious difficulties and some abuse of powers.[16]

9. Special legislation and confusion, 1858-70. The legislative assemblies of the territorial period made practically no contribution toward solving the problem of municipal government in Minnesota. Their practice was to meet every new demand with a special act; they evolved neither any general laws nor any constructive principles. Every community had a more or less special status, a charter different from that of other communities. To this uncertainty the first and second state legislatures added a new element of confusion. In the general acts for township government, the rural townships were called "towns" just as the semi-urban communities chartered in the territorial period were called "towns." Thus there were really two distinct classes of towns, the strictly rural and the non-rural. Some of the latter apparently wanted more of a distinction made in terminology, and it appears that some of them, without legal warrant, began to call themselves "villages." During the dull years following the panic of 1857, and also during the Civil War when the main attention of the legislature and people was centered upon events on a larger stage, there was relatively little progress in the towns and not much need of constructive legislation. With the closing of the war, there was a new condition of affairs. Old towns began to grow again and new ones to spring up. The latter desired to be separated in their local government from the townships in which they lay, whereas both groups undoubtedly wished to be distinguished in name from the rural towns or townships.

10. An illustration of confusion, 1865. Four special acts of 1865 give evidence both of new needs and of the confusion into which the legislature had fallen. The first of these acts incorporated the "city" of Owatonna, the second incorporated the "borough" of St. Peter, the third incorporated the "village" of Mankato, and the fourth incorporated the "town" of Caledonia.[17] Owatonna and Mankato had both been corporate towns since 1858; the other two do not appear to have been previously incorporated. They were all very much of a size and their needs must have been similar if not

[16] See secs. 9-11, 15-19, below.

[17] *Spec. Laws* 1865, chs. 11, 12, 13, 14.

almost identical. The largest of the four, Mankato, with 2,654 inhabitants in 1865, was made a "village"; the next largest, Caledonia, with 1,126 people, a "town"; and the two smallest a "city" and a "borough," respectively, Owatonna with 949, and St. Peter with probably 800 or 900 souls. The absurdity of these arrangements can be explained only by assuming that the legislature passed any bill for a municipal charter which a local representative was pleased to bring in. If this was indeed the attitude, no words are needed to explain the danger to the people in vesting such a power in the hands of local representatives.

11. **These four charters of 1865 compared.** Under the charters mentioned, the "village" of Mankato (the first real "village" in the state) was to be governed by three trustees, a clerk, a treasurer, and a marshal, all elected by the legal voters for terms of one year each. The voters of the "town" of Caledonia were to choose annually a president, a recorder, and three trustees, who were to constitute the governing body of the town. The "city" of Owatonna, with its 949 people, received a long charter, filling more than thirty pages in the statutes. Its territory was divided into three wards, in each of which the voters were to choose two aldermen, one justice of the peace, and one constable. In addition a mayor, a recorder, an assessor, and a city justice of the peace were to be elected at large. The mayor and the six aldermen together constituted the common council of the city. The "borough" of St. Peter (the first "borough" in the state) was made divisible into "districts" or wards by the borough authorities. From each such district three councilors and two constables were to be elected; from the borough at large a mayor, a treasurer, and two borough justices. The mayor and councilors were to constitute the borough council. The mayor was endowed with "the executive power" of the borough in strong and explicit language, but it does not appear that as a matter of fact he was anything more than a chief police officer. Clearly these four acts did not provide such different forms of government for the communities concerned as to have necessitated special legislation for each one. Such slight differences as were provided for were not based upon any fundamental differences in principle. It is very evident, as was said above, that the legislature acted more or less as a rubber stamp to approve the bills of local members. There was no attempt at uniformity, no pretense of laying down general rules or providing for future communities, no effort to lead wisely and in

right directions. The matter was purely a local concern, the legislature merely an agency to carry out local desires. The people of a community might call themselves a city, a town, a village, or a borough, and for all practical purposes have any form of government they wished or their representative said they desired.

12. Slight beginnings of uniformity, 1865-75. In their desire to be distinguished in name from the township "towns" of the state, the small semi-urban communities had at last in 1865 hit upon two names which suited them, namely "village" and "borough." From that time on it appears that no non-rural community was incorporated under the name of a "town." There was as yet, however, no general law for villages or boroughs. In 1866 one village and one borough were incorporated by the legislature; in 1867 a borough; in 1868 two cities, three villages and one borough; in 1869 one city, two villages, and a borough; and in 1870 three cities, five villages, and a borough. The demands upon the time of the legislature for such charters were burdensome and increasing. In 1870 it took the first notable step toward saving itself from this labor and expense by enacting a general law for the incorporation and government of cities.[18] This law appears to have accomplished very little. The preliminary steps to incorporation under it were difficult; and the law did not provide for the needs of villages at all. Special legislation continued to be the order of the day. In the session of 1871 the legislature gave special charters to seven villages; in 1872 to two cities and seven villages; in 1873 to one city and six villages; in 1874 to one city and seven villages; and in 1875 to twelve villages, besides a charter of reincorporation to the borough of Henderson. This period of five years found the demand for village charters decidedly upon the increase; the demand for city charters was holding steady but that for borough characters had fallen off to practically nothing. Again the legislature attempted to save itself by enacting in 1875 a general law permitting the voters in a small community to proceed to organize themselves into a village.[19] That the need was urgent is indicated by the fact that the special village charters enacted in 1875 alone filled over one hundred pages in the special laws.

[18] See sec. 13, below.

[19] See sec. 14, below.

13. **The general city incorporation law of 1870.**[20] This, the first general act for the organization of cities in the state, authorized two thirds of the legal voters in any district having from 2,000 to 15,000 inhabitants to petition the local judge of probate for the incorporation of a city with the name, the ward lines, and the boundaries stated in the petition. Upon ascertaining that the petition was sufficient, the probate judge was to declare the city to be incorporated and to set the date of the first election. Each city organized under the act was to have from two to five wards. The elective officers were to be a mayor, a treasurer, and a recorder, each for a term of one year, together with one justice of the peace and two aldermen from each ward, each for a term of two years. The mayor, called "the chief executive," was really to be the head of the police department, with power to appoint the chief and other officers; he was to enforce the ordinances and was also given the usual mayoral veto upon acts of the council. The common council, of which the mayor was not a member, was given extensive legislative, financial, and administrative powers. It was authorized to enact ordinances upon thirty-two specified subjects; to levy taxes and control the finances of the city; to appoint the city attorney, street commissioner, assessor, surveyor, and fire chief; and to have the management of the public works of the city, of all departments except police, and of the public ways within the city. This general act, somewhat amended in following sessions, was embodied as revised in the *General Statutes* of 1878 and also in the *General Statutes* of 1894, but was neither repealed by nor embodied in the *Revised Laws* of 1905. Since by the latter year it was already possible for cities to adopt home rule charters, it was probably intended that the law of 1870 should remain in effect for those cities which had already adopted its provisions but that, in any case, no other cities should be encouraged to adopt it. How many cities were organized under this law is not known, since it was not necessary to send notice of the adoption of the act to the secretary of state or to any other office of public record.[21] At the present time only six cities, namely

[20] *Laws* 1870, ch. 31; *Gen. Stat.* 1878, ch. 10; *Gen. Stat.* 1894, ch. 10, title 2, secs. 1045-1195.

[21] That there was at least one early use of the law we know from the decision in State *ex rel.* Gale *v.* Ueland, (1882), 30 *Minn.* 29, 14 *N. W.* 58. This decision did not pass upon certain important questions concerning the validity of this act.

Canby, Luverne, Madison, Marshall, Montgomery, and Waterville, are known to be operating under it. Five of these cities adopted the law between 1894 and 1904; as to Waterville the record is uncertain.[22]

14. The general village law of 1875.[23] The object of this law appears to have been to establish a uniform organization and uniform powers for all villages to be incorporated thereafter, and thus to relieve the legislature of the task of passing upon a whole series of lengthy and diverse bills for village charters. The act did not, however, grant the right of self-determination to the small communities of the state which desired village organization. Instead it reserved to the legislature the decision as to what districts should receive incorporation as villages. This greatly simplified the task of the legislature, however, for only three important questions needed then to be passed upon by the legislature. *First,* shall the petitioning community be incorporated as a village? *Second,* shall it have the boundaries asked for? *Third,* shall it be given the same organization and powers as other villages, or different ones? With a general village law on the books to establish a uniform pattern for villages, the burden of proof would fall on any community which requested an exceptional status. It is unfortunate that the legislature did not set up some other body than itself to answer the questions above stated. The village officers under this law were to be a president, three trustees, a recorder, and a treasurer, all elected for one-year terms, and a justice of the peace and a constable, each to serve two years. The president, trustees, and recorder were to constitute the village council, empowered to enact by-laws on sixteen enumerated subjects and to provide for the punishment of offenders. Strangely enough the villages thus provided for were to retain some of the characteristics of township government. There was to be an annual meeting of the voters and there might be special ones. No tax could be levied, and no amount of money in excess of $500 be expended for any one purpose, without the approval of such a meeting of the voters.

15. Special legislation unchecked. It was undoubtedly the hope of the legislature that with the enactment of general laws for the incorporation of both cities and villages there would be a decline

[22] See secs. 47, 50, below.

[23] *Laws* 1875, ch. 139.

in the demand for special charters. That this hope was not fulfilled in the case of cities is indicated by the figures given above for the incorporation of cities between 1871 and 1875. The disappointment was even greater in the case of the general village law. This act, passed at the end of the session of 1875, did not apply to any of the villages specially incorporated at that session. Its first effects were to be seen in the session of 1876. Besides two cities, fifteen villages were incorporated by this legislature. Of the fifteen, two were given special charters entirely without reference to the general law; five were put under the law but given some special powers in addition; and eight were put entirely under the general act. From that time on the reliance on and compliance with the general law grew to be less and less, as the following table will show:

ACTS INCORPORATING CITIES AND VILLAGES, 1876-81, INCLUSIVE

Session	Number of Villages Incorp.	Number *Not under* Gen. Law 1875	Number under Gen. Law but *Exceptional*	Number *Entirely under* Gen. Law 1875	Number of Cities Incorp.
1876	15	2	5	8	2
1877	14	1	6	7	0
1878	19	6	6	7	2
1879	12	3	5	4	2
1881 (reg.)....	45	15	15	15	3
1881 (ex.).....	17	2	8	7	1
Total	122	29	45	48	10

Of 122 villages, a high number, incorporated by law in six years, less than two fifths were willing to accept the general law of 1875 without change. Twenty-nine villages received entirely special charters, and forty-five were allowed a more or less exceptional position under the general law. Very clearly the desired result, namely relief to the legislature, had not been accomplished. The demands upon the legislature grew heavier rather than lighter, and when there was warning in 1881 that the people desired to have the constitution amended so as to prohibit special legislation upon a number of subjects, the legislature was fairly swamped by a wave of bills for special charters, brought in with the hope of passage before the constitution forbade.

16. The bane of special legislation, 1849-81. From the founding of Minnesota Territory down to the year 1881 in the state's history, special legislation upon the subject of local government was unrestrained by constitutional prohibitions. In 1870 and again in 1875 the legislature made feeble efforts to shut off the steady inflow of bills for special local laws, but the results were almost triflingly small. As a body the legislature seems to have had high ideals in this matter and to have resented the squandering of its time and the state's money upon special legislation, but as individuals the members found it almost impossible to resist the demands of their constituents who desired special laws and privileges. The very legislature which proposed the amendment to prohibit certain forms of special legislation was itself guilty of passing more special and local laws than any legislature up to that time (1881). From the first session of the state legislature (1857-58) down to and including the extra session of 1881, the legislature enacted 4,176 special laws as against 2,689 general laws, or 61 per cent special to 39 per cent general. The special laws filled 8,565 pages of the statutes, as compared to 4,265 pages of general laws, or 67 per cent special to 33 per cent general. The evils in a system under which the state legislature passed twice as much special as general legislation may be stated as follows: *First,* there was the great expense to the state in preparing, enrolling, enacting, and printing this large volume of special legislation. *Second,* the effect on the morale of the legislators was serious. As long as special legislation was the vogue, members felt themselves to be primarily the agents of their own districts to procure concessions from the state. Much of their time was consumed in promoting special laws for their localities. Log-rolling or trading of votes to pass local bills was necessary, and the practice was extended even to the passage of general acts. *Third,* and conversely of the second point, general legislation was given relatively less attention, much of it was passed by log-rolling, and the welfare of the whole state was somewhat neglected. *Fourth,* the principle of local self-government was frequently violated. The greater number of special laws enacted were designed to regulate the affairs of counties, cities, villages, towns, and school districts, to establish state and county highways, or to grant special privileges in the matter of ferry rights, plank roads, dams, booming rights, or bridges. Much of this legislation was opposed to the true interests not only of the locality concerned, but also to those of the state as a whole.

In any case, local voters or councils were generally given no right to pass upon these purely local questions; if they had been, many of the measures would probably have been defeated. *Fifth,* the law was kept in a constant state of confusion and uncertainty. Instead of having a simple code of general laws to apply, local governing bodies, lawyers, and courts were compelled to look closely into an increasing number of special acts which changed the law in this and that community.

17. Certain special legislation prohibited, 1881. At the beginning of the legislative session of 1881, Governor John S. Pillsbury made a strong recommendation on the subject of special legislation. Having discussed the change from annual to biennial sessions of the legislature, a change which had greatly shortened the time available for legislation, he went on to say:

> **If to the step thus wisely taken in the direction of reform there could be added the prohibition or curtailment of the growing evil of special legislation, another fruitful source of expense and abuse of power would be removed. It is well known to all persons familiar with this subject that at least two thirds of the time, labor, and expense required of an average session are consumed in the passage and printing of acts of a purely private or local nature, which are properly matters to be considered by the courts or local authorities, or which could be more promptly and justly treated under general laws of uniform application, with benefit to all parties concerned. This evil is receiving serious consideration in other states, from whose experience, both of the evil and of the attempted correction, valuable information can be derived. I commend the matter to your candid consideration, and suggest the passage of a measure for submitting to the people a constitutional amendment forbidding or greatly restricting special legislation.[34]**

Following this recommendation, the legislature proposed and the voters later adopted by an overwhelming vote an amendment which added sections 33 and 34 to article 4 of the constitution.[35] Under these sections the legislature was forbidden to enact special or private laws upon eleven stated subjects, and insofar as it acted upon these subjects at all it was limited either to repealing existing special laws, or to passing general laws of uniform operation throughout the state. No special or private laws were to be passed "For laying out, opening or altering highways. . . . For granting corporate powers or privileges except to cities. . . . For incorporating any town or village. . . . For vacating roads, town plats, streets,

[34] Annual message, Jan. 6, 1881, in *Minn. Exec. Docs.* 1881, Vol. I.

[35] *Laws* 1881, ch. 3. Adopted in 1881 by 56,491 votes to 8,369.

alleys, and public grounds," as well as for certain other local purposes.

18. The general village laws, 1883-85. One direct and tangible result of the amendment of 1881 was the enactment in 1883 of an important new general law for the government of villages.[36] This act was soon after declared unconstitutional because it attempted to confer upon the district courts the purely legislative power of incorporating villages,[37] but it was reënacted in 1885 with amendments which made it valid.[38] This law not only provided for the incorporation of new villages under uniform rules, but also applied to, and made uniform the government of, all villages previously organized under general laws (i.e., the law of 1875). In essentials the law of 1885 is still the law to-day, but in the 1905 *Revised Laws* so many modifications were made in the village code that villages previously organized were not required to, but were given the power to, come under the new code. In any case, since 1883 uniformity in village government has become more and more a fact, while special legislation for villages has greatly diminished especially since 1892.

19. Effect of the prohibition of 1881. When considering the effect of this amendment in checking special legislation, a number of points must be kept in mind. *First,* the amendment did not prohibit the passage of laws incorporating, or granting corporate powers to, cities, boroughs, school districts, or any other public corporations except towns and villages. *Second,* there was little general law in existence for the government of towns, villages, etc., upon which they could fall back in case their charters proved inadequate, and most of the latter were so full of temporary details that they were constantly getting out of date and requiring revision. There was no way in which amendments could be adopted except by the legislature. *Third,* the legislators, influential citizens, local politicians, and in fact all the people who had any voice in affairs, were habituated to the practice of going to the legislature to correct every difficulty, even the most purely local. *Fourth,* in case the legislature did enact a special law there was no way to prevent its enforcement except by appeal to the courts, a slow and expensive process, and

[36] *Laws* 1883, ch. 73.

[37] State *ex rel.* Luly *v.* Simons, (1884), 32 *Minn.* 540, 21 *N. W.* 750.

[38] *Laws* 1885, ch. 145.

the courts put their own interpretation upon the amendment. ***Fifth,*** in several cases the supreme court held that the words "for granting corporate powers or privileges except to cities" did not forbid the *amendment* of village charters by special laws authorizing bond issues, etc., but merely prohibited the conferment of truly "corporate" powers. Thus the legislature was free to pass almost any special law that it chose. In the five sessions from 1883 to 1891, inclusive, the legislature enacted 2,129 special laws filling 4,376 pages of print, or an average of over 400 acts and 800 pages of special legislation at each session. Very few of these acts were declared unconstitutional by the courts. Clearly some more drastic prohibition was needed to end this growing evil.

20. Special legislation forbidden, 1892. With the increasing population of the state, and the growth in the number of cities and villages, the demands upon the legislature for special legislation grew greater at every session. The amendment of 1881 proved to be a very weak barrier, indeed, as has already been shown. Finally in 1891 the people and the legislature insisted upon some relief from the many evils which special legislation involved, with the result that there was proposed in 1891 and adopted by the voters in 1892 a constitutional amendment containing a very strict prohibition of all special legislation.[29] This amendment, printed elsewhere in this book, may be summarized as follows: (1) There was to be no special legislation upon any subject whatever in cases where a general law could be made applicable, and it was for the courts, not the legislature, to decide whether a general law could have been made applicable. (2) Upon a whole series of stated subjects there was to be no special legislation whatever. Most important under this head was perhaps the provision that "The legislature shall pass no local or special law; regulating the affairs of, or incorporating, erecting or changing the lines of any county, city, village, township, ward, or school district." By these words special legislation of any kind for cities or villages was prohibited. (3) The legislature was permitted to repeal special or local laws but forbidden to "amend, extend or modify any of the same." (4) Section 34, which requires

[29] *Laws* 1891, ch. 1, proposing an amendment to sec. 33 of art. 4. The vote was 77,614 in favor to 19,583 against.

that general laws "shall be uniform in their operation throughout the state" was not changed by the 1892 amendment.[30]

21. Immediate results of 1892 amendment. The legislature which met in 1893 was confronted by an apparently effective prohibition against special enactments, and it appears to have endeavored honestly to live up to the letter and the spirit of the constitutional amendment. It enacted and printed no separate volume of special laws, a precedent which has been followed by other legislatures since that time. From its deliberations there emerged a small group of important general laws relating to the powers of cities and villages to issue bonds, a subject which had formerly been dealt with by special legislation almost entirely. There were also enacted a number of other general laws of no small importance for the government of municipalities. Indeed, this legislature laid much of the foundation for the present general laws upon the subject of local government. On the other hand this same legislature began the practice of passing some laws for very small and arbitrary classes of cities, and it also enacted a few laws which were really special, though one of them was subsequently sustained by the court as general in fact tho special in form.

22. The Legislature of 1895. The twenty-eighth legislature (1893) had refused to consider many demands for special legislation; its successor two years later found many cities, villages, and counties in dire straits because, while their old special laws were out of date and unworkable in part, there was no way to get relief. The legislature, the chief source of municipal powers, had apparently been forbidden to lend special aid. Public-spirited citizens, including officials, in the three large cities, met in Minneapolis to determine what could be done.[31] From this Tri-City Convention held in the winter of 1894-95 two proposals were evolved and submitted to the legislature in 1895. One of these proposals favored the adoption of a constitutional amendment authorizing the three large cities to frame, adopt, and amend their own charters, thus enabling each

[30] See secs. 28-34, below, for a more detailed analysis of the amendment. The text of secs. 33 and 34 will be found in the appendix.

[31] Interest in municipal problems had been greatly increased by the meeting in December, 1894, in Minneapolis, of the Second National Conference for Good City Government. These conferences were the beginning of the National Municipal League.

city to solve its own problems. The other proposition was a general law for the organization and government of cities generally. The legislature accepted both of these proposals, but amended the home rule provision in such a way as to permit any city or village to become a home rule city.[23] In addition to passing these two measures, the Legislature of 1895 also passed a considerable number of new general laws for city and village government.

23. The home rule amendment, 1896, 1898. The municipal home rule amendment proposed in 1895 was adopted by the voters in 1896 by a vote of 107,086 to 58,312, out of a total vote for governor of 337,229. The next legislature (1897) desired to make some changes in it and consequently submitted a new amendment which the voters approved in 1898, the vote being 68,754 to 32,068, out of a total vote for governor of 252,562.[24] If the present rule of amendment, requiring a majority of all voting at the election to vote favorably had been in effect, neither of these amendments would have been adopted. An amendment submitted in 1911 to make some further changes in the home rule provision failed to carry at the 1912 election despite the fact that 157,086 voted in favor of it and only 41,971 against, the total vote at the election being 349,678.[24] The 1898 amendment is therefore still in effect. Its provisions are somewhat fully discussed in another place.[25]

24. The home rule enabling acts, 1897 to date. True to the spirit of the home rule charter amendments of 1896 and 1898 the following legislatures (1897 and 1899) passed enabling acts which left almost the whole subject of charter-making to the charter commissions and the voters. That is to say, the original enabling acts, which were almost identical, embodied very few restrictions.[26] No perpetual franchises were to be authorized by any home rule charter, and no exclusive franchise without a popular vote; the city council was to have complete control of the city's property and finances; and there were beneficial restrictions on the incurrence of debt, including a five per cent debt limit. If it kept within these few limita-

[23] *Laws* 1895, chs. 4, 8.

[24] *Laws* 1897, ch. 280.

[24] *Laws* 1911, ch. 393.

[25] See secs. 35-38, below, and see also the appendix for a complete annotation of the amendment.

[26] *Laws* 1897, ch. 255; *ibid.* 1899, ch. 351. This legislation, as amended to date is printed in the appendix.

tions a city was free to adopt almost any scheme of municipal government not contrary to the constitution. The law then enacted has grown steadily by accretion and amendment. The commission form of government has been expressly authorized.[37] New home rule charters have been authorized for cities already having home rule. The rules as to municipal debt have been changed in the direction of greater liberality. Indeed none of the laws which come under this heading of "enabling acts" have done anything of importance except to increase the freedom and the power of home rule cities. It is true, however, that some other laws have been passed limiting the powers of home rule cities, but none of them are of transcendant importance.

25. Other legislation for cities and villages, 1899 to 1921. It would be useless to summarize here the progress of state legislation for city and village government during the past twenty years. This legislation is too voluminous and some of it too complicated for brief statement. One group of laws, mentioned elsewhere, has put certain restrictions upon the powers of all cities, including those under home rule. Another body of laws has widened the municipal powers of cities and villages generally. There was passed in 1917 a so-called "city manager" law (which was nothing of the kind), and in 1921 a law was passed for the incorporation of fourth-class cities out of territory, not necessarily already incorporated, and inhabited by from 1,000 to 10,000 people. A law of 1921, aimed at the cities and villages on the Iron Range, establishes certain per capita tax limits which are in no way burdensome to any but a very few towns. And besides all these laws of general scope, there has been a great quantity of legislation for particular classes of cities. In fact, the legislature has fallen into the habit of passing many laws for cities or villages which are of doubtful validity because the classifications are too narrow or arbitrary. The amendment of 1892, as interpreted by the courts, has been beneficial but has failed to prevent all special legislation.

26. The progress of municipal home rule in Minnesota. A summary of Minnesota home rule charters is given elsewhere.[38] At this point it will be sufficient to note that sixty-five out of ninety-two cities in Minnesota have adopted home rule. Of the sixty-five

[37] *Laws* 1909, ch. 170. See secs. 1354-60 of the laws printed in the appendix.

[38] See secs. 53-68, below.

five adopted home rule from 1898 to 1900, fifteen from 1901 to 1905, twenty-four from 1906 to 1910, twelve from 1911 to 1915, seven from 1916 to 1920, and two up to this time in 1921. Naturally, as very few new cities are springing up, the rate of increase in the home rule list declines each year. Of twenty-five cities in the state having over 5,000 population, twenty-two, including the three largest, have home rule. The exceptions are Cloquet, New Ulm, and Winona. There are also two villages in this class, Chisholm and Hibbing, which have not become home rule cities as yet. It is, of course, entirely too early to gauge the success of the municipal home rule provision as a whole. Let it be sufficient here to say that it has been one of the most beneficial amendments ever added to our constitution. As the cities have proceeded to adopt and to amend their own charters, the legislature has been more and more relieved of the necessity of passing any legislation for municipal government except of the most general sort. The communities which have adopted home rule have steadily advanced in the efficiency and democracy of their city governments. Experiments have been tried, it is true, bold experiments like commission government and the manager plan, yet no man will deny that city government has gone ahead. The voters, brought into direct contact with the problems of municipal organization through the necessity of voting upon charters and amendments, have shown a new interest in, and an increased knowledge of, the problems of their cities, and city officials, on the other hand, have shown generally a new and increased responsiveness to the demands of their constituents.

CHAPTER II

STATE CONTROL OVER CITIES AND VILLAGES

27. The city and the state. It has been said above that the state, acting through the legislature, has complete power over the existence, the organization, and the powers, of the local units of government unless there is some provision of the constitution to prevent.[1] For practical purposes, indeed, the legislature is the supreme, and often the most important, governing body in the control of city and village government in the state. The fact is, however, that in Minnesota there are several provisions of the constitution which seriously limit the power of the legislature in municipal affairs. The first of these is the prohibition against special legislation.

28. The prohibition of special legislation. It is now nearly thirty years since the present section 33 of article 4 of the state constitution was adopted by the voters to put an end to the pernicious system of special legislation.[2] It is our task to inquire, *first,* what does the provision really mean? And *second,* has it accomplished the desired result of ending special legislation and special interference in local affairs? It will not be out of place to devote several paragraphs to this subject since much charter legislation still comes from the state legislature and it is well to know how far this body may go in regulating the affairs of cities and villages.

29. Prohibition is against form, not substance. At the outset it is well to observe the fact that section 33 forbids the enactment by the legislature of "local or special" laws. Clearly, as the section says farther on, the prohibition is against a certain form of laws, not against the substance or matter which they may contain. The section does not say that the legislature may not pass any law whatever upon any given subject, but only that the law if passed must be general, not special. In the circumstances the courts are not to be

[1] See sec. 8, above, and its footnotes.

[2] See sec. 20, above. The text of sec. 33 is printed in the appendix, together with a short list of the leading cases. For additional citations the reader should consult Dunnell's *Minnesota Digest.*

blamed very greatly if they do not enforce the provision too stringently, since clearly the legislature should be the primary judge of the mere form of its enactments.

30. Definition of special law. What is a special law, and what is a general law? Must a law apply to everybody and everything to be general? Certainly not. Very few of our laws have such sweeping application. Some apply to doctors, some to telephone companies, some to grocers, and so on, yet they are undoubtedly general laws. Webster's *New International Dictionary* defines "general" in several ways, *first*, as "of or pertaining to the whole of a body, society, organization, or the like; . . . not local"; *second*, as "pertaining to, affecting, or applicable to, each and all of the members of a class, kind, or order; universal within the limits of reference." Other dictionaries give similar definitions, but with greater stress upon the second, and this is the definition which the courts in Minnesota and other states have adopted. In other words, the principle of *classification* must be recognized. A general law, therefore, is one which operates upon all members of a class, whether it be a class of persons, or places, or things. A special law is one which applies to a part only of the members of a class.

31. Classification. The question comes up as to what is a proper classification. Primarily classification is a matter of fact, but within a wide range of facts some common characteristics can be found for almost any two or more things. Cities which are entirely unlike in size, in organization, and in other important respects, may have the one common characteristic of being situated on navigable rivers and constitute a class from that point of view and for purposes of waterfront control; or they may be situated upon county lines, each lying partly in two or more counties, and thus have distinctive common legal or administrative problems. Now suppose that there is only one city in the state which extends into two or more counties. It will have problems entirely peculiar to itself, not shared by other cities. From this point of view it will be in a class by itself. Consequently the courts have held that a law may be general in its application even tho it relates to but a single city; the number of things or places in the class, whether one or a thousand, is a matter of no importance whatever in law, if the limits of the classification are properly defined and rest upon some real distinction.

32. Rules of classification. The legislature is primary judge of questions of classification, subject to certain general rules. (1) Any classification which is adopted must be based on real, not on trivial or illusory distinctions. It must not be arbitrary. To say that all cities whose names begin with the letter A shall be permitted to do a certain thing would violate this principle. (2) Among the germane distinctions which may be made the basis for a classification are the following: (a) population; (b) nature of city charter, whether home rule, or special, or general; (c) financial condition of cities; (d) presence or absence of such natural features as navigable waters, lakes, etc.; (e) presence or absence of independent school district within the city; (f) whether or not the city is a county seat. These will be understood to be mere illustrations of proper classifications based upon substantial distinctions. (3) Whatever the basis of the classification, however, it must be germane to the law to be enacted. This is a most important rule. Thus, for example, the population of cities may be used as a basis for graduating the salaries of the chief officers, in order to give the officers of large cities higher salaries than those of small cities, since the work is more difficult and there is more of it in large cities. But to pass a law saying that in all cities situated in counties having less than 1,500 square miles of territory the salaries of the city officers shall be such and so, or that cities situated on navigable waters shall be allowed a higher or a lower rate of taxation for school purposes than other cities, would be contrary to this important rule, since in these cases the basis of the classification would have nothing to do with the enactment. *Exception.* There is at least one important exception to this rule. The home rule provision of the constitution (section 36 of article 4) established four classes of cities according to population; those of over 50,000 inhabitants; those of 20,000 to 50,000; those of 10,000 to 20,000; and those of 10,000 inhabitants or less. In view of this express authority granted in the constitution the state supreme court has held that the legislature may pass any sort of general law for any of these classes of cities without regard to whether there is any relation between the size of the cities and the subject-matter of the law. (4) When a law has been enacted for a particular class of cities, it must operate uniformly upon all cities within the class. The courts have not, however, been able to say exactly what this means. (5) Whether a law is really general, i.e., whether it actually applies to all the

cities which should come within its operation, is a question of fact and not of the form of the law. While this may seem to be a strange perversion, our supreme court has held that a law may be special in form, actually naming the place to which it shall apply, and still be general in fact. (6) While ordinarily purely temporary or transient circumstances, or mere temporal distinctions, may not be made the basis for a legal classification, for the purpose of curative acts such a basis of classification is permissible. Thus it is ordinarily entirely lawful to enact, for example, that all water supply bonds issued by certain cities between such and such dates are to be considered validated despite certain informalities in the procedure of issuing them.

33. Exception to the prohibition. For the purposes of this discussion, the most important clause of section 33 is that which reads: "The legislature shall pass no local or special law; regulating the affairs of, or incorporating, erecting or changing the lines of any county, city, village, township, ward or school district," etc. We have found out what is a local or special law, but what is a law "regulating the affairs of" a city? What are the affairs of a city? This is indeed a wide subject, which will be discussed also in connection with home rule. One point the state supreme court has clearly decided, and that is that a municipal court is in reality a *state* court and not one of the affairs of the city in which it is situated. Hence, special legislation as to municipal courts is entirely lawful. Furthermore, section 33 itself provides that an act repealing a special or local law is legal. Thus we have several important exceptions to the prohibition of special legislation.

34. Results of the prohibition. Political and governmental reforms seldom if ever accomplish all that is expected of them. Eminent authorities have doubted the wisdom of attempting to prohibit special legislation at all; nowhere has the prohibition been entirely successful. The case is analogous to the prohibition of the liquor traffic. The question is not whether the prohibition is getting perfect results, but whether on the whole it is not better to have a prohibition that is sometimes violated than to have no prohibition at all. There have been some bad results from the attempt to prohibit special legislation. An element of hypocrisy has been introduced into some of our legislation. The old special legislation was frankly, boldly special. To-day special legislation is still passed, but it is disguised as general legislation, applicable to a

whole class. The classifications are often arbitrary or artificial; there is often doubt as to the legality of such laws; and there has been an increase in the amount of work thrown upon the courts, since cases frequently come up which raise questions of the applicability and constitutionality of such legislation. In the main, however, the results of attempting to prohibit special legislation have been good. There is to-day much less special legislation than before; no longer do we have separate, bulky volumes of special laws to print at state expense. Members who do not like to play the game of log-rolling or vote-trading, who prefer working for the interests of the state as a whole to acting as the agents of local interests, can point to the constitutional prohibition of special laws as justifying their stand. As a result of having the prohibition printed in the constitution, citizens no longer demand as they once did that their representatives serve as special or local agents, seeking particular favors for the locality. Special privileges are no longer sought as once they were. The body of general laws, of equal application to all, is constantly increasing in volume and growing in public respect. And on top of all, the prohibition of special legislation made necessary the next important amendment of the constitution, namely that providing home rule, or genuine local self-government, for cities. Few indeed are they, whether legislators or ordinary citizens, who would now expunge from the constitution the prohibition of special legislation.

35. **The home rule amendment.** The second important limitation on the powers of the legislature to control local units of government is the so-called "home rule" amendment, section 36 of article 4 of the state constitution, adopted in its present form in 1898. While it is called the "home rule" amendment, and the charters drawn up under it are called "home rule charters," the section nowhere contains the words "home rule." A brief history of this amendment is given elsewhere.[3] So important is this section to the purposes of this little book that a digest of the principal decisions under it is given in the appendix. It will suffice here to give a brief analysis and interpretation of the amendment.

36. **Analysis of the home rule amendment.** (1) Section 36 does undoubtedly grant to the cities and villages which take advantage of its provisions a substantial power of home rule. "Home

[3] See secs. 21-24, 26, above.

rule" may here be defined as the power vested in cities to make, adopt, and amend locally the charters for their own government. (2) At the same time there is clearly reserved to the legislature the power, by general laws, to assert its supremacy and to overrule city charters in the interest of all. A home rule city can not set itself up as superior to the sovereign state, yet it is free to regulate its local affairs to suit itself until checked up. (3) The section divides the cities of the state into four population classes and authorizes the legislature to enact different laws for each class. The purpose of this provision undoubtedly was to permit the legislature to bring about some uniformity of powers and organization among cities of substantially the same size and circumstances. Under the old system of special charters there was too much diversity; there was a prospect of still more and equally needless diversity among the home rule cities of the future. (4) The section contains a few, a very few, restrictions as to the form of the city government and as to the contents of home rule charters. (5) In addition the section lays down a fairly definite method of procedure for the adoption and amendment of home rule charters.[4]

37. **Interpretation of the amendment by the legislature.** There is every reason for the assertion that the legislature has, in good faith, carried out the spirit of the home rule amendment if not always the exact letter. It has not in the past attempted to deprive cities of the power of home rule conferred upon them by the constitution, and it is not likely to do so in the near future. The original enabling act passed by the legislature to put the constitutional provision into effect was an exceedingly brief act in which the only important limitation put upon home rule cities was a debt limit, and even that was fairly liberal. From that time (1899) down to the present the legislature has acted generally in the same spirit of generosity toward the home rule cities. It has, in fact, at some times seemed even to stretch a point in order to give home rule a fair chance. True, it has passed some general laws relating to matters of state-wide concern, such as the county option law, the motor vehicle laws, and the telephone and street railway regulation laws, which have seemed to take away important local powers, yet even if it were conceded that these laws do deprive home rule cities of some authority, they cover a field relatively small as compared with that which is still left to local control.

[4] See ch. 4, where home rule procedure is discussed at length.

38. Interpretation of the amendment by the courts. The courts have also, in good faith, attempted to give to the cities all the powers and benefits which they may properly claim under the home rule amendment. At times they have seemed to lean far over in order to sustain municipal home rule powers. It has not been possible for them to be entirely consistent, however. Nothing is more difficult, indeed, for a court whose members change frequently than to follow out an absolutely consistent line of interpretation on any point. No more need be said here, however, since the reader will find a digest of the important court decisions in the annotations to the home rule section in the appendix.

39. State administrative control over cities. Everywhere in the United States there is increasing evidence of a movement for state administrative supervision over the government of cities. The legislatures feel more and more their inability to solve the many new and complicated problems created by the growth of urban population. To strengthen its own hands and to improve the processes of administration in local government, the legislature of Minnesota, like other state legislatures, has found it necessary to endow certain boards and departments with the power to supervise and even to control the local governments in their activities. The state department of health has extensive powers over local health authorities. The state board of control inspects local jails, hospitals, and other institutions. The state department of education looks after educational administration in the localities, and determines whether and to what extent the school districts are entitled to state aid from the state school fund. The public examiner has some active, and even more latent powers, to audit local government accounts and to require adequate and uniform systems of accounting. In recent years the state railroad and warehouse commission has been given control over telephone and street railway charges. All these facts are but illustrations of a new tendency which is of tremendous importance to cities. If well considered and carefully worked out, central administrative supervision may be of inestimable advantage to them, but it is equally possible to make this new system of administrative control the instrument for the destruction of local self-government. No more can be done here than to call attention to its importance.

CHAPTER III

PRESENT GOVERNMENT OF MINNESOTA VILLAGES AND CITIES

A. The government of villages

40. Villages in Minnesota. The villages in Minnesota in 1920 ranged in size from Hibbing, with 15,089, and Chisholm, with 9,039 population, down to Hillman, in Morrison County, with 35 souls. In all, eight villages had 2,500 or more inhabitants, seventy had from 1,000 to 2,500, and 529 had less than 1,000 population. The total population of all villages was 349,033, making the average size about 575 people. Clearly these are small units, yet so numerous are they that all together they have charge of the local government of one seventh of the people of the state.

41. Classes of villages. Villages fall into several classes, more or less sharply defined. (1) There are probably still a number of villages operating under old special village charters. The first village in Minnesota was incorporated by special law in 1865, and from then on down to 1881, inclusive, at least seventy-nine special village charters were enacted. After 1881 the constitution forbade any further special acts for incorporating villages. (2) In 1875 the legislature passed the first general law under which villages might be organized. From 1876 to 1881, inclusive, ninety-three villages were incorporated under this law. Other acts passed in 1883 and 1885 authorized the formation of new villages by petition and vote of the residents, and also provided that all villages incorporated under general laws should have one uniform system of government. Thus, from 1885 on, there is a unified class of general law villages, organized from 1875 on and all governed after 1885 by the act of 1885.[1] (3) In 1891 a new general law was passed authorizing villages of 3,000 inhabitants and over to establish a system of four wards, with two trustees to be elected from each ward,

[1] See secs. 9-11, 14, 17, 18, above, for the early history of village government.

and to elect a municipal judge at large.[2] (4) Another class of villages was authorized in 1895 when villages of 2,000 inhabitants and over were permitted to reincorporate under the act of 1891 and to establish two wards for the election of trustees.[3] (5) In 1905 the legislature enacted the *Revised Laws of Minnesota 1905*, the last official revision of laws in this state.[4] Certain sections of the *Revised Laws* provided an amended method of organization for villages, while certain other sections expressly repealed the important village laws of 1883, 1885, and 1891, but not of 1895.[5] The 1905 revision did not, however, change the organization of existing villages, whether under special or general laws, but merely authorized their reincorporation under the *Revised Laws*. While no one has ever checked through all the records to ascertain how many villages there are in the five classes herein mentioned, it is probable that by far the greater number exist under the *Revised Laws of 1905*. This number steadily increases as new villages incorporate and as old villages adopt the provisions of the 1905 code.

42. Village government.[6] Each village under the 1905 law holds an annual election by ballot on the second Tuesday of March, at which the voters choose a village treasurer and a president and a clerk of the village council, all for terms of one year, and one of the three trustees for a term of three years. In addition, every second year the voters elect two constables for a term of two years, and two justices of the peace for a like term except in villages where a municipal court has taken the place of the justices. Where the village is a separate election district, as appears to be the case with 500 of the 607 villages reported in 1920, the voters also elect biennially a village assessor. The village council of five appoints all other officials. The ordinary village organization may, therefore, be charted as follows:

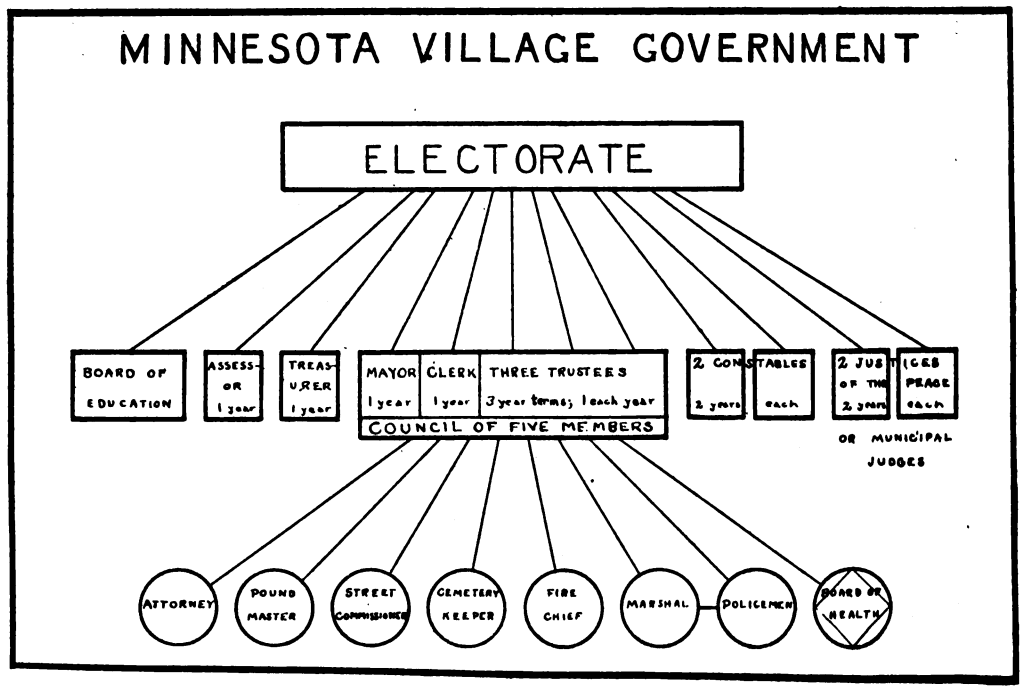
[2] *Laws* 1891, ch. 146.

[3] *Laws* 1895, ch. 256.

[4] *Laws* 1905, ch. 185; *Revised Laws*, 1905.

[5] *R.L.* 1905, secs, 698-775, 5517, 5535, 5536, 5539, 5541.

[6] *Gen. Stat.* 1913, secs. 1202-1338, with statutory amendments to date.



This plan of organization, while not perfect, is worthy of commendation for the concentration of appointing and controlling power vested in the council. It is unfortunate, however, that the treasurer, assessor, and constables were not also made appointive by the council and subject to its control. It is difficult to understand, also, why there should be elective constables, and appointive marshals and policemen, all with powers of law enforcement. Confusion of duties is to be expected from such an arrangement. Furthermore, while it is probably true that many of the smaller villages need to make use of unpaid services, and therefore need to have a number of specific offices, each involving little labor, to which appointments can be made, larger villages could undoubtedly get much more efficient service by having one or a few paid officials under the council to combine several of the administrative functions of the village.

43. Village powers. The legislature of Minnesota has always shown a liberal spirit in granting powers to municipalities, both cities and villages. Every village is given the rights and powers of municipal corporations at common law, is made capable of contracting, of suing and of being sued, and of taking, purchasing, holding, and leasing such real and personal property as may be needed for its purposes, and of disposing of the same when no longer needed. In addition the village council is given broad municipal powers in matters of fire prevention and protection, the provision and control of streets and other public ways, the regulation and licensing of local businesses, health and sanitation, the provision of markets, cemeteries, libraries, jails, reservoirs, street lights, and harbors and docks, and the raising of revenues by taxation and borrowing for all local purposes.[7]

B. The classes of cities

44. Population of cities, 1920. The Federal census of 1920 listed 84 cities as existing in Minnesota; the number is now 91. The three largest cities are Minneapolis (380,582), St. Paul (234,698), and Duluth (98,917). Between Duluth, the third, and Winona, the fourth city in size, is a population gap of nearly 80,000. Seven cities have from 10,000 to 20,000 inhabitants, namely Winona (19,143), St. Cloud (15,873), Virginia (14,022), Rochester (13,722), Mankato (12,469), Faribault (11,089), and Austin (10,118). Fifteen cities have from 5,000 to 10,000, namely Brainerd (9,591),

[7] *Ibid.*, secs. 1268, ff.

Red Wing (8,637), Albert Lea (8,056), Stillwater (7,735), Fergus Falls (7,581), Owatonna (7,252), Eveleth (7,205), Bemidji (7,086), South St. Paul (6,860), Crookston (6,825), New Ulm (6,745), Willmar (5,892), Moorhead (5,720), Little Falls (5,500), and Cloquet (5,127). Twenty-six cities have from 2,500 to 5,000 inhabitants, thirty-eight have from 1,000 to 2,500, and two have less than 1,000 each, namely Henderson (766), and Tower (706). All together, 1,071,600 people lived in 1920 in the ninety-one places which are to-day legally classed as cities. The figures may be grouped and summarized as follows:

	No. of Cities	Total Population
Cities of over 50,000 population	3	714,197
Cities of 10,000 to 20,000	7	96,436
Cities of 5,000 to 10,000	15	105,812
Cities of 2,500 to 5,000	26	86,892
Cities of 1,000 to 2,500	38	66,791
Cities of less than 1,000	2	1,472
Totals	91	1,071,600

45. The classes of cities, 1921. The cities of Minnesota may be classified in many ways. For the purpose of discussing their charter problems it is necessary to consider only three bases of classification, namely (1) population, (2) the legal source and nature of their charters, and (3) the form of their city governments.

46. The population classes. The constitution itself (art. 4, sec. 36) provides for four classes of cities according to population, as follows:

> First class. Cities of over 50,000 inhabitants.
> Second class. Cities of 20,000 to 50,000 inhabitants.
> Third class. Cities of 10,000 to 20,000 inhabitants.
> Fourth class. Cities of 10,000 inhabitants or less.

The legislature has not attempted to make, and is probably prohibited from making any subdivisions of these four classes based on population. It has, however, controlled the classification of cities by designating which census shall be followed. The history of this control is curious, indeed. By the 1905 (state) census Winona had over 20,000 population, Mankato and Stillwater had 10,996 and 12,435 respectively, while all the other small cities had under 10,000. At that time the last census, whether Federal or state, determined the classification of cities for law-making purposes.[8] Winona was,

[8] *R.L.* 1905, sec. 746.

therefore, from 1905 on, alone in the second class, Mankato and Stillwater made up the third class, and all the remaining small cities were in the fourth class. When the Federal census of 1910 was announced it was found that Winona had dropped below 20,000, whereas St. Cloud and Virginia had joined Mankato and Stillwater in the 10,000 class. Unless the law were changed, therefore, all five of these cities would thenceforth have been in the third class. But in the meantime certain laws had been passed for second class cities, adapted to the needs of Winona, the benefits of which that city did not wish to lose. An act was passed, apparently at the instance of friends of Winona, in the 1911 legislature by which it was provided that the last *state* census (1905) was to be followed.[9] This act was upheld by the courts, and resulted in keeping Winona alone in the second class and in preventing St. Cloud and Virginia from entering the third class.[10] Since no state census was taken in 1915, this classification was binding until 1921. In the meantime the 1920 (Federal) census had disclosed that Winona, while it had grown, was still under 20,000. At the same time Austin, Faribault, and Rochester had increased to over 10,000, and Stillwater had dropped below that figure, making actually seven cities of from 10,000 to 20,000 population. By the law of 1911, however, one of these cities, Winona, was legally in the second class, and another, Mankato, was in the third class, together with Stillwater (which in 1920 had less than 10,000 people) while the other five cities of over 10,000, namely St. Cloud, Virginia, Rochester, Faribault, and Austin, were kept in a classification lower than their size warranted. Several of these cities demanded entrance to the third class of cities, in order to get the benefit of certain laws for that class, yet if the 1920 Federal census were to be made binding for purposes of classification, this would mean depriving Winona of her special status as the only second class city. In the 1921 legislature a clever compromise was effected by an enactment which permitted the last Federal or state census to control, but provided for the addition of five per cent of the population shown by such census to such census to determine the population of any city for classification purposes.[11]

[9] *Laws* 1911, ch. 73.

[10] State *ex rel.* City of Virginia *v.* County Board of St. Louis County, (1913) 124 *Minn.* 126, 144 *N. W.* 756.

[11] *Laws* 1921, ch. 12.

Thus Winona, with only 19,143 inhabitants, was permitted to retain its favored position as the only city in the second class; St. Cloud, Virginia, Austin, Faribault, and Rochester, were brought within the third class, as was also Brainerd with only 9,591 actual inhabitants; while the only city to be reduced in rank was Stillwater, which had suffered a great loss in population and was now set down as a fourth class city. The following table shows the situation at a glance:

Name of City	Population 1905 St. Census	Class under R. L. 1905	Population 1910 Fed. Census	Class under 1911 Law	Population 1920 Fed. Census	Class under 1921 Law
Winona	20,334	2	18,583	2	19,143*	2
Stillwater ...	12,435	3	10,198	3	7,735	4
Mankato	10,996	3	10,365	3	12,469	3
St. Cloud ...	9,422	4	10,600	4	15,873	3
Virginia	6,056	4	10,473	4	14,022	3
Austin	6,489	4	6,960	4	10,118	3
Faribault	8,279	4	9,001	4	11,089	3
Rochester ...	7,233	4	7,844	4	13,722	3
Brainerd	8,133	4	8,526	4	9,591†	3

* 19,143 plus 5 per cent of 19,143, or 957, equals 20,100, which is to be considered the population of Winona for classification purposes.

† 9,591 plus 5 per cent of 9,591, or 479, equals 10,070. Brainerd and Winona are the only two cities affected by the 5 per cent rule.

47. Classes of cities according to charters. From the chapter dealing with the history of the development of city government in Minnesota, it appears that we have the following classes of cities based upon the origin and nature of their charters:

1. Cities under special act charters (all prior to 1892).
2. Cities under the general act of 1870 (1878, 1894).
3. Cities under the general act of 1895.
4. Cities under the general act of 1921.
5. Cities under "home rule" charters.

It will be understood that population furnishes a cross-classification of these several groups of cities. Thus we have home rule cities of the first class, of the third class, and of the fourth class, and if Winona should adopt a home rule charter there would also be a second class home rule city. A table printed in the appendix shows that there are at the present time the following classes of cities:[18]

[18] See Appendix 6, p. 178.

	First Class	Second Class	Third Class	Fourth Class	Total
Home rule.....	3	0	7	55	65
Special charter.....	0	1	0	12	13
General act of 1870....	0	0	0	6	6
General act of 1895....	0	0	0	5	5
General act of 1921....	0	0	0	3	3
Totals	3	1	7	81	92

All the cities of the first and third classes now have home rule charters. The only second class city (Winona) has a special charter. The fourth class cities are distributed as shown among all types of charters.

48. Classes of cities according to form of government. To many people the most important thing about a city charter is the form of government which it embodies. Upon this point it is safe to say that; with the exception of the cities organized under general laws, no two cities in the state have identical forms of government. Indeed, when one compares the charters of the thirteen cities still operating under special legislative charters and of the sixty-five cities which have adopted home rule charters, the variations in detail which are found to exist present an almost hopeless maze. True it is that cities have copied from each other, yet in no case does it appear that any city has been content to take over all of the charter of another city without change. Confusion and diversity meet the investigator on every hand. Some cities elect all their councilmen at large, others elect some at large and some by wards, and some elect them all by wards. In some cities the mayor has the veto power, in others not; in some he presides over the council without a vote; in some he presides and votes as an ordinary member; in some he presides and votes only in case of a tie; and so on. Where he has the veto power, different sized majorities are empowered to override his veto, sometimes two-thirds, sometimes three-fourths, sometimes seven-ninths, and so forth. His power to make appointments varies all the way from no power at all up to the power to nominate and appoint practically all city officers with the consent of the council. Some cities have no boards, unless it be a statutory board of health, while others have a considerable number of them; and where they exist they may be elective, or appointed either by the mayor or by the council. Indeed, Minnesota cities should be reaping the full benefits of whatever advantages

there are in freedom for local experiments. As a matter of fact, however, it is difficult for one city to profit from the experience of another at the present time, since one city has as a general rule very little knowledge of what another city is doing. It might in certain respects be better to have more uniformity, coupled with adequate publicity, for if twenty cities had exactly the same form of organization which they were trying to operate under different conditions, by an exchange of experiences they could reach some judgment as to the value of the form, a common judgment which they can not reach to-day because of the great diversity in their charters. Because of the excessive diversity in forms of government, it will be desirable to devote a few pages to explaining just what forms of city organization we have in Minnesota. In a general way it will be found possible to classify these forms as follows:

1. Council and mayor forms in which the mayor has the veto and appoints and controls the police, but all other power of importance is vested in the council. This form is most common.

2. A few mayor and council or federal forms in which the mayor has the veto and a very extensive power of appointment and control over the whole city administration. The various mayor and council plans shade off from (1) into (2) by imperceptible degrees. Some have no boards, some have a few, and some have more. The number of elective officers also varies.

3. Ordinary commission plans, in which all the powers of the city government are vested in a council of five or seven elected at large, who both legislate and administer.

4. Council-manager plans, in which a small council elected at large controls all the administrative work through a salaried manager who appoints and directs his subordinates.

C. Government of special and general act cities

49. Government of special charter cities. Seven of the thirteen cities in this group received their present charters either new or as revisions of old charters in 1891. These cities are Chaska, Henderson, Jordan, Le Sueur, New Prague, Redwood Falls, and St. Peter. Winona and New Ulm received revised charters and Chatfield its first city charter from the Legislature of 1887, St. Charles was chartered in 1879, Shakopee in 1875, and Rushford, which has

the oldest municipal charter in the state, in 1869.[18] While these charters vary considerably among themselves they all provide for the election by popular vote of a mayor, a single-chambered council, one or more justices of the peace or municipal judges, and usually one or more other officials, such as a treasurer, a clerk or recorder, and an assessor. Terms of office are short. The mayor in these cities, serving for either one or two years, is generally declared to be the chief executive of the city. In most cases he has the veto power over the enactments of the council, appoints and has direct control over the police, but is otherwise little more than the titular head of the city. In New Ulm, however, he appoints with the council's consent practically all the city officials. The city council, varying from five to not over fifteen members, is chosen in practically all cases by the ward system for terms of two or three years. Except in New Ulm the council appoints most of the chief non-elected municipal officials, such as the city clerk, attorney, surveyor or engineer, street commissioner, pound master, city physician, board of health, fire chief, and even, in a few cases, the head of the police department, which is supposed to be under the mayor's control. Usually it may, by a two-thirds vote following a hearing, remove any city official, elective or appointive. Its financial powers are generally broad enough but not always well defined. Its ordinance-making powers, instead of being stated in simple, general language, are enumerated and expressly stated at great length, there being over fifty distinct subjects of municipal legislation named in the New Ulm charter. These charters are full of oddities. In one city where there is an even number of councillors, the one who is elected president is practically deprived of his vote by the provision that he shall vote only in case of a tie. In at least one case the mayor both presides over the council and has a veto power over its acts. In another city, where the mayor is called head of the police department, he may not even appoint its members. In Rushford he is a member of the council and has no veto power. But such variations and inconsistencies are to be expected in charters passed

[18] Chaska, *Spec. Laws* 1891, ch. 2; Chatfield, 1887, ch. 25; Henderson, 1891, ch. 3; Jordan, 1891, ch. 4; Le Sueur, 1891, ch. 45; New Prague, 1891, ch. 46; New Ulm, 1887, ch. 4; Redwood Falls, 1891, ch. 1; Rushford, 1869, ch. 2; St. Charles, 1879, ch. 57; St. Peter, 1891, ch. 5; Shakopee, 1875, ch. 6; Winona, 1887, ch. 5. These charters will all be found in the *Special Laws* for the respective years.

under the old methods of special legislation; they are not, in general, of any great importance. Indeed, the one thing that is really hard to understand about some of these charters is why they should have been passed as special laws at all, unless it was for the purpose of getting some printing done at the state's expense.

50. **Cities under the law of 1870 (1878, 1894).** It appears that six cities, namely Canby, Luverne, Madison, Marshall, Montgomery, and Waterville, ranging in size from 1,211 to 3,092 inhabitants, are still governed under the general charter law first enacted in 1870 and finally codified as revised in the *General Statutes of 1894*.[14] Interestingly enough this law, which appears to have been almost forgotten soon after its original enactment, was revived by its republication in the *General Statutes of 1894*, and was adopted by four of the six cities named above after 1900, when it was already possible for cities to draw up their own charters. The council in each of these cities is required to divide the city into from two to five wards as nearly equal as practicable. The elective officers are a mayor, a treasurer, a recorder, as many justices of the peace as there are wards, and two aldermen for each ward. No doubt one or more of these cities has organized a municipal court by this time, thereby abolishing the office of justice of the peace. The aldermen serve for two years, one being elected each year from each ward. The mayor, the treasurer, and the recorder serve for one year each. The mayor is declared by law to be the chief executive officer of the city and the head of the police. He has power to appoint the chief of police and the subordinates in the department, and to discharge them at will. He does not sit in the council, but has power to recommend ordinances, and to veto measures passed by the council in case they do not meet with his approval, subject to the council's power to repass them by a two-thirds majority. The city attorney, the street commissioner, the assessor, the city surveyor or engineer, the board of health, the chief and assistant engineers of the fire department, and whatever other appointive officers there may be, are appointed by the council and subject to its control. The latter body has also the legislative power. It is, therefore, by far the most important authority in the city. It is not entirely supreme, however, since the mayor and the other elective officers have certain independent powers which result in a division of responsibility. The law, considered as a charter of local government, is too long

[14] *Laws* 1870, ch. 31; *Gen. Stat.* 1878, ch. 10; *Gen. Stat.* 1894, ch. 10, title 2, secs. 1045-1195.

and contains too much detail. The form of organization provided is typical of Minnesota council and mayor plans generally.

51. Cities under the law of 1895. Five cities, all located in the northern and western portions of the state, appear to be governed to-day under the law of 1895.[15] These five are Cloquet, East Grand Forks, Melrose, Red Lake Falls, and Thief River Falls. These cities range in population from 1,549 to 5,127. Since the act was repealed in 1905, no more cities can come under it in the future. It is, therefore, unnecessary to describe the procedure by which it was adopted in these several cities. The act requires the cities which adopt its terms to establish a system of wards not to exceed ten in cities of under 30,000 population. One alderman is elected from each ward, and a certain number, either 2, 4, or 8, are to be elected at large, as determined under the law by the council. The mayor and the treasurer are also elected by the voters. All terms are for two years. The mayor is denominated the chief executive, and is required to see that the laws are enforced. To this end he is given control of the police, but the council is to pass on the rules he adopts for their regulation. He appoints also the five park commissioners, the superintendent of the workhouse if any, and the commissioner of health. In legislation he has the power to recommend measures and to approve or to veto ordinances passed by the council. In a few cases, such as bond issues, his veto is absolute; in other cases a three-fourths vote of the council is required to override his veto. In the hands of the council are vested legislative, financial, and administrative powers. In section 135 of the law are enumerated 78 specific legislative powers, to which should be added a number of others provided in following sections. The council levies the taxes, issues the bonds of the city, and receives the reports of the chief fiscal officers. It appoints the city clerk, attorney, assessor, engineer or street commissioner, superintendent of waterworks, superintendent of the poor, city physician, the board of health (which consists of three of its own members and the commissioner of health, the latter being appointed by the mayor!), and presumably the comptroller. As far as its organization is concerned, the government provided for cities by this act stands upon no single consistent principle. It is neither a "mayor" government nor a "council" government, but an unusual mixture of the two, with many opportunities for conflict between the mayor and council. The charter itself goes excessively

[15] *Laws* 1895, ch. 8. See secs. 22, 47, above.

into detail. It lays down a few rudimentary civil service regulations but is entirely deficient in its budget requirements.

52. The fourth class city law of 1921. For reasons which are not entirely clear, but probably to meet a peculiar local situation in the city of Waconia, the Legislature of 1921 enacted a law for the organization of fourth class cities in communities having not less than 1,000 nor more than 10,000 people, without regard to any existing village organization.[16] Only two cities have up to this time been organized under its terms, namely Waconia and Nashwauk. In essentials the law of 1921 follows the law of 1870, described above. Various interests which opposed the organization of the city of Nashwauk have brought action in the nature of *quo warranto* to test the validity of the act.[17] Among many arguments which have been urged against the act are these: first, that it confers or attempts to confer non-judicial powers upon probate judges; second, that it provides no rule for determining what territory is properly conditioned for city government, but throws the doors wide open for any city organized under its terms to include as much or as little territory as it pleases; third, that it creates a new class of cities, in violation of the constitutional classification. Until the state supreme court has reached a decision in this case, it would be unwise for any other cities to attempt to organize under this act.[17a] It is interesting to note that nearly all of the arguments brought against the constitutionality of this law would have been equally sound if brought againt the law of 1870.

D. The government of home rule cities

53. Number and variety of home rule charters. Sixty-five cities in Minnesota to-day are governed under charters of their own adoption and to a certain extent of their own making.[18] The home rule list embraces the three largest cities, all the seven cities of the third class, and fifty-five of the eighty cities in the fourth class. In

[16] *Laws* 1921, ch. 462.

[17] State *ex rel.* Hilton *v.* City of Nashwauk, (1922).

[17a] Since this section was written the Nashwauk case has been decided. That portion of the law which confers certain duties upon probate judges was declared by the supreme court to be invalid, but to be separable from the body of the law. The law itself is valid. Following the supreme court decision, North Mankato was also incorporated as a fourth class city under this law.

[18] See list of these cities in Appendix 6.

order to get a correct estimate of the government of these sixty-five cities to-day, the writer found it necessary to scan and to make a brief digest of the charter of each one; and he was fortunately able to get access to sixty-four of them, and to get certain information concerning the only one which he did not actually handle. They furnished altogether an interesting study, for they showed not only what local institutions there are in each of these cities but they also showed what types and principles of local government the people of the past twenty years have favored when given an opportunity to choose. Naturally the variations in detail between one city and another, and among all sixty-five, are so numerous as to be impossible of exposition in a few pages. This is not to say that every city has exercised its privileges to make an entirely new and original charter. On the contrary, the various cities have copied liberally from each other's charters, making often only such variations as suited local needs or tastes. Thus, it is perfectly apparent that the Moorhead charter of 1900, or some other early charter very much like it, has had more or less influence, directly or indirectly, upon the charters of Ada, Breckenridge, Detroit, Fairmont, Fergus Falls, Glencoe, Renville, Staples, Windom, and Worthington. The Windom charter (1920) apparently came very largely from the Worthington charter (1909). The charters of Two Harbors and Virginia are much alike, as are those of Ely and Eveleth. In important respects the Sauk Centre and Wabasha charters are similar. The Duluth charter of 1912 had an important influence upon the charters of Morris and Columbia Heights, and so on. Variety is more noticeable than uniformity, however. Thus it is possible to say that we have in these sixty-five cities many varieties of mayor and council government, at least four variations upon the commission plan, and four other distinct plans in which there is a city manager. These plans will be described briefly in this order.[19]

54. Council and mayor plans. Fifty-one of the sixty-five home rule cities have the council and mayor plan of government in

[19] The following sections are based almost entirely upon a study of the charters, as printed either at the time of their adoption or subsequently. The statements here made undoubtedly contain errors of fact, since some of the charters may have been amended, some charter provisions may be inoperative, and in other cases the writer may have misunderstood or misread the printed documents. An error here and there will not, however, be sufficient to affect the conclusions as to general tendencies disclosed through summarizing the facts as to a large number.

one form or another. The governments set up by these fifty-one charters run the gamut from those in which the council is almost completely predominant, and the mayor little more than a figurehead, to those in which the powers of the council seemed dwarfed beside those of the mayor. The best test of the relative powers of the mayor and the council is the extent of their power to appoint and control administrative officers. Judged upon this basis the council is more important than the mayor in 38 of these cities;[20] the mayor is predominant in 11;[21] while in one the situation is uncertain, and in another it is unknown to the writer. In a typical city of the first group the council appoints and controls the work of the city attorney, the clerk, the board of health, the engineer, the street commissioner, the fire warden, and most other officers. In such a city the mayor is usually called chief executive, but he actually controls only the police department. He may or may not be a member of the council, but usually has the power of veto. Standing at the opposite extreme are such cities as Crookston, Glencoe, and Tracy, in which the mayor appoints practically all the city officials with the approval of the council, tho in some cases he appoints without its consent. In Glencoe, in addition to having this wide appointing power, the mayor presides over the council, votes in case of a tie, and also has a veto upon the council's acts which can be overruled only by a four-fifths vote. Between these extremes there is almost every possible variation. One confusing factor is the number of officers elective by the people, for, of course, the more the people elect, the fewer there are for the council or mayor to appoint. A good example of this difficulty is found in the Northfield charter, which provides that the voters shall elect not only the mayor, the council, and the local judges, but also the treasurer, recorder, attorney, assessor, street commissioner, and engineer.

55. The city councils in these cities. Of the 51 cities under discussion, only 2 elect all their councilmen by the ward system

[20] These 38 cities are: Ada, Albert Lea, Alexandria, Austin, Barnesville, Bemidji, Blue Earth, Brainerd, Breckenridge, Detroit, Ely, Fairmont, Fergus Falls, Granite Falls, Hastings, International Falls, Lake City, Little Falls, Minneapolis, Montevideo, Moorhead, Owatonna, Red Wing, Rochester, St. James, Sauk Centre. South St. Paul, Staples, Stillwater, Tower, Two Harbors, Virginia, Wabasha, Warren, West St. Paul, Willmar, Windom, and Worthington. See p. 83 for a diagram of a typical city in this group.

[21] These 11 cities are: Benson, Cannon Falls, Crookston, Dawson, Glencoe, Ortonville, Renville, Sleepy Eye, Tracy, Waseca, and Winthrop.

(Minneapolis and Northfield). In 13 others, where the mayor is a member of the council, he is the only member elected from the city at large. Some members are elected by wards and some at large in 26 other cities, and in 19 all members are elected at large. Altogether, 41 of these 51 cities have ward systems, of which 10 have 2 wards each, 16 have 3 wards, 8 have 4 wards, 4 have 5 wards, 1 has 6 wards, 1 has 8 wards, and 1 (Minneapolis) has 13. These figures are based upon the printed charters; they may be inaccurate in view of the fact that some city councils may have exercised their power to change the number of wards. In size these 51 city councils range from that of Dawson (3 aldermen and the mayor) to that of Minneapolis, which has 26 members, or 2 from each of the 13 wards. The exact figures are (including the mayor wherever he is a member): 1 council of 4 members; 12 of 5 members; 7 of 6 members; 16 of 7 members; 2 of 8 members; 8 of 9 members; 2 of 10 members; 2 of 11 members; and 1 of 26 members. In 5 of these cities the councilmen or aldermen serve for only 1 year; in 41 they serve for 2 years; in 1 they serve for 3 years; and in 4 for 4 years. In summary of these dry facts, little criticism can be made of the size of the city councils, considering the size of the communities governed. Terms of office could be somewhat longer, however; and in the widespread use of the ward system of election there seems to be over-emphasis upon the needs of small sections of the cities as against the needs of the cities as united wholes, for even where some members of the council are chosen at large they are usually a minority of the council.

56. The mayor in these cities. In 20 of the cities under discussion the mayor serves for a single year; in 30 his term is 2 years; and in only 1 is his term of office 4 years. In 16 of these cities he is in no sense a member of the council; in 32 he is a member and president of the council, tho not always possessed of the right to vote; and in 3 he appears to be a member but not president. In the cases where he is a member, 9 charters provide that he may vote in all cases; in 5 cities, even tho he be a member, he may not vote, and in 21 he is permitted to vote only in case of a tie. It is really ambiguous, however, to say that he may vote only in case of a tie, for in a council of 5 or 7 members, where he is the odd member, when all members are present his right to vote in a tie is as good as a vote on all questions. In cases where there is an

odd number without him, the situation is almost reversed. In 41 of these 51 cities the mayor is empowered to veto acts of the council; in 9 others he does not have this power; and in one case the writer is doubtful as to the facts. It may seem to be strange, yet it is true, that in a number of cases where the mayor is a member of the council, and where he votes either on all questions or in case of a tie, he is also empowered to veto acts of the council. In all cases the mayor's veto may be overridden by the council. In 1 city the charter requires only three-fifths majority; in 23 the charter specifies two-thirds; in 2, five-sevenths; in 3, three-fourths; in 7, four-fifths; in 1, five-sixths; in 1, six-sevenths; in 1 (Dawson) a unanimous vote of the council of 3; and in 2 cases the facts are unknown to the writer. The 23 charters which specify two-thirds are really misleading. In a council of 4 members (not counting the mayor, who is usually excluded from voting in such cases), two-thirds really means three-fourths; in a council of 5 it means four-fifths; in a council of 6 its meaning is clear; in a council of 7 it means five-sevenths; and so on. Turning now to his more strictly executive and administrative powers, we find that the mayor is generally declared to be the "chief executive" of the city, (a phrase which means very little), that he is usually given the power to appoint and to control the officers of the police department (tho this is not the case in South St. Paul, Virginia, or West St. Paul, where boards handle these functions), and in many cases to appoint and to control also the fire department, and that in 11 cities he has an extensive appointing and controlling power over other departments as well. With so much variation between one place and another, it is impossible to generalize about the office of mayor in Minnesota. One thing may be said, however, and that is that if the office is to be of any importance whatever, the term should be at least two years.

57. Other officers and boards. Of course, no city stops with the election of only the mayor and the council. The constitution and statutes require the election of either municipal judges or justices of the peace in the various municipalities, and in addition there is almost everywhere the requirement of the election of the school board. Even this considerable electoral burden has not been enough to deter our cities from putting additional responsibilities and duties upon the voters. Only 2 of the 51 cities under consideration elect no other officers by popular vote. Of the others,

6 elect 1 additional officer each, 14 elect 2 additional, 14 elect 3 additional, 4 elect 4, 5 elect 7, 2 elect 6, Minneapolis elects 22, of whom each voter votes for 15, and as to one city the writer has no information. The office of treasurer is that most frequently filled by popular election, with the exception of mayor, council, judges, and boards of education. Of the 51 cities under consideration, 47 elect their treasurers. In addition, 25 elect their constable or constables, 24 elect their clerks or recorders, 19 their assessors, 5 their attorneys, 2 their street commissioners, 1 its engineer, 1 its comptroller, and several others, notably Minneapolis, elect certain boards. Of the 47 elective treasurers, 22 serve one-year terms, and 25 serve two-year terms. Nearly two thirds of the other elective officers, including practically all the constables, serve 2 years, the others 1 year each. In addition to these numerous elective officers, all cities have a number of appointive officers. A typical list of such officers would include (where they are not elective), an attorney, an assessor, a clerk, an engineer, a street commissioner, a chief of police, a fire chief, and in some cases also firewardens, a weighmaster or scaler and weigher, a poundmaster, an auditor, and a building inspector. Of 19 charters which clearly specify the terms of such officers, 17 set the term at 1 year and 2 at 2 years. In addition to these officers, the cities have also their appointive boards. Whether the charter specifies it or not practically every city has its board of health, as required by statute, consisting generally of one physician and two laymen. There is, as has been said above, in most cases a board of education, too, tho only a few charters mention this body. Ten of the cities under discussion provide in their charters for no other boards than these. Nine have one additional board, 19 have 2 additional, 4 have 3 additional, 2 have 4 additional, 1 (Red Wing) has 5, and as to 6 cities the writer does not have the facts. Twenty-eight of these cities have park boards, 13 at least have library boards, 17 have water and light commissions, and from 1 to 3 cities have boards of public works, water boards, boards of public welfare, police and fire boards, water and sewer boards, boards of fire commissioners, public utility boards, boards of cemetery trustees, city planning commissions, and boards of estimate and taxation. Nothing need be said of such ex officio bodies as sinking fund commissioners, which exist in nearly all cities, and boards of tax levy, which are also very numerous. Whether one looks at the organization of any one of these cities alone or at them all in the

mass, one is impressed by the tremendous amount of official machinery which has been set up to do, in most cases, a relatively small amount of public business. There seem to be far too many officers and boards. In many cases they can hardly avoid duplicating each other's work. The opportunities for shifting responsibility which they present must frequently appear to the intelligent voter and taxpayer. Indeed it is difficult to see how so many different authorities in our different small cities can work together harmoniously, or how the voters can control them all. Furthermore in most cases terms of office are too short to enable the average official to develop any special skill in his particular work.

58. Elections. Twenty-eight of the cities in this group of 51 have annual elections; in 23, elections occur biennially. A few of those having biennial elections distinctly specify that they shall occur at the time of the state and Federal elections, but the great majority of these cities hold their elections at another time, usually in the spring. As to the conduct of elections, practically all of these cities provide in their charters that the general laws of the state shall apply. In this respect these charters are strikingly unimaginative. Those cities which have adopted the commission plan of government (the next group to be discussed) have shown themselves far more willing to make experiments in electoral procedure. The Duluth commission plan charter of 1912 provided for preferential voting and the elimination thereby of primary elections. The state law at that time also provided for a system of preferential voting. The city of Morris in its 1913 commission-manager charter adopted practically the Duluth plan of preferential voting. The Duluth scheme was subsequently declared to be unconstitutional.[22] That city thereupon amended its charter to provide for a nonpartisan preferential primary and a final election without the preferential feature. Preferential voting may now be considered definitely out of the question for Minnesota cities until the constitution is amended. In the St. Cloud charter of 1911 (modified commission plan) and in the Glenwood commission plan charter of 1913 a different plan of election was provided. Both of these cities have a first and a second election, with the proviso that any candidate who receives a clear majority of the votes cast at the first election need not run again in the second election. The first election is not,

[22] Brown *v.* Smallwood, (1915), 130 *Minn.* 492, 153 *N. W.* 953.

strictly speaking a primary, but is a bona fide election for all candidates who receive a majority at that time. This is very much like the French system of municipal elections. The writer has no important information as to how the plan has worked in practice. Anoka (modified manager plan) and Columbia Heights (manager plan) both provide for nominations by petition, without a primary. Anoka requires a 10 per cent petition, which seems high, and Columbia Heights provides for a 5 per cent petition.

59. **Commission plan cities in Minnesota.** We have now spoken briefly of the electoral provisions in several of the commission and manager plan cities in the state. There are 9 cities in Minnesota whose charters conform more or less fully to the commission plan. Of these 9, 5 are quite orthodox commission plans,—Duluth, Eveleth, Faribault, Glenwood, and Mankato. Each of these has its 5 commissioners, all elected at large, one of whom is mayor, and each has its 5 departments. In Duluth the terms of all are 4 years, and the mayor may be assigned by vote of the commission to the headship of any of the 5 departments just like any other commissioner. In the others the terms are 2 years and the mayor always heads the departments of health, police, and welfare, while the other 4 commissioners are assigned to departments by vote of the commission. In all, the chief appointive officers are appointed by the commission as a whole. A sixth city, Lake Crystal, has almost a pure commission plan, but here there are 5 commissioners in addition to the mayor, all serving for two-year terms, and the mayor does not vote in the commission, but has a veto upon its acts. He heads the department of health, sanitation, police, and general welfare. Three other cities in the state, Hutchinson, St. Cloud, and St. Paul, also have a so-called commission plan. St. Paul will be discussed below. The voters of Hutchinson elect a clerk, treasurer, and assessor, in addition to a commission of 5 members, and it appears also that there are two boards, a park board and a library board, to carry on their several functions, which results in complicating the government almost out of resemblance to other commission plans. The scheme of government in St. Cloud is unique. The voters there elect for four-year terms a mayor, 2 commissioners, and 5 members of the council, all at large. The council of 5, which meets by itself, is a purely legislative body. The mayor has the power of veto over it, but acts can be passed over his veto by a four-fifths vote. The city commission, consisting of the mayor

and the two commissioners, is vested with all the executive and administrative power of the city, including therein the power to tax and to appropriate money, to manage all the property of the city, and to perform all the other actual business of the municipal corporation. The commission itself appoints all the chief city officials, such as the clerk, attorney, engineer, assessor, treasurer, physician, the chief of police, the fire chief, and the library board. The administration is divided into three departments, of which the mayor heads the department of public affairs and safety. Taken as a whole, the commission charters provide for a simpler scheme of government than do the charters which embody the mayor and council plan. There are fewer elective officers, and fewer boards, and there is a more definite concentration of responsibility.

60. The city-manager plan in Minnesota. Five Minnesota home rule cities have officers called "city managers" at the present time, and it is well to discuss the charters of these cities separately. Anoka and Morris both adopted commission plan charters in 1913 in which definite provisions were made for the office of city manager. In the Anoka charter there is provision for a mayor to serve for 2 years, and 4 commissioners to hold office for 4 years each. These together constitute the city commission, and there is the usual provision for 5 departments, of which the mayor heads the department of health, sanitation, police, etc. Among the appointive officers under the commission, including the clerk, treasurer, assessor, attorney, engineer, fire chief, and board of health, stands the city manager. He is not in any sense the real head of the administration. Properly described he is a sort of director of public works, but dignified with a more pretentious title. In Morris the commission consists of the mayor and two commissioners, all elected for four-year terms. In this small body is vested all the legislative, executive, and administrative power of the city. As a body, the commissioners appoint a treasurer, an assessor, a chief of police, a board of health, and the city manager. The latter combines in himself the functions of clerk, engineer, street commissioner, superintendent of waterworks, and chief accounting officer of the city. He approaches, thus, more closely to the capacity of a true city manager than is the case in Anoka, but all the administrative work does not center in him. Pipestone also adopted in 1913 a commission plan charter, with a mayor and 4 councilmen (commissioners) and the usual 5 departments. The manager plan was foreshadowed,

however, in a provision of the charter authorizing the council to combine various appointive offices into one. Such provisions exist in a number of other charters in Minnesota, and in the charters of Sauk Centre (mayor and council) and Eveleth (commission plan) and perhaps in others, there is definite provision for the creation of the office of city manager by ordinance. The commissioners in Pipestone have acted upon this power to create the office of city manager, but the writer is not able to describe the exact range of his functions and authority.

The next definite step toward the adoption of the city manager plan in Minnesota was taken by the charter commission of Columbia Heights in 1920-21. The charter which it drew up, and which was adopted by the voters in June, 1921, provides for a mayor elected for 2 years and 4 councilmen serving for 4 years. The mayor and councilmen together constitute the city council, and as such are vested with full power of government in the city. They pass all the ordinances, levy the taxes and enact the budget, and in general determine the policies for the municipal corporation. All administrative work with the exception of police is centered in the city manager, who is appointed for an indefinite term by the council and who is removable at any time by the council. The police department alone is not under the city manager; it is the mayor who appoints and controls the police. Under the manager there may be as many or as few officers or departments as the council wishes to create, but it is not within the power of the council to establish departments which are not under the manager's control, since the manager has authority to appoint all the minor city officials and to direct their work. Thus he is prevented from shifting responsibility to others. If the city's work is not well done, the manager must shoulder the blame, and the council may, if it so chooses, dismiss him for inefficiency at any time.

Since the adoption of the Columbia Heights charter the city of White Bear Lake has also been organized under a charter providing for a city manager. This charter, somewhat awkwardly drafted, is unlike anything that has yet been described. The city is divided into three wards, each of which elects one councilman, who, together with 2 aldermen at large and the mayor, 6 in all, constitute the city council. The mayor does not vote in the council, but he has a veto power which can be overridden only by a four-fifths vote of the councilmen. The terms of these officers are 3 years, and there is

also an elective treasurer who serves for 1 year. The council appoints a city attorney and the library board; the mayor appoints the city manager, the clerk, and the assessor, whom he may remove, and also a board of public welfare. The city manager is declared by the charter to be "the business and administrative head of the city," and as such is authorized to "organize all necessary departments, appoint all city employees, with power of removal, and have full management of the affairs of the city," subject to the limitations in the charter.[23]

61. The city-manager plan is constitutional. Certain articles printed in Twin City newspapers during the past year have created the erroneous impression among many people that the city-manager plan is unconstitutional in Minnesota. These articles were supposed to be based on an opinion of the attorney general of the state. Upon examination of the opinion cited it appears that the attorney general did not rule the plan to be invalid. On the contrary the opinion holds that "of course there may be a city manager as well as a mayor, but the point is that the duties customarily performed by the mayor may not be taken from him and reposed in another officer of the city government." In fact the city-manager plan does not propose to dispense with the mayor, nor to establish an office which will take away any of his essential powers. The writer has fully discussed this problem in another place.[24] The provisions of the model city-manager charter in the appendix of this little book fully comply with the requirements of the state constitution.

62. City government of Duluth. The city of Duluth first adopted a home rule charter in 1900. Twelve years later the present charter was adopted. As a document it is one of the best drafted, briefest, and clearest charters to be found among the cities of the state. Instead of giving the powers of the city and of the council at great length and in detail, it confers on the city authorities all possible municipal powers in one broad, sweeping statement (sec. 1). All its provisions are put in fairly clear and simple language. The entire legislative and executive authority of the city is vested in the city council, consisting of the mayor and 4 commissioners, all of whom serve for 4 years. At one biennial election the voters

[23] In addition to the city-manager charters in actual operation, charters of this general type were proposed but defeated in Brainerd (1913), Wadena (1917), and in Bemidji, 1918-19.

[24] See *Minnesota Municipalities*, December 1921, Vol. 6, pp. 163-69.

choose the mayor and 2 commissioners; at the next they elect 2 commissioners. The mayor and commissioners receive annual salaries of $4,000 each. The city's administration is divided into five divisions, namely public affairs, finance, public works, public safety, and public utilities. To the division of public affairs has been assigned the control of public buildings, markets, and libraries, the work of charities and corrections, the inspection of weights and measures, buildings, plumbing, elevators, and wiring, and the enforcement of franchises. The work of the treasurer, the auditor, and the assessor, and all the handling of public funds, fall to the division of finance. The police, health, and fire departments, the inspection of milk, and sanitation in general, come within the scope of the division of public safety. The division of public utilities manages the municipal gas and water supplies, the aerial bridge, and street lighting. The division of public works handles all street work and public improvements not otherwise assigned. Whenever any new member or members take their seats, the council by a majority vote designates one of its members to have control of each department. As a whole the council legislates and also, after every general election, it appoints a clerk, an auditor, an assessor, and an attorney. All other officials are appointed by the head of the division in which they fall. A civil service commission, consisting of 3 members appointed by the council for overlapping terms of 6 years each, makes rules subject to council approval for the selection, promotion, and management of the city's civil servants. The provisions of the charter relative to elections have been mentioned above.[25] The charter also provides for the recall, the initiative, and the referendum.[26] The provisions as to taxation and finance can not be discussed at length here, but attention should be called to the very interesting chapter dealing with franchise (ch. 11). Everything considered, the form of government, if not perfect, is one of the simplest and most effective to be found among the cities of this state. Because of its excellent draftsmanship the charter is well worth the study of every charter commission in Minnesota.

63. St. Paul's plan of government. St. Paul and Duluth have had parallel charter histories since the amendment of the constitution authorizing municipal home rule. Both adopted their first home

[25] See sec. 58, above.

[26] See sec. 65, below.

rule charters in 1900, and in both cases these were of the old mayor and council type and based upon their previous charters. In 1912 they both reached the point where they desired new charters. The Duluth charter commission carefully drew up a commission-plan charter which the voters thereupon adopted. The St. Paul charter commission, however, was proceeding with the work of drafting a charter based upon the Federal plan, when certain citizens of St. Paul, filled with enthusiasm for the commission plan, hastily drew up a commission charter, circulated a petition to have it submitted as an amendment to the existing charter, and were successful in having it adopted by the required 60 per cent vote. The charter commission thereupon dropped its plan. In 1921 the charter commission again became active. This time it submitted a charter based in part upon the Federal plan of organization. The proposed charter was submitted to the voters at a special election on December 29, 1921, and was defeated by a vote of 21,549 against it, to 16,123 in favor. St. Paul continues to be governed under the charter of 1912. As a document this charter shows the defects of the hasty manner in which it was prepared and submitted. It is long, complicated, and in some parts obscure, and it puts a number of restrictions upon the city government which do not promote either economy or efficiency. The plan of the government, which may be classed as a modified commission plan, is not well considered and is probably unique among American cities. Elections are held biennially. At each election the voters of the entire city are required to elect for two-year terms a mayor, a comptroller, and six councilmen or commissioners. This number of elective officers necessitates an unduly long ballot. The mayor and comptroller each receive annual salaries of $5,000; the commissioners receive annually $4,500 each. The mayor is a member and, ex officio, president of the council. He has also the veto power over its acts, but these may be repassed over his veto by four votes. When the new administration takes office every two years, the mayor assigns one member of the newly elected council to head each of the six large departments, namely public safety, education, public works, public utilities, finance, and parks, playgrounds, and public buildings. Six months later the mayor may shift two or more of the commissioners to different departments, but thereafter he may make no further reassignments. The mayor himself does not head any particular department, but is supposed to exercise a sort of coördinating influence and is em-

choose the mayor and 2 commissioners; at the next they elect 2 commissioners. The mayor and commissioners receive annual salaries of $4,000 each. The city's administration is divided into five divisions, namely public affairs, finance, public works, public safety, and public utilities. To the division of public affairs has been assigned the control of public buildings, markets, and libraries, the work of charities and corrections, the inspection of weights and measures, buildings, plumbing, elevators, and wiring, and the enforcement of franchises. The work of the treasurer, the auditor, and the assessor, and all the handling of public funds, fall to the division of finance. The police, health, and fire departments, the inspection of milk, and sanitation in general, come within the scope of the division of public safety. The division of public utilities manages the municipal gas and water supplies, the aerial bridge, and street lighting. The division of public works handles all street work and public improvements not otherwise assigned. Whenever any new member or members take their seats, the council by a majority vote designates one of its members to have control of each department. As a whole the council legislates and also, after every general election, it appoints a clerk, an auditor, an assessor, and an attorney. All other officials are appointed by the head of the division in which they fall. A civil service commission, consisting of 3 members appointed by the council for overlapping terms of 6 years each, makes rules subject to council approval for the selection, promotion, and management of the city's civil servants. The provisions of the charter relative to elections have been mentioned above.[25] The charter also provides for the recall, the initiative, and the referendum.[26] The provisions as to taxation and finance can not be discussed at length here, but attention should be called to the very interesting chapter dealing with franchise (ch. 11). Everything considered, the form of government, if not perfect, is one of the simplest and most effective to be found among the cities of this state. Because of its excellent draftsmanship the charter is well worth the study of every charter commission in Minnesota.

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[25] See sec. 58, above.

[26] See sec. 65, below.

legislature found that it could, without violating the constitution, enact special laws for Minneapolis by making such laws applicable to "all cities of the first class not operating under home rule charters." This classification neatly excluded St. Paul and Duluth, and came to be considered entirely valid. For over twenty years after municipal home rule became possible the chief city of the state failed to exercise its privilege. The legislature changed its charter session after session, making its government more complicated and its fundamental law longer and more detailed as the years went by. Finally in 1920 a new charter commission was appointed to bring about home rule. It simply collected the laws which the legislature had evolved for the city without plan or purpose over a period of fifty years, put them together into one document, called it the charter of the city of Minneapolis, and asked the people to adopt it for the sole purpose of putting Minneapolis in a position to govern itself. Amendments to the charter could come later. The voters accepted this view, and at the general election in November, 1920, adopted the proposed charter by an unexpectedly large majority. Ever since that time the voters have been discussing improvements in the charter, but as yet no organic changes have been made. Municipal elections are held in June of the odd numbered years. At each election the voters elect the mayor, the treasurer, the comptroller, 1 member of the council from each of the 13 wards, 2 of the 6 elective members of the library board, 2 or 3 of the 7 members of the board of education, 1 of the 2 elective members of the board of estimate and taxation, and 4 of the 12 elective members of the park board, besides municipal judges. Minneapolis voters have the longest municipal ballot to be found in the state. The mayor is nominally the head of the city government. He appoints the superintendent of police, the civil service commissioners, 4 of the 9 members of the city planning commission, and 4 of the 7 members of the board of public welfare, all with the council's approval. He is, ex officio, a member of the board of estimate and taxation, the park board, the library board, the board of public welfare, and the city planning commission. He also has a veto power, but ordinances can be passed over his veto by a two-thirds vote of the council. All told he is a very busy man, but not overendowed with power. The council, consisting of 2 aldermen from each of the 13 wards, each serving for 4 years, controls some of the most important administrative branches of the city. It appoints

the city assessor, attorney, clerk, and engineer every two years without being required to conform to any civil service regulations, and it also appoints the following subject to civil service rules: a chief fire engineer, building inspector, gas inspector, purchasing agent, weigher, registrar of water works, superintendent of baths, a street commissioner for each ward, and a street railway inspector. It would require too much space to explain at length the organization and powers of the several boards and commissions. The partly ex officio and partly elective board of estimate and taxation has the important power of setting the maximum tax rate or total budget of each of the various spending authorities, and also of regulating and controlling the bond issues of the few which can issue bonds. This is practically the only board which in any degree centralizes the government of the city. Everywhere else there is decentralization, resulting in overlapping of fields of work, constant discord among the several independent authorities, and, undoubtedly, some inefficiency. Besides these organic difficulties, the charter contains a number of other exceedingly unfortunate details relating to tax limits, bond issues, street maintenance, and other matters. There is reason to believe, however, that the present situation is only temporary. The voters of Minneapolis will undoubtedly set their house in some sort of order in a reasonably short time.[27]

65. The initiative, referendum, and recall in home rule charters. Nineteen of the home rule charters which have been passed under review provide for the initiative, referendum, and recall. Two other cities provide for only the initiative and referendum, and three cities have only the recall. All of the commission plan and city-manager plan cities provide for one or more of these instruments of popular control and most of them have all three. It is generally and perhaps wisely felt that where the power of government is more fully centralized, it is necessary to reserve to the voters a direct power to control the government or to recall its

[27] For a more extended discussion of the charter problems of Minneapolis, see *Minneapolis Charter Problems*, pamphlet, 43 pp., published in 1921 by the Woman's Club of Minneapolis and the Fifth District League of Women Voters; and also *Analysis of the Growth of Government in Minneapolis with organization charts, 1872-1921*, mimeographed bulletin, 34 pp. and charts, prepared by the Bureau of Municipal Research of the Minneapolis Civic and Commerce Association, July, 1921. A large Citizens' Representative Charter Committee is now holding meetings almost every week for the purpose of formulating a new charter.

members. The charter of Two Harbors (1907) was apparently the first in this state to provide for the initiative, referendum, and recall, and its provisions are very liberal. A 5 per cent petition is sufficient to require the submission of an initiated ordinance to a general election; a 15 per cent petition to a special election; a 7 per cent petition prevents an ordinance enacted by the council from going into effect without a vote of the electors; and a 25 per cent petition compels the holding of a recall election. Other charters which provide for the initiative require from 15 per cent to 30 per cent of the voters to sign if a special election is desired, and from 5 to 20 per cent in case a general election is contemplated. The average requirement is that of Duluth and eight other cities which set the requirements at 10 per cent (general election) and 20 per cent (special election). As to the referendum, 2 cities require only a 7 per cent petition; St. Paul requires an 8 per cent petition; 3 (including Duluth), a 10 per cent petition; 2, a 15 per cent petition; 9, a 20 per cent petition; and 2, a 25 per cent petition. For the recall, 4 cities require 20 per cent of the voters to sign the petition; 11 (including Duluth and St. Paul) require 25 per cent; 3 require 30 per cent; 2 require 35 per cent; and 1 requires 40 per cent. As to the city of Jackson, which is reported to have the initiative, referendum, and recall, the writer has no data.. Clearly some of the percentage requirements are unduly high. As to how useful these various provisions have been in the different cities, there is altogether too little information. Perhaps they have been but little used and their chief value has been in their silent deterrent effect. As this is being written, however, the voters of St. Cloud are engaged in an interesting recall campaign, the recall petition being directed against the city "commission."

66. The grant of powers in home rule charters. As a corporation and a local government, a city has only those powers which are conferred upon it by the state. In the days when the legislature granted all city charters, the courts developed the rule of strict construction, that a city should be allowed only those powers which are clearly given to it. This made it almost necessary for the legislature to specify the powers of the city in great detail. The enumerations of municipal powers in city charters grew longer and longer as the cities grew larger and more numerous and their problems multiplied. The chapter granting powers to the city council was usually one of the longest in the entire chapter. But

even these lengthy chapters failed to keep step with the times. There was always something important omitted from the enumeration. In those days it was not fatal to have this occur, since the legislature met annually or biennially and could always by special law add another to the list of the city's powers. At the same time the legislature was enabled in this way to keep the cities under constant surveillance and control. With the coming of home rule the situation is much changed. The people who live in the city are themselves the municipal corporation. When they adopt a home rule charter they do it for the better management of their local business, not for the benefit of some distant authority over which they have little control. If they put limitations upon their own powers as a city they are not hurting their local officers so much as they are themselves. They are expressing a lack of confidence in their ability to govern themselves. They are tying their own hands, and tying them very effectually. When they some day grow weary of their bonds they find that it is necessary to amend the local charter, and that this can be done only by a 60 per cent vote of the electorate. That this vote is not easy to get, many a city in Minnesota has found to its sorrow. Despite these considerations, however, we find that 57 of the 65 home rule charters in Minnesota, to-day, following traditional models, attempt an enumeration of the city's powers, and by long and detailed descriptions of what shall be done and just how it shall be done they actually handicap their own city governments of the future. The enumerations vary in length from 41 to 94 items, and average 68. All wisdom is not bound up in the ordinary charter commission; it would ordinarily do a better piece of work if it left some things to be worked out by the city council, not merely because the council can easily undo or do over again what it has once enacted as an ordinance, but also because the science of municipal administration is now rapidly growing, and what may seem the only wise course to-day may be much improved upon ten years hence. Four-cylinder engines were once considered the acme of perfection for automobiles, but he would have been a very foolish automobile manufacturer who would have doomed his factory to turn out four-cylinder engines and nothing else forevermore. A small number of cities in this state have realized this fact. Duluth appears to have led the way in 1912, with a short, simple charter, embodying few important restrictions, and in which the

city was given all possible municipal power in one broad and sweeping statement.[28] The charters of Columbia Heights and Morris were much influenced upon this point by the Duluth model. Anoka and Little Falls also have included general statements of the city's powers in their charters. In the Sauk Centre charter, which appears to have been followed in the Wabasha charter, a somewhat different course is pursued. Here in one long section, couched in general terms, an attempt is made to summarize the general powers of the city without actually enumerating or specifying them in detail. In closing it is provided that the statement of powers is not to be construed as a limitation or restriction, and that in addition "the city of Sauk Centre shall have full power to deal with all matters of municipal concern and have complete self-government in harmony with and subject to the constitution and laws of the state of Minnesota." It would seem that some such grant of powers as that in the Duluth or Columbia Heights or Sauk Centre charter is necessary to give a city genuine home rule according to the spirit of the constitution and the statutes.

67. Draftsmanship and arrangement of home rule charters. Considering the fact that charter commissioners are unpaid men chosen from every walk of life, that they are without funds for paying for expert assistance in drafting charters, and that there has been little information available upon the subject of charter drafting and few good model charters, it is not surprising that one charter has often been made up by clipping sections from others. In this way have many bad provisions been scattered broadcast and perpetuated along with good. When provisions have been drawn from several different charters, often different words have been used in different parts of the charter to express the same idea. Thus has much confusion crept in. In most cases, many words have been used where a few would have sufficed, thus adding to the length of the charters without making them more clear. In addition subjects are dealt with in the charters which should be left to ordinances. Equally noticeable to one who knows a little of the constitutional law of Minnesota is the fact that many charter commissions have either had very poor legal advice or none at all. Many charters contain provisions which are contrary to the constitution of the state as interpreted by the state supreme court. In varying num-

[28] The state supreme court has sustained the Duluth charter upon this point. Park *v.* City of Duluth, (1916), 134 *Minn.* 296, 159 *N. W.* 627; State *ex rel.* Zien *v.* City of Duluth, (1916), 134 *Minn.* 355, 360-61, 159 *N. W.* 792.

bers they attempt to limit the number of persons who may vote either for municipal officers or upon bond issues; to restrict the right to run for elective office to those who have resided a certain number of years in the community, or who own property therein, or who have never been convicted of crime, or who can read and write the English language understandingly, and so on; to extend the jurisdiction of the city for a mile, more or less, beyond the city limits for certain purposes; to require the local district judges to appoint members of the water and light commission; to interfere with the local municipal courts; to prohibit officials who have resigned or who have been recalled from running for office within a year; and so on. In arrangement most of our home rule charters would bear improvement. The same subject should not be discussed in different parts of the charter, but should be completely disposed of in one place. Similar subjects should be grouped together as much as possible. Then when all has been arranged in proper order, and in short rather than long sections, the sections should be numbered consecutively from 1 to the end. The common practice of numbering the sections in each chapter in a separate series, each beginning with 1, is an unfortunate one and leads to difficulty both in citing the section and in finding it in the charter pamphlet. Every charter should be preceded by a complete table of contents, and should conclude with a full index.

68. Conclusion as to existing home rule charters. The writer may be permitted a few words of comment in conclusion. The existing home rule charters lack nothing in variety, but it is not every novelty or innovation that is to be considered an improvement. More uniformity along sound lines would be greatly preferable. Under home rule, however, uniformity can be attained only by widespread popular education, and that is, indeed, one of the purposes of this little book. In general, the existing home rule charters provide for too many local officials and too many boards. This usually means that, since so many are employed, the salaries must be very small. The average city in this state would gain by having fewer officials, by paying them more, and by requiring them to put more of their time and effort into their public work. In order to do this, however, it is necessary to educate the local voters away from the idea that public positions are spoils or rewards, which should be passed about as widely as possible, and up to the idea that public offices are an opportunity for service and that they should

hold out to those who have training and ability a genuine career of public service. Terms of office are generally too short. The ward system for the election of aldermen is somewhat overdone; the modern tendency is somewhat away from it. It is very doubtful whether the veto power vested in the mayor is actually a good thing. It probably has as many bad as good results, and it always gives some opportunity for shifting of responsibility and for the blocking of essential public business. Cities which feel called upon to make amendments in their charters might well consider at the same time whether important improvements could not be made in the existing municipal organization. It is often as easy to adopt an entirely new charter as to adopt mere amendments. When overhauling their charters, they should endeavor so to rewrite and to rearrange them as to make them understandable to the average citizen, consistent with the laws and constitution, and harmonious in every part.

CHAPTER IV

PROCEDURE FOR MAKING AND AMENDING HOME RULE CHARTERS

69. Advantages of municipal home rule. The practice of local self-government, says James Bryce, the most distinguished English student of American institutions, is "the best school of democracy, and the best guarantee for its success." Indeed, "democracy needs local self-government as its foundation."[1] The little village communities in which our forefathers learned to govern themselves in ancient times were, he tells us, "the tiny fountain-heads of democracy." It was in small communities that the spirit of democracy, of local self-reliance, was born ages ago; it is in them that it must be reborn in every generation. It was the New England towns and other small units which carried on the same tradition of local self-government in early America as then prevailed in England; to-day the American system of government is one of almost complete decentralization, "the primary and vital idea of which is, that local affairs shall be managed by local authorities."[2] In that group of states, including Minnesota, in which the people are authorized to enact and to amend their own charters of municipal government, the principle of local responsibility has simply been carried one step farther. In Minnesota, cities and villages have the choice between being half self-governing or being almost entirely self-governing by adopting municipal home rule. If they do not choose home rule they are powerless to change their organization and functions; only the legislature can help them. In many cases even the legislature can not give the needed relief to a bad local situation without violating, in spirit at least, the prohibition against special legislation; and in any case the local citizenry is not the active procurer of its own salvation but a mere passive recipient of charter amendments which may in some cases be against the wishes and interests of the people most concerned. On the other hand the advantages which come with home rule may be briefly stated as follows:

[1] *Modern Democracies*, 1:133, 320.

[2] Cooley, *Constitutional Limitations*, seventh ed., p. 261.

1. Every home rule city may have the form of government and the range of local powers and functions which the people of the city desire it to have.

2. The charter may be drawn up locally, in the open, and by residents of the city, and must be adopted by the electors themselves.

3. Whenever changes in the local government are really needed or desired, they can be had by local action, immediately instead of a year or more later when the legislature meets.

4. The legislature is relieved of much time-consuming and expensive labor in devising laws for local communities. The result will be a better legislature and better general laws, to the great benefit of the entire state.

5. The entire home rule process is distinctly educational to all the voters of the city. Some are called to work on charter commissions; the others must learn at least a little about charters and amendments because they must vote upon proposed changes. Trained thus in local affairs, the people become better fitted to cope with state and national problems.

70. What communities may adopt home rule? The constitution says that "any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state."[3] "Any city" means any community now or hereafter organized for municipal government under the legal designation of a city. The name of a community is not the test; some villages and a few mere townships call themselves "cities." Thus "Winnebago City" is in law only a village, but as a village it may adopt a home rule charter and become a city. Garden City, in Blue Earth County, and Forest City, in Meeker County, are legally only towns or townships, and may not take advantage of the present home rule provision. "Any village" means any community organized as a village under general or special laws of the state. There is one "borough" in the state, Belle Plaine, besides many cities and villages. At law this borough has practically the same rights as an ordinary village and it is probably entitled to become a city by adopting a home rule charter. Counties, towns or townships, school districts as such, and other local units, have not the power to adopt home rule charters.

[3] *Minn. Const.* art. 4, sec. 36, printed with annotations in the appendix.

71. Present cities and villages. A list of the cities in the state will be found elsewhere in this book.[4] The names of villages which in 1920 had 1,000 or more inhabitants are also given elsewhere.[5] The number of both cities and villages is constantly increasing. The present law permits any community of 100 inhabitants dwelling on platted land to organize as a village if the people so choose. In the case of such communities lying upon any boundary line of the state, only 50 inhabitants are required to make a village organization legal.[6] Thus it would be possible for almost any little group of people in the state to organize first as a village under the general law, and then to proceed to the next step of becoming a "city" by adopting a home rule charter. The good sense of the people has kept all of our smallest villages from attempting to become home rule cities. No community of less than 1,000 inhabitants has up to this time adopted home rule.

72. Initiating the movement for home rule. It is not necessary for any official of the city or village or for any branch of the local government to originate the movement for a home rule charter. The initiative may come entirely from groups of private citizens, from commercial clubs, good government associations, improvement societies, women's clubs, churches, or from anyone else. The same is true with reference to originating amendments after a home rule charter has been adopted. Common sense dictates, however, that the movement shall be fairly general and representative and that as many elements in the community as possible shall be enlisted before the active work begins. A movement which is not fairly popular at the outset, or which is opposed by the entire city or village government, is almost sure to be defeated.

73. Appointment of the board of freeholders (charter commission). The requirements of the law as to the appointment of charter commissioners are very simple.[7] In the first place the judge or judges of the state district court of the district in which the city or village lies *may* make the appointment without waiting for a petition of the people. It is not to be expected, however, that they will proceed until the people in the city or village have shown some

[4] See appendix.

[5] See appendix.

[6] *Laws* 1919, ch. 324.

[7] The statute is printed in the appendix.

interest in the matter. They will usually wait until they have been approached by some locally influential citizens or clubs. In the second place, the judges are *required* to make the appointment upon the presentation to them of a petition "signed by at least ten per cent of the number of voters of such municipality, as shown by the returns of the election last held therein." In the smaller communities it is an easy matter for a few interested persons to procure the signatures of the requisite number of voters. In all cases it is the judges of the district court who make the appointments, and it is for them to make such appointments as they deem expedient within the limits prescribed by the law.

74. Qualifications of charter commissioners. The constitution lays down two qualifications for the members of charter commissions. *First,* they must be freeholders within the city or village concerned, that is, each member must own some piece of real estate in the community in his own right. For this reason a charter commission is called a "board of freeholders." *Second,* the members must be, and for the past five years must have been, qualified voters in the city or village. Formerly this requirement excluded women, but since the adoption of the Federal woman suffrage amendment (1920), women will also be eligible to membership on charter commissions. If the law is given a very technical construction, this will not be before 1925.

75. Order of appointment and oath of office. Having determined to make the appointments, or having been directed by a petition so to do, the judges undoubtedly listen to such counsel and information from interested citizens as to appointments as the latter please to give. The appointments are then made by the judge or judges by means of an order filed with the clerk of the district court for the county in which the city or village lies. The clerk then notifies the appointees, who are given thirty days in which to file with the clerk their written acceptances and oaths of office. The statute does not give any definite form for either the acceptance or the oath; but the latter should adhere as closely as possible to the form laid down for public officers in the constitution and statutes, as follows: "I, A——— B———, do solemnly swear [or affirm] to support the constitution of the United States, and of this state, and faithfully discharge the duties of charter commissioner of the city [or village] of C——— to the best of my judgment and ability."[8]

[8] *Minn. Const.* art. 5, sec. 8; *Gen. Stat.* 1913, sec. 5733.

In case any appointee fails to file his acceptance and oath of office in the time specified, he is deemed to have declined to serve, and his place is filled by the judge by a new appointment.

76. Charter commission a permanent body. A charter commission consists of fifteen freeholders appointed as described above. The commission is not deemed to be complete and ready for business until the last of the fifteen has qualified by filing his acceptance and oath of office. Once appointed a charter commission becomes a permanent body, theoretically everlasting, like Congress or the Supreme Court. Its membership will change from time to time; each member is appointed for only four years at a time; but the commission as such goes on indefinitely. Mere failure of the body to meet or to function does not end its existence. In case the judges neglect to appoint a new group of commissioners or to reappoint the old members at the end of four years, any ten freeholders of the city or village may petition the court for new appointments and thereupon the judges are required to act. Vacancies in the commission may occur in various ways, as by death, disability to perform duties, resignation, or removal from the corporate limits of the city or village. Freeholders may also be removed from the commission at any time by written order of the district court, but the order in this case must show the reason for removal. In case any member fails to perform his duties and fails to attend four consecutive meetings of the board without satisfactory reason, a majority of the members may sign a request for, and thereupon the judges must order, his removal. In all such cases the judges fill the vacancies by appointments presumably for the unexpired term. The board should "always contain its full complement of members."

77. Starting the commission's work. The law declares that within thirty days after the appointment of the charter commission the judges of the district court "shall make such rules with reference to such board, and require such reports, as may appear desirable or necessary." It appears that in practice the judges leave the board to provide its own organization and rules of procedure, merely giving the members such elements of sound counsel as seem necessary to have the work taken up in an orderly and expeditious manner. Every such board is practically master of its own house. Success or failure rests very much with the members themselves.

78. A new charter within six months. The law further provides that a newly appointed charter commission in a city or village

where home rule has not yet been adopted shall draft a home rule charter and "shall within six months after its appointment return to the chief magistrate of said city or village a draft of said charter signed by the members of said board, or a majority thereof." This six months period begins when the last of the fifteen freeholders has qualified for his office. Within six months thereafter a complete charter must be in the mayor's hands. This means that no time can be wasted.

79. **First meeting. Officers and committees.** At their initial meeting, therefore, the commissioners should elect a president, a vice-president, and a secretary, and should prepare for their work. The *president* should be a man with some experience as a presiding officer and one well acquainted with parliamentary procedure. He should be characterized by qualities of leadership, tact, and business-like habits. The *vice-president* should be selected for similar qualities. The position of *secretary* should go to one who is able to write good English in a clear hand, whose habits are orderly, and who is willing to invest some time and labor not only in keeping a full and clear record of proceedings but also in keeping himself constantly in touch with all the work of the commission and its several committees. A good secretary to a charter commission is simply invaluable. At the same meeting there should be appointed several committees, as follows: (1) A small standing committee on rules. Three members will suffice. (2) A small standing committee on arrangements, to deal with the time and place of meeting, stenographic assistance, library, stationery, and other matters, not neglecting publicity. (3) A large committee on general plans and purposes. This committee should deal with the general strategy of the situation, in the manner to be described, and the question of whether it should be a temporary or a permanent committee should be left to later decision.

80. **Committee on plans and purposes.** Because it will have much to do in a very short time, the committee on general plans and purposes should meet immediately after the first meeting of the entire commission to plan its work. Upon discussing the problem it may find it necessary to divide into several sub-committees, or at least to delegate to selected persons the duty to report on special questions falling within the three main fields of its investigations. These fields are the following: (1) A survey of local charter opinion.

Members of this committee should get in touch with the leaders of public opinion in the community, men and women, business men, professional men, public officials, politicians, labor leaders, newspaper editors, ministers, and others, and particularly with some of those who petitioned for the appointment of the charter commission. From these persons they should learn what the public is expecting of the charter commission. Why was the charter commission appointed? Why are the people dissatisfied with their existing city or village government? How much of the existing charter needs to be changed, i.e., must there be a completely new charter or can the old charter be taken over as a home rule charter with only minor modifications? What must the new charter contain in order to win the support of the voters? Much of this information the committee members will get easily by private consultations, each member interviewing a select few. In addition a widely-advertised public meeting should be arranged for in which the various views can be presented. (2) But the quest of the committee should not end after getting local opinion. A few selected members should find out, by a short intensive study, just what sort of city or village government the community has, what its various departments and officers are and what they do, how much the government costs the people in comparison with the cost of neighboring towns, how much the taxpayers are getting for their expenditure as compared to others, what the real defects in the local system are, and so on. It may prove, on investigation, that public opinion is "barking up the wrong tree," and that what really ails the local government is something entirely different from what the people think. (3) The committee should also look into the history and literature of American municipal progress to ascertain what forward steps the cities in this and other states have taken, and what the national leaders in municipal reform think about the various proposed cures for the ills of municipal government. To summarize this paragraph, this committee should diagnose the local situation as fully and as carefully as time will permit and should get some ideas concerning the probable remedies. It will then be in a position to submit to the next meeting of the entire commission a report as to what work the commission should undertake, whether a complete new charter or merely some amendments to the old, of what nature the new charter or amended

charter should be, and what committees will be necessary to carry out the work.

81. Expert charter advice. The making of a city charter is a complex and difficult matter requiring special skill. Unfortunately the laws of Minnesota do not permit charter commissions to spend over $500 in the original preparation and proposal of a charter, a sum almost too small to cover ordinary expenses, not to mention hiring an expert charter draftsman. It is true, also, that there are not many skilled charter draftsmen in the entire country. Nevertheless a charter commission should at least get a little preliminary advice from some person with skill in these matters as to what should go into a charter, and should also, before proposing a charter, submit its draft to some impartial expert for final criticism. The *Municipal Reference Bureau* of the *General Extension Division* of the state University, can be of some assistance both directly and in suggesting the names of charter experts. The *National Municipal League*, 261 Broadway, New York City, can also be of some service.

82. Second meeting. Standing committees. The second meeting of the charter commission should come within two weeks. An early start is necessary and members should become accustomed to frequent meetings. At this session the first important items of business should be the adoption of rules of procedure and the making of arrangements for future meetings. Following these matters the commission should hear the report of the committee on general plans and purposes, and should if possible reach an agreement upon its general plan of procedure. Unless this is done at the outset, much valuable time will be wasted. Assuming that it is decided to draft an entirely new charter, the writer would suggest an immediate division of the commission into five committees, somewhat as follows:

1. On general provisions, the plan of government, the council, and legislation.
2. On nominations, elections, initiative, referendum, and recall.
3. On administration, taxation, and finance.
4. On local improvements, special assessments, and eminent domain.
5. On franchises, public utilities, and miscellaneous matters.

The first of these committees will deal primarily with the subject-matter of chapters 1, 2, and 3, of the model charter printed in the appendix; the second committee with the subject-matter of chapters 4 and 5; the third with chapters 6 and 7; the fourth with chapters 8 and 9; and the fifth with chapters 10, 11, and 12.

83. Third meeting. General plan of government. At the next (the third) meeting of the charter commission, the first committee named immediately above should present its report in favor of one or another general plan of government for the city. Is there to be a commission plan, or a mayor and a council, or a council and a manager? What other elective officers are to be provided? Are there to be any boards? Are schools to be left under a separate authority or brought under the city? These and other leading questions require an early tentative solution. The preliminary agreement on these fundamentals need not be final and binding, but it should at least temporarily form the basis from which to proceed. In any case this general subject should be the first one brought up for discussion, and it should be considered continuously until settled. In the meantime the several committees ought to be gathering their materials and meeting from time to time for discussion in order to have their proposals ready to be embodied in the charter just as soon as substantial agreement is reached on the main outlines of the plan of government.

84. Further progress on the charter. "Well begun is half done" is a proverb which every charter commission will find true in its own experience. If good, orderly habits of business are adopted at the beginning, the way to a successful conclusion will not seem so hard. Nevertheless there is much work ahead. Meetings of the whole commission should come at least once every two weeks on a day and at a time set in advance. Each of the five committees should make a progress report at every meeting of the whole board. When substantial agreement has been reached upon the plan of government, a definite time should be fixed for each of the committees to present a final report. Time will be saved if each committee prepares its report in the form of sections and articles of a charter, following the skeleton charter given in the appendix of this book. Enough copies of each committee report should be run off on the typewriter to give every member of the commission a copy for his own use, with a few to spare. These copies should

be in the hands of members before the meeting. When the report is called for, it should be read by the chairman section by section, with opportunity given for amendments and debate. In case no objection is offered to any section it can be passed over, but where objection is made, or an amendment offered, a vote should be taken as soon as the debate has been closed. When an entire chapter has been read and informally approved, a formal yea and nay vote should be taken on it as a whole, and the result recorded by the secretary. When all the work of any committee has been approved, that committee may be discharged and its members may be designated to assist other committees or to do some other work. Steady and visible progress will be made if the commission adopts chapters of the charter in their order, instead of skipping about. The members will feel the charter growing under their hands.

85. Committee on phraseology. Legal advice. Just as soon as a chapter of the charter has been approved by the commission, it should be submitted to a special committee on phraseology, to be gone over and revised from the point of view of uniform, clear, concise English. This committee should be composed of about three men, including those members of the commission who are most skilled in the use of the language. If there is a lawyer on the commission, he should serve with this committee to see to the proper use of legal terms and to study all the proposed provisions from the point of view of their legality. As the work of this committee proceeds it will unquestionably find a number of misuses and variations in the use of terms, inconsistencies, ambiguities, and even direct contradictions. Its function is to weld all the sections and chapters into one unified, consistent document, making it a complete and harmonious charter. Having finished its work it will report back to the entire commission, which will hear the explanation of the several changes introduced, debate them if it so desires, reject such as it opposes, and finally, as the culmination of its work as a drafting body, vote upon the adoption of the revised charter as a whole. The final vote should be carefully recorded.

86. Signing, returning, and printing the charter. When the charter draft has been adopted by a vote of a majority of the board of freeholders, at least three good, clear, typewritten copies should be made and authenticated. Each of the three should be signed by all the members who approve of the draft. (1) One of

these should be delivered to the mayor or other chief magistrate of the city or village, to be transmitted by him to the city or village council or commission. (2) A second copy should be preserved by the charter commission in its own files. (3) A third copy should be kept for the use of the printer. Obviously, these three copies should be absolutely identical in contents. Long before the election the third copy should be sent to the printer. The secretary of the commission should see to it that the printing is carefully done, so that the printed charter will be an exact copy of the charter adopted by the commission, even to punctuation, spelling, and capitalization. In addition the pamphlet should be made as attractive as possible for distribution among the voters.

87. Time of charter election. The mayor or other chief magistrate is inferentially required to notify the council or other governing body of the city or village that he has received the draft of the proposed charter, and that body is then in duty bound, and can by court order be compelled, to submit the charter to an election by the voters. As to the time of the election, however, the council has several options. (1) If no general city or village election is to occur in the city or village within six months after the delivery of the draft to the mayor, the council is required to call a special charter election within ninety days of the delivery of the draft charter. (2) But if a general city or village election is to occur within the six months period, the council may either (a) postpone the election on the charter until such general election, or (b) call a special election on the charter to be held on some day prior to the general election.

88. The charter campaign. No outsider can give the charter commission much advice as to the campaign which should be conducted in favor of the adoption of the charter. Local conditions and the sort of opposition which develops will determine what needs to be done. Two points may be stressed, however. (1) Over-confidence of the charter's supporters frequently results in the defeat of a charter. The opposition may be more effective than noisy, and it is no easy task, especially at a general election, to get four sevenths of the voters voting to vote in favor of the charter. (2) Absolute frankness and honesty about the contents of the charter go a long way toward disarming any opposition. Throughout its entire proceedings the commission should follow the policy of letting the

public know exactly what is being done and of asking for public coöperation. If this has been done, there will be less opposition manifested during the campaign.

89. Election. Form of ballots. The expense of a charter election is borne by the city or village. Presumably the ordinary rules as to the conduct of elections will apply, but the statutes add the following provision: "If said election is held at the same time with the general election, the voting places and election officers shall be the same for both elections. The ballot shall bear the printed words, 'Shall the proposed new charter be adopted? Yes—No,' with a square after each of the last two words, in which the voter may place a cross to express his choice. And if any part of such charter be submitted in the alternative, the ballot shall be so printed as to permit the voter to indicate his preference in any instance by inserting a cross in like manner."[9] A sample ballot would, therefore, take somewhat the following form:

CHARTER ELECTION BALLOT		
Shall the proposed new charter be adopted?	YES	☐
	NO	☐
Shall the alternative section 35A be adopted in lieu of section 35 relating to the debt limit of the city?	YES	☐
	NO	☐

90. Majority required for adoption. The constitution provides that a proposed charter can be adopted only "if four-sevenths of the qualified voters voting at such election shall ratify the same." Suppose the charter to be voted upon at a general election in a city of about 10,000 inhabitants, and suppose that 2,800 voters actu-

[9] *Gen. Stat.* 1913, sec. 1348.

ally vote at the election. Undoubtedly some of them will fail to vote upon the charter question, but this makes no difference. Four sevenths of all the voters who vote at the election must affirmatively approve of the charter, or in other words, 1,600 voters out of the 2,800 must positively vote in favor of the charter to adopt it. Those who fail to vote on the charter practically vote against it. But suppose that a special election is held. In this case the voters who are indifferent upon the question of the charter will stay at home. They will not vote at the election at all, and hence can not be counted as voting against the charter. In this case probably only 2,100 will appear at the polls, and four sevenths of this number, or 1,200 instead of 1,600, will be sufficient to carry the charter. For this reason it is usually better to submit a charter at a special than at a general election, whereas opponents of the adoption of a charter will generally try to have the question come up at a general election. If the charter itself is adopted, then any alternative provisions submitted at the same time which receive a majority of the votes cast thereon are also considered adopted.

91. Certification of charter. The constitution requires the filing of two copies of the ratified charter, as follows: (1) one to be filed with the secretary of state, St. Paul; (2) the other to be sent to the register of deeds of the county. These may be printed copies, if the printing has been accurately done. Both copies must be accompanied by identical certificates, signed by the chief magistrate of the city or village, and authenticated by its seal, in which the facts of the proposal and ratification of the charter are set forth. The copy sent to the register of deeds is to be registered by him and returned to the city to be deposited among its archives. While the constitution and laws do not require it, it is exceedingly desirable that the charter commission retain at least one copy of the charter itself, and that printed copies be sent out as follows: one to the *University of Minnesota Library,* Minneapolis; one to the *Minnesota Historical Society,* St. Paul; one to the *Municipal Reference Bureau, General Extension Division,* University of Minnesota, Minneapolis; one to the *State Library,* Capitol, St. Paul; one or more to the local city library; one to the clerk of the district court for the county. Not only will these copies be frequently referred to in these various places, but the city will gain a good name from a fairly liberal policy in the distribution of its charter.

92. Charter in effect. Succession. Assuming that the certificates mentioned above have been deposited and recorded, the new charter will take effect at the end of thirty days from the date of the election. It supersedes the previous charter of the city or village, the courts are required to take judicial notice of it, and the officials elected and appointed under it may take over the control of the city's records, money, and property at any time specified therein. The charter may provide that in the meantime, that is until an election of officers can be held, the officers under the old charter shall continue to function in their different capacities. When the new charter finally comes fully into operation, the municipal corporation thus reorganized is in all respects the legal successor of the corporation under the old charter.

93. Further duties of charter commission. As has been said above, the charter commission is a permanent body. Once a charter commission has been set up in any city, that city is never legally without such a board. Its function is to continue to study the local charter and government. In case the first charter proposed is rejected, it may submit another, and another, until one is finally adopted. Thereafter, too, it may from time to time submit new charters, or amendments to the old charter, whenever it sees fit. It is, for the local government, a sort of standing constitutional convention, and empowered to propose charter changes at any time. If the charter which it has drafted for the city does not work out as was expected, or proves to be faulty in operation, it is its duty to propose improvements. It should, therefore, meet at regular intervals, at least twice a year, and thus keep its organization intact for any emergency that may arise.

94. Amendments to the charter. Amendments may originate in either of two ways. (1) The charter commission may propose amendments at any time. (2) A number of voters equal to five per cent of those who voted at the last regular municipal election may sign and file with the charter commission a petition setting forth the substance of any amendment to the charter which they desire, and in that case the commission is required to submit it to popular vote. In either case the amendments are delivered to the mayor of the city, who notifies the council, and the latter body then provides for the election under the same rules as apply to the sub-

mission of a new charter.[10] The council may not refuse to submit the amendments.

95. Publication of amendments. The law does not require the publication of a proposed new charter, but strangely enough it does require that amendments be published. Proposed amendments "shall be published for at least thirty days in three newspapers of general circulation in such city." These need not all be daily newspapers, nor need they all be printed and published in the city concerned, but they must have a general circulation in the place and the publication must extend over the entire period of thirty days. This publication is an expensive matter in some places, but it is absolutely required as it is provided for in the constitution. If a considerable number of amendments are to be submitted at one time, it may be better to submit an entirely new or amended charter, for in this way the necessity of publishing in three newspapers will be avoided, and besides a smaller affirmative vote will suffice to put the charter into effect.

96. Adoption and certification of amendments. The election upon proposed amendments is conducted, and the ballot is arranged in substantially the same manner as in the case of the adoption of a new charter. An amendment will not be considered adopted, however, unless "accepted by three-fifths of the qualified voters of such city or village voting at the next election." This is a slightly higher percentage than is required for the adoption of a charter. Sixty per cent of all who appear at the election and actually vote upon any matter must vote affirmatively upon an amendment in order to adopt it. It is, therefore, just as important in the case of amendments as in the case of a charter to have a special election if possible. Amendments, like charters, must be certified to both the register of deeds and the secretary of state. They take effect either at the end of thirty days after the election, or at some other time specified in the amendments themselves. Alternative proposals are permissible.

[10] See secs. 87, 89, above.

CHAPTER V

PRINCIPLES AND PROBLEMS OF CHARTER MAKING

A. The essentials of a good charter

97. Simplicity and brevity. A city charter is a legal document which incorporates a community as a municipality and which organizes and empowers the governmental authorities to administer its local affairs. It is in a sense the local constitution, and as such it affects directly the welfare of the thousands or tens of thousands, perhaps even hundreds of thousands of people, who come under its provisions. In a democratic country, where the people are supposed to manage their own affairs, it is essential that they be able to understand and to control their government and at the same time spend the greater part of their time in their private vocations. Therefore the first essential of a good municipal charter is simplicity, brevity, understandability. It should be written in clear, concise English. It should be brief enough to be read in a few hours time. The various provisions should be simple and plain, not capable of two or more interpretations. Ex-Mayor Mathews, of Boston, puts the truth in this way: "The more intricate and uncertain the provisions of law, the greater the opportunities for a corrupt use of them; and the citizen who has not made a special study of these complications is at a great disadvantage as compared with the municipal politician who is ignorant perhaps of every other subject, but a master of this."[1] Yet despite the need of simplicity and brevity, every municipal charter in Minnesota, even in the home rule cities, is longer and more complicated than the Constitution of the United States, and most of them are longer than the state constitution or the covenant of the League of Nations.

98. Details should be omitted. The Federal constitution is short and flexible because it deals with nothing but the fundamentals. Municipal charters are usually long because they contain a great many provisions which are not fundamental at all. We think we can foresee the needs of the city for years to come, and therefore we load the charter with details saying just what shall be done in

[1] Mathews, *Municipal Charters*, p. 5.

each particular case. Then the conditions change and the charter provisions no longer fit. Most charter amendments are necessitated by just such details being inserted in the charter when the subject-matter should be left to be regulated by ordinances. One city in this state adopted a home rule charter one year and adopted twenty-seven amendments to it the next year. Minneapolis adopted a long, complicated charter in November, 1920, and at the election in June, 1921, the voters were asked to pass upon six amendments to the charter proposed by the same charter commission, and even these were but a few of the many that were needed. Ordinances passed by the council can be easily changed, but home rule charters can be amended only by a vote of the people after a campaign of publicity. Elections take much time and cost much money, especially in the larger cities. Frequently, proposed amendments are defeated. The lesson to be learned from this is, "Put only the fundamentals into the charter."

99. A broad, general grant of powers. Another essential of a good charter is a comprehensive grant of powers to the city in general terms. Cities are organized to promote the welfare of the people, and where the people are in complete control of their affairs there is no reason to fear to entrust the city government with a wide range of powers. If desirable, the initiative, referendum, and recall may be adopted as additional checks to prevent the abuse of powers. When the legislature enacted the charters for our cities some years ago, it enumerated the powers of each city at great length in the charter. This was the traditional method of procedure, and because it was so common to do this the courts developed the view that the legislature had provided for everything which it wished the city to do. Hence, the courts did not permit cities to exercise any powers unless they were expressly granted in the charters, or very clearly implied, or absolutely necessary to the city's operations as a municipal corporation. But now that cities are permitted to make and to change their own charters it must be admitted that these rules need to be materially changed. The legislature could formerly have empowered cities to exercise all necessary municipal powers, but it simply never thought to do so since it was so easy to add new powers, whenever the need arose, by a mere act of legislation. It is not so easy to change a whole series of home rule charters, and it would therefore be better policy to grant the city all necessary power to begin with, and thus avoid the necessity of frequent amendment. That the city has the power to do this

when adopting a home rule charter is now settled; for a home rule charter may provide "for the regulation of all local municipal functions, as fully as the legislature might have done before the adoption of sec. 33, art. 4, of the constitution." (1892).[2] A number of Minnesota cities, beginning apparently with Duluth in 1912-13, have therefore left out of their charters the old-fashioned long and detailed enumerations of municipal powers which once constituted so much of the entire charter, and have substituted brief, broad, general statements which confer all municipal power upon the corporation. Other cities besides Duluth which have done the same thing in one form or another include Anoka, Columbia Heights, Little Falls, Morris, Sauk Centre, Wabasha, and other cities in this and other states. Cincinnati, in the home rule state of Ohio, goes to the extreme in this matter, for its home rule charter says simply: "The city shall have all powers of local self-government and home rule and all other powers possible for a city to have under the constitution of the state of Ohio."[3]

100. A simple, responsive municipal organization. A good city charter should provide for a simple, workable, responsive organization of the city government. It should be simple, so that all citizens and officials may understand it. It should be designed not to check and retard the municipal business, but to promote it, to eliminate red tape, and to make the government more efficient by a reduction in the number of working parts. It should be responsive at all times to the forces of public opinion and to the control of the electorate. Especially in large cities, and as far as possible in small places, it should encourage and reward expertness and efficiency in the administration, and should discourage the untrained citizen who tries to get himself by political pull into places which he is not qualified to fill. Even small cities, while they may be forced by their slender resources to the use of unpaid, volunteer citizen service, may well study their budgets to see whether it would not be a saving in the long run to hire a few or even only one full-time, trained and disinterested municipal official for administrative work.

[2] *Gen. Stat.* 1913, sec. 1345; *Laws* 1921, ch. 343. See Appendix 3. See also Park *v.* City of Duluth, (1916), 134 *Minn.* 296, 159 *N. W.* 627; State *ex rel.* Zien *v.* City of Duluth, (1916), 134 *Minn.* 355, 159 *N. W.* 792.

[3] See sec. 2 of the model charter in this book for specimen provisions and also the discussion in sec. 66, above.

B. The essentials of a good municipal organization

101. The citizens are responsible for good government. American cities have experimented for so many years with different forms of municipal government that they are coming to learn, often by sad experiences, some of the fundamentals of good municipal organization. Slowly but surely there is growing up a public opinion which is united upon the code of principles soon to be explained. But it must be said that even an ideal form of government will never work well without the aid of an alert, intelligent, interested body of citizens. There is no such thing as an automatic government, any more than there is such a thing as a self-enforcing law. The chief stumbling block to-day as always on the highway to good government is the apathetic, the indifferent citizen. A good form of government is important just as good tools are important to the workman; because a good charter instead of hampering the government and encouraging inefficiency, will give good officials, supported by an intelligent electorate, an opportunity to increase the efficiency of the government. Important as it is, however, a well-organized government is not a panacea for all municipal ills. Eternal vigilance is the price of liberty and of good government. In the long run people will get just as bad a government, or just as good a government, as they deserve.

102. Principles of popular control over government. (1) *The elective officers of the city should be few and important.* The voters will then be able to cast their ballots more intelligently, and since the elective offices will have more importance than formerly, perhaps abler men can be induced to run for them. In no case should the voters be asked to elect unimportant administrative officers. This may be called the "short ballot" principle.

(2) *Election of the council at large* will in the long run ensure the election of abler aldermen, will establish majority rule, and will put the interests of the city as a whole above those of any part. Something can be said for electing part but not all of the council by the ward system in large cities, but almost nothing can be said for a ward system in small places. If proportional representation is legal in this state, it is certainly worthy of being tried.[4]

(3) *The initiative, referendum, and recall* are no longer considered radical and they sometimes prove to be effective checks upon the city government. To be workable, these provisions must not require a large percentage of the voters to sign the petition. The

[4] See sec. 116, below.

voters should and will learn not to use these powers too often. Their value is in their existence as much as in their use.[5]

(4) *Elections should be on non-partisan ballots,* as provided by state law, and should not be held at the same time as the state and national elections. Nominations in the larger cities should be made at non-partisan primaries, in smaller places by petition or mere filing. The St. Cloud plan of making the first election final for all who receive clear majorities at that time is a common-sense method and well worth trying.[6]

103. Principles of legislative organization. (1) *There should be but a single body to legislate and to determine policies for the city, and it should be elective by the voters.* As John Stuart Mill has put it, "in each local circumscription there should be but one elected body for all local business, not different bodies for different parts of it."[7] Two-chambered councils are rapidly being discarded everywhere in favor of one-chambered bodies. Moreover, it confuses matters, and scatters responsibility entirely too much, to have a number of boards exercising legislative and financial power alongside of the council. "Put all your eggs into one basket,—and then watch that basket."

(2) *The single legislative body (council) should be fairly small,* probably not over fifteen even for the larger cities in the state, and from that on down to five or seven members for small places. Small bodies do not need a large number of committees to diffuse both power and responsibility. They are, also, more practical and businesslike, less given to long speeches for Buncombe, and more speedy if less formal in procedure. A few of the ablest men in the city can do better work than a large number of men of small capacity.

(3) *Members of the council should hold office for definite and fairly long terms.* Four years is not too long a term, and every good councilman should be rewarded by at least one reëlection. Experience is an invaluable asset in all public business. Freedom from politics is also important; a man who has to run for reëlection every year or two has less time for his public duties. If the voters may recall their officers, there is little danger either in long official terms or in vesting the members with great power.

[5] See sec. 65, above, and sec. 114, below.

[6] See sec. 58, above.

[7] Mill, *Representative Government,* ch. 15.

(4) *This single small council should have complete control over the entire government.* It should be held responsible for everything. It should enact all local ordinances. It should *control* the administration, but should not itself attempt to administer the city's affairs. "There is a radical distinction between controlling the business of government and actually doing it," says John Stuart Mill. "The business of the elective body is not to do the work, but to see that it is properly done, and that nothing necessary is left undone."[8] This the council can best do through the power to appoint and dismiss a single chief administrator or several chief officials, and through a single itemized annual budget prepared and proposed by the officials but passed by the council itself.

(5) *Council members in small cities may well be asked to serve either without pay or at a nominal salary.* They need not give their entire time to city affairs.

104. Principles of administrative organization. (1) *Responsibility for administration should be centralized if possible, and as much as possible, in one man.* Efficiency is not obtainable where administrative work is divided up among a number of equal and independent department heads.

(2) *The chief administrative officer should be appointed by, and be under the control of, the council, and his appointment should be based solely upon his ability and fitness.* The alternative scheme of having him (in this case the mayor) elected by the voters is also worthy of consideration; but it will always bring more politics into the administration and will not always be sure to select a trained, able administrator, tho this may sometimes result.

(3) *Politics should be separated from administration as much as possible.* Not until this is done, not until city officials who do administrative work are selected without regard to politics upon the basis solely of their training and ability, will city administration ever be fully satisfactory.

(4) *The chief administrator should choose his principal subordinates, solely on the basis of training and fitness,* and should have power to remove them at will. Of course, an elective mayor, if he is the chief administrator, will almost always have to pay some

[8] Mill, *Representative Government*, chs. 5, 15.

political pledges in making his appointments, and thus he will sacrifice good administration to politics. A chief administrator chosen without regard to political considerations will not need to do this.

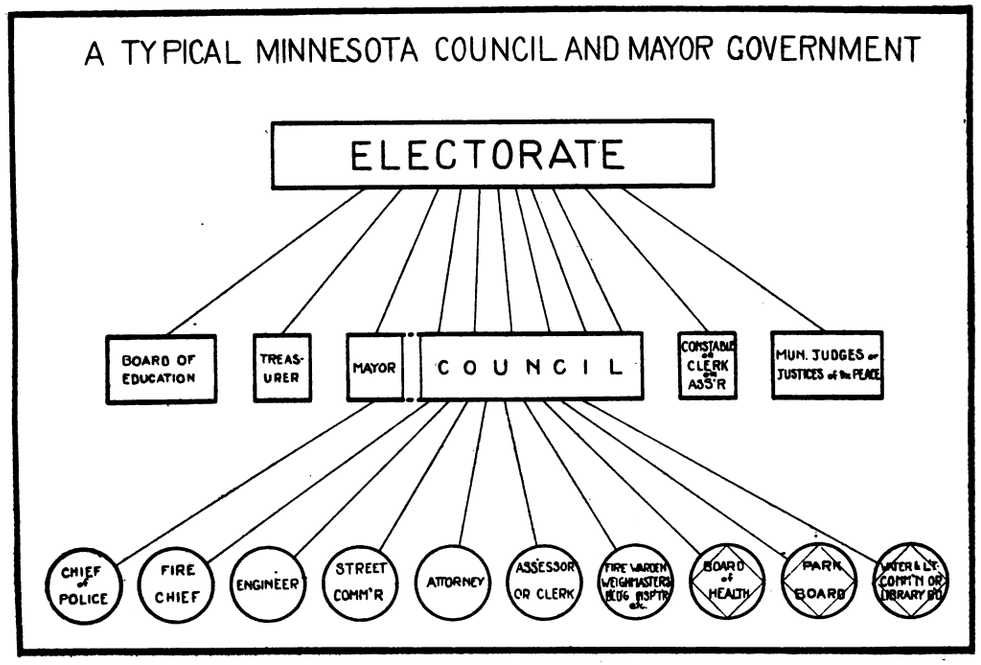
(5) *All administrative officers should have indefinite terms of office, but be subject to removal* at any time by the appointing authority for reasons to be stated by him. A city engineer, for example, should not have a tenure of only a year or two, for as he grows better acquainted with the city his value to it increases, and on the other hand his work will be better if he does not have to seek reappointment at short intervals. The chief administrator himself should have an indefinite term, but be removable at any time by the council.

(6) *Official salaries should be honorable and adequate, worthy of the work to be performed.*

C. The general plan of the city government

105. The council and mayor plan. The greater number of cities in Minnesota are governed under the plan which is first to be described.[9] It is unnecessary to name all the cities in the state which have this scheme of things but it may be well to note that Ada, Alexandria, Granite Falls, and Montevideo, among the smaller cities, have this plan of organization and that Minneapolis also has it to a certain extent. This plan prevailed in practically all the cities chartered by the legislature before 1892, and it is also the basis of the general laws for cities enacted in 1870 and in 1895. Under this plan the mayor is little more than the nominal head of the city. As a general rule he has charge of the police department, he is usually given the veto power, in some cases he sits as a member of the council, and he is given certain ministerial powers. The council is the real governing body of the city. It makes all the ordinances, levies the taxes, passes the annual budget, appoints nearly all of the heads of departments, and actually conducts the administration of the city. Usually in addition to the mayor and the council the people elect a treasurer and sometimes a clerk or an assessor in addition to their judicial officers. There may also be one or more boards as for example a board of health, a library board, a park board, and a board of water and light commissioners.

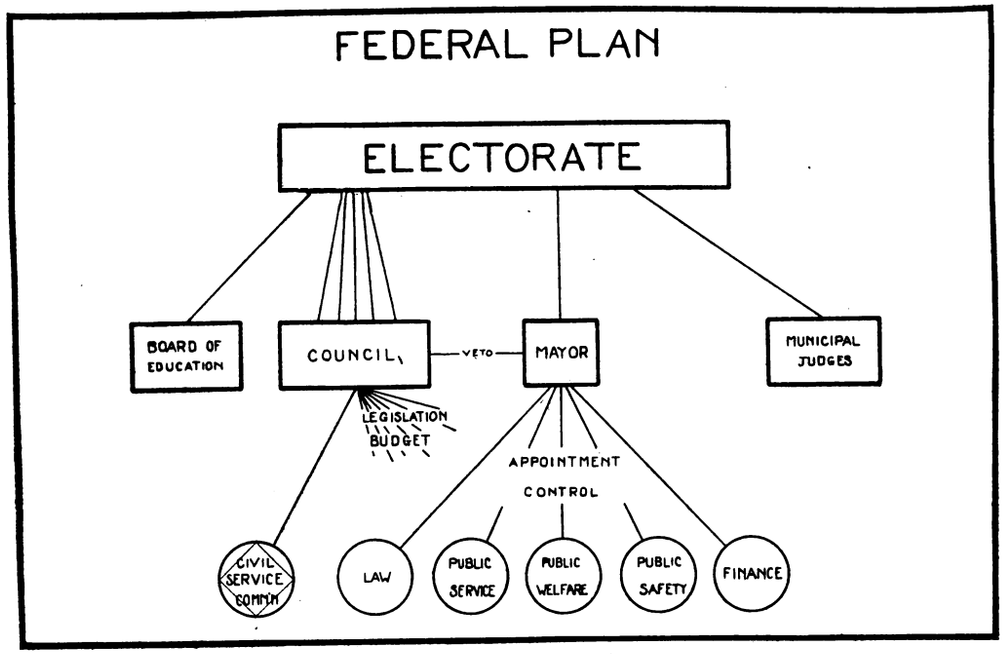
[9] See the diagram of this plan on p. 83, and see also secs. 54-58, above.



It is sometimes argued that this plan of organization has the advantage of separating the police question from all others in the municipal campaign. The mayor is primarily a police officer and runs on a platform of strict law enforcement or "wide open town." The disadvantages of this plan clearly are that it keeps the police question always in politics, since the mayor has very little else upon which to base his candidacy. The city council, not having charge of the police, feels little responsibility for that department and very often fails to appropriate enough money for it. The voters are usually deluded into thinking that the office of mayor is a very important one and they permit most of their attention at the time of election to be distracted by the mayoralty campaign. As a matter of fact when the mayor gets into office they find that he can do little for them. Among the different departments under the council there is little coöperation since in this plan the council does not appoint a single manager for municipal affairs but rather appoints a clerk, an engineer, a fire chief, a building inspector, a street commissioner, a weighmaster, a board of health, and perhaps other separate and independent officers. Legislative and administrative functions are not separated. The council not only raises the money but spends it as well.

106. The federal plan. Among the larger cities in the country the tendency in recent years has been towards what is called the federal plan of city government.[10] The plan is equally applicable to small cities. Thus we find that the cities of Benson, Cannon Falls, Crookston, and Glencoe, among others in this state, have practically this plan, except that they require the council to confirm the mayor's appointments. The essential idea is that of separating the legislative from the administrative powers of the city, and of centralizing the administrative work in the mayor. This is, of course, similar to the plan of the Federal government. Under this scheme of things the mayor is in reality the executive head of the city. The office of mayor becomes an important one and it is hoped that abler men will be attracted to it as they see the possibilities of public service in it. The mayor is empowered to appoint, and to direct the work of, all or practically all of the department heads. He is given the power to prepare and to submit to the council the annual budget. He has also the veto power. The council, on the other hand, is

[10] See the diagram of this plan on p. 85.



restricted to legislation. It may not interfere with the administration tho it may control the administration to some extent through ordinances and through the passage of the annual budget.

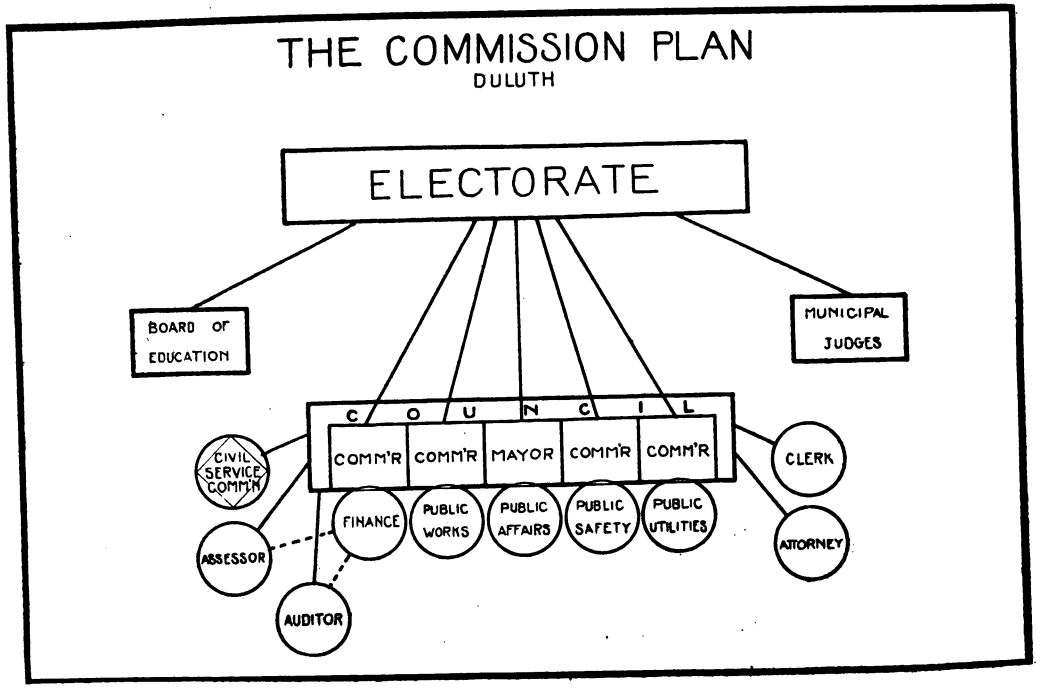
Some of the advantages of this plan have already been stated. The mayor's office becomes what people expect it to be, an important one. Administration is centralized. Legislative and administrative functions are to some extent separated. As a matter of fact, however, this separation is not as complete as is usually said. The mayor retains his power to recommend and to veto legislation. Through his great power of control over administration and over the public business he may practically dominate the legislative body. It is true also that if the council attracts any men of ability there are likely to be serious clashes between the mayor and the council. The public business may be obstructed while the council and the mayor are squabbling over their relative powers. In the long run, however, since the council does not control administration, and since the ordinance-making function is not a very important one, the council will not attract the ablest and best men in the city under this plan. The mayor's office has been made stronger really at the expense of the council. There is also another disadvantage and that is that problems of administration instead of general municipal policies will become the issues in the campaign. The mayor will run for reëlection on the ground that he has given a good administration. Someone will run against him who charges that the administration has been poor. If this second party wins, as he is likely to do in more than half of the cases, he will feel it his duty to dismiss some or all of the department heads appointed by his recent opponent. A new set of city officials will then start to learn at the expense of the city, how to run their departments, and they will no sooner have begun to learn than they may be removed because a new person has been elected mayor. In other words the administration is kept in politics instead of being removed from politics, and in the long run political administration is inefficient administration. This tendency will not be so noticeable in small cities as in large, and it may be overcome by a long process of public education to the need of expert administration, but the danger is always there.

107. The commission plan. The commission plan of government really had its beginning in 1901 at Galveston, Texas.[11] About

[11] See the diagram of this plan on p. 88.

1910 it was the most-talked-of form of city government in the country. It is hard to say how many cities now operate under this form but there are probably over four hundred, large and small. There are approximately fifty of these cities which have over 50,000 population each, including St. Paul and Duluth in this state, Oakland, New Orleans, Jersey City, Buffalo, Omaha, Spokane, and Tacoma. Among the smaller cities of Minnesota which have this plan are Eveleth, Faribault, Glenwood, Hutchinson, and Mankato. The commission plan is founded upon the short ballot idea. It eliminates the ward system entirely. The people elect three, five, or seven persons on a non-partisan ticket from the city at large. These men are the council or commission of the city. As one body they enact the ordinances, levy the taxes, pass the annual budget, and determine all the policies of the city. As individuals they each take charge of one of the three or five or seven departments into which the city administration is divided. Sometimes, however, one member who is designated the mayor does not have control over any particular department but has a general power of supervision over all the others. There is thus no separation of powers in this scheme of government; the same group of men raise the money and spend it, and make all the ordinances for the city.

The *advantages* of the commission plan are as follows: (1) It greatly simplifies the work of the voter, for he is called upon to elect only the members of the council or commission. (2) Responsibility is concentrated somewhat better under this plan than under more complicated and older forms. There is "higher visibility" for seeing all the working parts of the government. (3) There is some increase in administrative efficiency due to reducing the number of city departments to three or five. (4) Election at large serves to bring somewhat better men into office than are obtained under the ward system of electing the council. But there are serious *disadvantages* to the plan, too. (1) Men elected because of their popularity or because of the policies for which they stand may prove entirely unfit to administer a great department. (2) As administrators their careers are short, which results in making the city departments a constant training school for city administrators. (3) The city's administration is not sufficiently centralized; there is still some division of responsibility. There is likely to be pulling and hauling between the departments for appropriations, and since

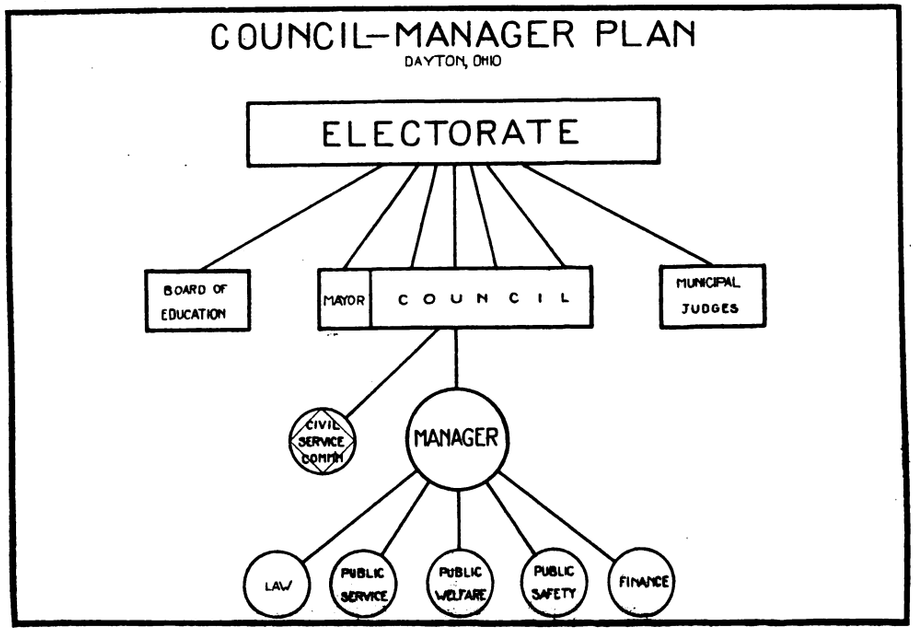


three men can dominate a commission of five, one or two departments are very likely to be slighted in the making of appropriations. (4) In general, politics and administration are not separated but fused into one. The same men who make the policies administer the departments. The men who levy the taxes also spend the money. But when all the advantages and disadvantages have been stated, it is still safe to say that the commission form would be a great improvement over the ordinary council and mayor governments so common in Minnesota cities to-day.

108. The council-manager plan. The council-manager plan of city administration was given its start in the United States when in 1908 the city council of Staunton, Virginia, abolished administration by council committees and employed a "general manager" for its business. The plan was first embodied in a city charter by Sumter, South Carolina, in 1912, and in 1913 both Dayton and Springfield, Ohio, followed suit.[12] Since 1914 it has spread with even greater rapidity than did the commission plan at the time of its greatest popularity. At the present time over 250 cities have this plan either embodied in their charters or provided for by ordinance or otherwise. Of the cities now operating under the plan, twelve have from 50,000 to 208,000 people, including Sacramento, California; Tampa, Florida; Wichita, Kansas; Grand Rapids, Michigan; Niagara Falls, New York; Akron, Dayton, and Springfield, Ohio; Norfolk, Portsmouth, and Roanoke, Virginia; and Wheeling, West Virginia. Forty-eight city-manager cities have from 10,000 to 50,000 inhabitants; the others are under 10,000. For a long time it was argued that the plan is unsuited to large cities, but Cleveland, with 796,000 people, has recently denied this by adopting the plan to take effect in January, 1924.

The foundation stones upon which the manager plan is built are the short ballot, the unification of powers, the concentration of responsibility, the separation of politics from administration, and the use of non-partisan trained experts in the administration. The voters are given the advantage of the short ballot, for they are called upon to elect only the city council. In this council all the powers of the city government are vested, so that it and it alone can be held responsible for the entire city government. (Schools

[12] See the diagram of this plan on p. 90. The statement frequently made that this plan is unconstitutional in Minnesota is without foundation. See sec. 61, above.



are usually under a separate elective board.) Just as the council can be held responsible for the entire city government, so can it in turn hold its chief servant, the manager, responsible for the administration of affairs. The council is elected by political methods through popular election, but it is required to select its chief administrator without regard to political considerations, and being a political body the council is forbidden by the charter to meddle with details of administration, tho it may remove the manager himself at any time. Thus the function of determining all policies and of controlling the administration is vested in the council exclusively, but the actual work of administration is done by men removed from politics and without any control over policies. As the manager is selected for his administrative ability, so he in turn is supposed to select all his assistants upon the basis of their fitness alone, and it is to his advantage to do so.

The mere description of this plan indicates the nature of the arguments commonly put forward in support of it. Almost everything that can be said in favor of either the federal plan or the commission plan can also be said in favor of this one. It centralizes responsibility and unifies the powers of government as much as or more than either of these two plans, and in addition it separates politics from administration.

The usual *arguments against* this plan are as follows:

First, that it is autocratic, that it vests too much power in one man. In fact, however, the manager is not given as much power in this plan as is the mayor in the federal plan, and besides, the manager is kept constantly under the control of the council which may dismiss him at any time. In fact the manager can not be an autocrat, for he is only the chief servant of the council to do what it commands without any control over its policies.

Second, it is also said that the plan is undemocratic because it may give an important local position to an outsider, which seems to be a slur on local talent and a denial of the fitness of every man to fill any public position. This argument is based on the feeling that public office is a reward rather than a trust, and that local residents should be entitled to all local offices. In fact, the council may select a local resident as manager if it so desires, but when it does so it is running the risk of getting a man interested in local politics, thus defeating its own purpose of getting an impartial trained administrator. The local range of choice is narrowly

limited and there may not be any local resident fully qualified by training and experience for the position of manager.

Third, it is said that a manager chosen from outside the city will not know local needs and conditions. This is true, but in fact he scarcely needs to. It is for the council to say what is to be done, to decide all questions of policy, and it is for the manager to know principles of municipal administration so as to carry out the council's wishes most effectively. He will soon come to know his city.

Fourth, it is alleged that there are no such expert and trained city administrators as the manager plan requires. This is only partly true and the statement conceals a larger truth. There are not now and probably never will be enough of the best trained city managers. Universities, bureaus of municipal research, special training schools, and other agencies are attempting to supply the new demand but without complete success. For the time being many cities will have to be content with average men, for until the demand for city administrators begins to make itself felt on a big scale, young men of ability will not train themselves for this field of work. In other words there must be more city-manager cities before there are more first-class city managers. There must be an effective demand before there is an adequate supply. But in truth already the city-manager movement has called into public service a large number of men of a class to which the older forms of city government never made the slightest appeal. The average man who wants to be a councilman or mayor under a council and mayor or a federal plan of city government, or a commissioner in a commission plan, has little or no training in administration, and on the other hand in every large city and in many small ones there are men who never will run for elective office who have both the ability and the training fitting them for city managership. Mayors and councilmen elected by the people are the ones best fitted to determine municipal policies, to enact local ordinances, and to order public works, but we need to call out the other type of ability to do the actual work of administration, in the most workmanlike and businesslike way. The manager plan does this.

Fifth, it is also said that there is nothing to guarantee that the council will appoint a manager without regard to politics, nor to assure the people that the manager will not appoint politicians to office at the behest of the council. The first point here is absolutely true. The manager plan is not automatic. It is neither fool-proof

nor politician-proof. If the people elect and then fail to recall a council which is willing to sacrifice efficiency and the public good to purely political ends, there is nothing to protect the city against this sort of thing. The government will probably become just as bad as the voters deserve. A manager appointed without regard to politics, however, is not likely to fill the offices under him with incompetents. The manager has a reputation to make if he expects to succeed in his profession. He can not afford to put unfit men into office, since it will endanger the success of his administration.

109. Conclusions as to these forms. During the century and a half since the Revolutionary War the people of the United States have made more experiments in the organization of city governments than any other people in the world. Our cities passed from a simple uniform plan of organization into a variety of complex schemes in which there were more elective officers, boards, and departments than could then be found in any other cities in the world. Always the thought was that these changes would give the voters more control. In fact there was too much machinery, too much complexity, too much loss of energy, in the operation of our city governments. Only the bosses and party managers knew how to operate them. When finally the people aroused themselves to see what was wrong, there began a return to simplicity in the forms of municipal government. The commission plan and the council-manager plan have found favor in hundreds of cities because they have made popular control over city government more effective. Indeed, speaking broadly, it may be said that the nineteenth century settled the principle that the people, acting as voters, must have full control over their city and other governments. It is the task of the twentieth century to make democracy efficient,—to find forms of government under which popular control will be a reality and through which the people can get expert, efficient service to the full value of every dollar expended. The city-manager plan is the latest, the simplest, and seems to be the most promising plan for combining democratic control of policies with expert administration.

D. Special problems of organization

110. The school system: independent, or a branch of the city government? Either under general laws, or under special laws of long standing, school affairs in almost every city and village in Minnesota are handled in special school districts under boards of

education elected by the voters. The areas and boundaries of these school districts do not always correspond exactly with those of the city or village. In cases where the areas are not the same, it will probably be the wiser policy to leave the school under separate management. In other cases, however, the charter commission may wish to consider the advisability of bringing schools under the control of the city council. This has been done completely in St. Paul, while in Minneapolis and several smaller cities the ordinary municipal authorities have only a partial financial control over the schools, and in Duluth and practically all the other home rule cities the schools are independent. As a general practice in the United States, local educational interests are not under the ordinary city government but under separate board control. This is very interesting in view of the fact that in England and generally on the continent of Europe the practice is the opposite. Naturally, those who have a direct personal interest in the schools, such as school board members and superintendents, desire separation and independence. One who expresses this point of view writes as follows in a Federal government publication:[13]

> It is the general and growing opinion among students of school administration that the school board should be independent of the city council, not simply because city government has been notoriously bad in some instances, but because education is something more than merely a municipal function; because the schools are important enough to demand the attention of a board directly responsible to the people; and because experience has demonstrated that an adequate public-school system can best be developed by a school board not dependent upon a city council. If the schools are independent of the city council, the school issue may be presented squarely to the people as a separate issue and not be overshadowed by other issues of less importance. The trend of opinion is that city schools should be managed by a board in no way dependent upon the city council, by a board with large powers, with power to levy its own taxes or to prepare a budget within statutory limits the amount of which must be appropriated from the city funds, to expend its own funds for everything of an educational nature both for children and adults, libraries, playgrounds, continuation schools, social centers, etc. The tendency in progressive communities is to place more and more responsibility in the hands of the school board.

Those who study the problem of city government as a whole quite frequently come to the opposite conclusion. They say that there

[13] Deffenbaugh, "Current Practice in City School Administration," U. S. Bureau of Education, *Bulletin*, 1917, No. 8, pp. 8-9.

are very few arguments which can be put up for an independent school system which could not also be brought forward in favor of an independent library system, park system, and so on. If the voters are to have the short ballot, if there is to be one city budget and a unified and centralized control of taxes and debts, if all the departments of the city are to be allowed to progress harmoniously and with equal rapidity, and if there is to be a minimum of overlapping of functions and of duplication of efforts, then, they argue, the schools must be brought under the council's control. Council service will become more attractive, and better men and women will be drawn into it, if schools are put under the council.

111. **The problem of separate boards.** In addition to its school board almost every mayor and council city in Minnesota has certain other boards and commissions.[14] Armory boards, which handle state rather than municipal affairs, are provided for by statute and it is almost certainly outside of the power of cities to change them. Health boards are also provided for by general laws, but since local health is a municipal affair there seems little reason why the council in each city could not itself be and perform the duties of this board. The same is true with reference to library boards and park boards, which cities may, but are not required to, create. Indeed, so far as power to do so is concerned, there is little reason why the charter should not vest in the council all the powers of all the boards which have been named except the armory boards. The same may be said of sinking fund commissions, boards of tax levy, city-planning commissions, water and light commissions, and all the other bodies which our legislatures and our home rule cities have seen fit to set up in our cities. Instead of centralizing responsibility, such bodies almost always diffuse it. They do not generally draw more expert and able men into the public service. Frequently it is hard to get good attendance at their meetings, with the result that the work often devolves upon one or two members. They complicate the machinery of the government. They always detract from the importance of the city council. If their powers are purely administrative, their work could usually be better done by one man. If they have power to determine policies and to raise and spend money, conflicts with other city authorities are almost sure to result, and the city will develop unevenly along different

[14] See sec. 57, above, and diagram, p. 83.

lines. Schools may lag, while parks forge ahead. Indeed, it is becoming generally accepted that separate boards are of little genuine utility in city administration. Temporary commissions for investigating certain problems, such as public markets, municipal ownership, and so on, and city-planning commissions to prepare plans for the city's future growth and development, are often of the greatest utility. The city council should have power to create such bodies, but ordinarily their powers should end when they have presented a final report to the council.

112. The problem of separate elective officers. What has been said above about separate boards applies in part to the subject of this paragraph. Separate elective officers are numerous in those Minnesota cities which have the council and mayor form.[15] Some of these offices have been created for the purpose of having one to watch another. They have been made elective because the people have felt that in this way direct responsibility could be enforced. As a matter of fact it is doubtful whether direct election to such offices as treasurer, assessor, engineer, and so on, has ever justified itself. Popular election is not the best way to get men with training for administrative positions. The more elective officers there are, the longer is the ballot, and the more divided is responsibility for administration. In small cities the office of treasurer has little reason for existence. The county treasurer collects most of the taxes, the funds are deposited in banks, and the functions of keeping the books and making out checks or warrants could easily be handled by the clerk or some other official. In places which have small annual budgets and which need to practice rigid economy, the object should be to reduce the number of paid officers to a minimum by combining similar functions into one office.

113. Differences between large and small cities. When a charter commission comes to the point of drafting a charter for the city it should seriously consider the size of the city for which the government is designed. A large city needs a great deal of machinery not required in a small place. This fact is recognized in many of the general laws of the state. For example while in large cities it is necessary to have a careful registration of voters, in small communities where the number of voters is small and every man knows his neighbor, it is not essential to have registration of

[15] See sec. 57, above.

the voters at all. Such is the case also with a primary election system; while it is needed in a large city is it not necessary in the smallest places. Large cities will need a considerable number of voting precincts. They may in some cases desire and need a larger city council and perhaps even feel the need of district representation in the council. Having more money to spend they are in a better position than the small cities to employ expert officials to head the different departments. Hence large cities require a merit system for selecting officials. Large cities may need a few more departments of administration than small places. Thus we could go on enumerating one difference after another between the less populous communities of the state and the larger cities.

E. Problems of popular control over city government

114. Nominating methods: primaries and petitions. In small cities, as has been said above, the problem of nominations is not so difficult as in large. In first, second, and third class cities the state law provides for non-partisan primaries as a means of nomination to elective office. While this system is not mandatory, and has been changed in such cities as Duluth and St. Cloud, the general plan is reasonably satisfactory, it is understood by the people, and it might well be continued until something clearly better is devised, or until preferential voting or proportional representation are validated. The St. Cloud plan of having two elections has been mentioned.[16] It appears to have two merits. *First,* it should bring out more voters at the first election than usually attend a primary. *Second,* it may frequently save the city money in conducting the second election, and in rare cases may entirely obviate the necessity of a second election. For cities of the fourth class the system of nomination by petition without holding a primary election appears to have much merit. In very small cities a fairly high percentage of voters may be required to sign a nomination petition, but in no case over ten. In larger places the percentage requirement should be made smaller, say from three to five per cent in cities of over 5,000 population.

115. Preferential voting. When the question of elections is under discussion it is very common to have the system of preferential voting proposed or at least brought up for discussion. Preferential voting is a scheme by which a voter may designate not only

[16] See sec. 58, above.

a first but a second and a third choice, or even more, among the candidates for a particular office. The essential idea is to bring about true majority elections, where there are three or more candidates for an office. The various methods by which this is done need not be described here. It is sufficient to say that this system was used in the state elections in 1912 under a law of that year and immediately discarded by the next legislature. The city of Duluth tried the plan about the same time under its 1912 charter. The election of a municipal judge by this method was contested, the case going finally to the supreme court which decided that preferential voting is contrary to our state constitution and therefore unlawful in this state.[17] However desirable preferential voting may be, therefore, no city should attempt to provide for it until our constitution has been changed.

116. Proportional representation. Proportional representation in the council or commission for all parties, groups, and factions in the city is also certain to have its advocates in every community. The "Hare system" of proportional representation, or something similar to it, has been very widely adopted in European countries as well as elsewhere throughout the world not only for municipal elections but also for the choice of members of the legislature or parliament. The central idea in this plan is to make the council or legislature a truly representative and deliberative body by giving to every political group representation according to its numbers. Thus if there were 1,000 voters in the community with ten councilmen to be chosen, as far as possible every 100 voters who could agree on a candidate unanimously should be allowed to elect him. Neither under the ward system nor through our present methods of election at large are parties given proportional representation. The dominant party in most cases gets more than it deserves, but sometimes a minority party can actually elect a majority of the city council. Thus the majority may be either unduly free to work its will, or it may be entirely defeated. Under the Hare system of proportional representation it is justly claimed that parties and groups get what they deserve and no more. In order to carry out the plan of proportional representation at least four or

[17] Brown *v.* Smallwood, (1915), 130 *Minn.* 492, 153 *N. W.* 953.

five representatives or councilmen must be elected from a district, or in other words a city council or commission of five would have to be elected at large. The voter would then mark his ballot with the figure 1 after the candidate of his first choice, 2 after his second choice, and so on to as many choices as he cares to exercise. A system of counting and distribution of votes is then followed which results in the counting of every vote for some candidate of the voter's choice but no vote can be counted for more than one candidate. The counting process is not complicated, but it would take too long to explain it here. One difficulty in using this scheme in any city where it is not used generally for all elections is that the voters gets confused and marks crosses, as he is accustomed to do, instead of figures. This spoils his ballot. The number of spoiled ballots is sometimes very high. Another possible objection in Minnesota is that the scheme may be unconstitutional. Preferential voting was declared illegal both in Michigan and in Minnesota. Recently the Michigan supreme court has declared proportional representation unconstitutional. The attorney general of Minnesota has ruled that it is invalid in this state, also, and it is conceivable that our supreme court, following similar reasoning, would do so too. Nevertheless the case has not yet come up, it is not a settled question, and some city might well make a test case of the matter. The fact is that under proportional representation every vote is counted once and only once, and that votes come nearer to having equal value under this scheme than under any other yet devised.[18]

117. **The initiative, referendum, and recall.** In another place we have summarized Minnesota home rule charter provisions for the initiative, referendum, and recall.[19] It is not necessary here to go into the arguments for and against these instruments of popular control. If they are to be made effective the number of voters required to sign the petition in each case should be kept reasonably low. At the beginning this may have the result of encouraging the voters to use them too freely, but in the long run a democratic people learns self-control even while practicing complete control over its officers.

[18] For further information upon this subject see the *Proportional Representation Review*, quarterly, and other publications of the American Proportional Representation League, 1417 Locust Street, Philadelphia.

[19] See sec. 65, above.

F. Problems of administration

118. The administrative provisions of the charter. No subject connected with government is being given more consideration by intelligent men and women to-day than that of efficiency in public administration. Whole new schools, some of them in our universities, are being established simply to study administrative questions. With the rapid increase in the cost of government we have come to see the necessity for getting a dollar's worth of real service for every dollar spent. This raises the questions of budget-making, of the civil service, of proper financial procedure, of adequate accounting and reporting, of methods of contracting and of doing work directly by city labor, of the internal organization of departments, and many other important matters. What provision should the charter make upon these subjects? Generally speaking these matters should not be dealt with at length in the charter but should be entrusted to the council for it to regulate by ordinance. Only the fundamental provisions needed to protect the city should be inserted in the charter, and these should be worked out with the greatest care. The science of municipal administration is just beginning to be understood. Every year cities learn something new and find it wise to change their administrative procedure. It would be unfortunate to embody in a charter, which is hard to amend, a whole series of detailed administrative provisions which may soon be out of date and unworkable.

119. The administrative departments. For the largest cities of the state it would be quite possible to designate in the charter the number, the names, and the principal functions of the chief departments of the city. For smaller cities the wiser policy seems to be to leave this matter to the council, and this is particularly true in cities which adopt the council-manager plan. If the council itself can not appoint the heads of departments, there is little danger that it will create too many departments and offices. Furthermore, in small cities the aim should be to combine functions as much as possible into a few important offices, but just what combinations can be most conveniently made will not be known until something has been learned about the qualifications of those who are to fill the positions. From time to time, with changes in the official personnel, it should be possible to transfer duties from one office to another and to make new combinations. Cities which adopt a commission form of government are, of course, more rigidly bound, and for them it

would seem to be the wiser policy to name the departments in the charter and to designate in general language the functions of each.

120. The merit system. For the three large cities there is no question as to the need of charter provisions enforcing the merit system. These cities need their civil service commissions or personnel departments, and they need to be protected as fully as possible both against the spoilsman and against the inefficient civil servant who tries to hold his position without performing any useful service. In the smaller cities of the state the number of full-time city employees is usually not large enough to require the elaborate machinery of the civil service commission and civil service rules. There should, however, be a just standardization of salaries and so far as possible there should be some sort of competitive test for the filling of each vacancy in the city's service. In small cities with the council-manager plan of government, the council might itself standardize positions and salaries, and also set the examinations. It is not necessary to provide for these matters in the charter; they may be left to council action.

G. Problems of taxation and finance

121. Tax and debt limitations. For various reasons the accompanying model charter contains neither a tax nor a debt limit for the city. (1) In the first place the state laws now put adequate limits on both the total debt and the annual taxes of cities, villages, and school districts. The tax limit is $100 per capita per year for city or village purposes, and $60 per capita per year for school districts. There is also a provision of the laws limiting taxes in fourth class cities to 25 mills on the dollar of assessed valuation unless the charter otherwise provides. The debt limit for cities and villages, including debt for school purposes, is 10 per cent of the total assessed valuation of all property taxable in the city or village, including money and credits. (2) The second reason for omitting such limits from the charter is that such limitations are of little value. There is no scientific basis for setting such limits. If the debt or tax limit is fixed on a basis of the assessed valuation of property, cities which need increased revenues will usually find ways to pad the assessment rolls. The city will then pay both state and county taxes on an inflated valuation. If population is made the basis, then efforts will be made to increase the population figures. Otherwise, under this plan, a city may be left without adequate

revenues in a time of rapid growth when it most needs money. Cities restricted by tax limits have also been known to shift their burdens to other local units, such as the county. The taxpayer bears the burden in either case. Indeed, maximum tax and debt limits usually tend to become minimums. The council generally takes the maximum because it thinks the maximum is authorized. In a time of falling prices like the present, this tends to make city governments unduly extravagant. In a time of rising prices, when the expenses of government are going up, cities which have reached their tax limits usually circumvent their limits by borrowing money even for current expenses, and often at high rates of interest. The only way to keep down taxes in the long run is to keep down expenses. Generally speaking this can not be accomplished by merely putting a provision in the charter or in the statutes. It can be accomplished to some extent by the constant pressure of interested citizens through taxpayers' and voters' associations. A good budget system, with adequate publicity, backed by alert citizens, will succeed probably better than anything else. A municipal organization in which the officers themselves have some incentive to attain efficiency will also be of much influence in keeping down taxes.

H. Miscellaneous problems

122. Local improvements and special assessments. The model charter printed in the appendix contains very few provisions upon local improvements and special assessments. In this respect it departs from the precedents set by the great majority of city charters in Minnesota. While there can be no doubt as to the importance of these subjects it must be admitted that there are few branches of municipal administration in which there is greater need for flexibility. The council should be left as free as possible to change the rules from time to time. Certain fundamental provisions may properly appear in the charter, particularly such as are designed to protect the property-owner and taxpayer, but beyond these the charter should not go.

123. Franchises and public utilities. The model charter provisions upon these subjects are so drafted as not to hamper the council and the voters in case they desire municipal ownership, and at the same time to give them ample control over the local utilities in case they are left in private hands. One of the most difficult points to settle under private ownership undoubtedly is the fixing

of rates. It should be made absolutely clear to every citizen that the courts will not permit rates to be fixed at so low a point as to take away the value of the property. The service must be paid for by the consumers, and the company is entitled to some profit. This being the case it seems best to have rates set by a board of three, one representing the city, one the company, and the third a person skilled in such matters who is chosen by the other two. In such rate determinations the valuation of the plant is an exceedingly important question. For this reason there are provisions in the charter designed to prevent an undue inflation of the property valuation.

124. Municipal courts. It has been pointed out elsewhere that only the legislature may establish courts in this state.[20] A home rule charter may neither establish nor disestablish any court. Municipal courts established by special law exist in a number of cities and villages. In others there are municipal courts which have been established under general law, and in still others the voters still elect justices of the peace. There are general laws, also, under which any city or village having a thousand or more inhabitants may dispense with its justices of the peace and "organize" in their stead a municipal court, for the laws "establish" such a court in every such city or village. The city or village council may at any time take the initiative to "organize" a local municipal court. In view of this situation it was deemed unwise to insert in the model charter any lengthy provision concerning municipal courts.

125. The council and the administration. Many readers of the accompanying model charter will be impressed at the brevity of many of the administrative provisions. In fact, a large number of sections originally included were subsequently eliminated from the charter entirely. They were in most cases mere details. They could be just as well dealt with by ordinances. The people in the United States must learn again to trust their city councils. If need be they must elect better men to these bodies, but they will never encourage the best fitted to seek council positions until they give the councils something important to do. The soundest and most constructive movements in the reform of city government to-day are not those which aim to make the mayor all-powerful but rather those whose objective is the revival and the rehabilitation

[20] See Appendix 2, under "Contents of a home rule charter. Exceptions."

of the council, the representative body, as the dominant force in municipal affairs. The model charter printed herewith is based upon this principle.

APPENDICES

APPENDIX 1

A MODEL CHARTER FOR MINNESOTA CITIES

NOTE: 1. The author of this little book takes complete responsibility for the provisions of the model charter printed herewith. His object in printing it is not to urge any city or village to adopt it *in toto* while drafting a home rule charter but rather to put into the hands of charter commissions and others a document against which they can check their own charter provisions. Some cities may find it desirable to adopt a considerable portion of what is here written, but no city should do it without completely checking it all and ascertaining whether what is here outlined will actually be of value in the local charter. The author hopes that he has worked well enough so that much of what he has written will be found acceptable, but his object will be accomplished if the provisions printed herewith succeed in giving the reader of this book some new and constructive ideas of what should go into a charter.

2. The model charter is designed primarily for the numerous cities having less than 20,000 population. The reader will note that this idea has been carried out not only in the small size of the council but also in many other provisions. There will be little difficulty, however, in adapting this draft to the needs of our largest cities.

3. The draft is based upon the council-manager plan of organization, which necessarily implies a recommendation of that form. The writer does not, however, urge the adoption of this plan in any city where the people are not fully convinced that it will better their local conditions, and where they will not be willing to support the plan at least until it has been given a long and fair trial. Charter commissions which wish to adopt a different form of organization will find it possible to use nine tenths of the model charter without real alteration. Great care must be taken, however, to check each section in order to make the terminology conform to the plan of organization adopted.

4. The sections of the charter are numbered consecutively. This is in every respect the best plan, since it makes easy the finding of every provision. When amendments are introduced they may be added to existing sections, or, if necessary, they may be given separate numbers such as 35a, or 47a, 47b, and so on.

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MODEL CHARTER

CHAPTER 1

Name, boundaries, powers, and general provisions

Section 1. **Name and boundaries.** The city of A————, in the county of M————, and state of Minnesota, shall, upon the taking effect of this charter, continue to be a municipal corporation, under the name and style of the city of A————, with the same boundaries as now are or hereafter may be established.[1]

Sec. 2. **Powers of the city.** The city of A————, by and in its corporate name, shall have perpetual succession; and save as herein otherwise provided and save as prohibited by the constitution or statutes of the state of Minnesota, it shall have and exercise all powers, functions, rights, and privileges possessed by it prior to the adoption of this charter; also all powers, functions, rights, and privileges now or hereafter given or granted to municipal corporations having "home rule charters" by the constitution and laws of the state of Minnesota; also all powers, functions, rights, and privileges usually exercised by, or which are incidental to, or inhere in, municipal corporations of like power and degree; also all municipal powers, functions, rights, privileges, and immunities, of every name and nature whatsoever; and in addition it shall have all the powers and be subject to the restrictions contained in this charter. In its corporate name it may take and hold, by purchase, condemnation, gift, or devise, and lease and convey any and all such real, personal, or mixed property, within or without its boundaries, as its purposes may require, or as may be useful or beneficial to its inhabitants; and it may contract with the county or with other municipalities for such joint services and utilities as may seem desirable and for all other legitimate purposes.[2]

[1] For a village advancing up to the rank of a city, the language should be somewhat as follows: "Upon the taking effect of this charter the Village of A———— in the county of M————, shall become a city under the name and style of the City of A————, and shall continue to be a municipal corporation with the same boundaries as now are or hereafter may be established." Many cities will wish to include a description of existing boundaries as a matter of information.

[2] Some cities may desire the Sauk Centre type of grant of powers which is, with slight modifications, as follows: "Section 3. *Powers of the City.* The City of Sauk Centre may sue and be sued; shall have and use its present seal and may alter its seal at pleasure; shall be capable of contracting and being contracted with; may take by purchase, condemnation or otherwise, and hold, lease, sell and convey all such real and personal property as its purposes may require, or the transaction of its business may render convenient, within or without the limits of the city; may acquire, construct, own, lease, and operate

Sec. 3. **Construction of this charter.** The provisions of this charter shall be construed liberally in favor of the city, to the end that it may have all necessary powers for the efficient conduct of its municipal affairs, as contemplated by the municipal home rule provisions of the constitution and laws of the state of Minnesota. The specific mention of particular municipal powers in other sections of this charter shall not be construed as limiting the powers of the city in the premises to those thus mentioned.

Sec. 4. **Charter a public act.** This charter shall be a public act and need not be pleaded or proved in any case. It shall take effect thirty days from and after its adoption by the voters.[2]

public utilities, and render public service of every kind; may grant franchises or licenses for the construction, operation and maintenance of public utilities in, over, upon, and under the streets and public places in the city, and shall have power to fix and regulate the fares, tolls, or charges which may be collected, order the extensions which shall be made, and regulate the services which shall be rendered by any owner or operator of a public utility franchise or license; may assess, levy, and collect taxes, for general or special purposes, on all subjects or objects which the city may lawfully tax; may borrow money on the faith and credit of the city or on a public utility or other property owned by the city, by the issuance and sale of bonds or certificates of indebtedness; may appropriate the money of the city for all lawful purposes; may provide for, construct, regulate, and maintain public works and local improvements; may levy and collect assessments for local improvements; may license and regulate persons, corporations and associations engaged in any business, occupation, trade or profession; may define, prohibit, abate, suppress, all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the city, and all nuisances and causes thereof; may regulate the construction, height and materials used in all buildings, and the maintenance and occupancy thereof; may regulate and control the use for whatever purposes of the streets and other public places; may make and enforce local police, sanitary, and other regulations; may pass ordinances for maintaining and promoting the peace, good government, and welfare of the city, and for the performance of all the functions thereof; shall have all the powers possessed by municipal corporations at common law; shall have, retain and may exercise all powers, functions, rights, and privileges, heretofore possessed by it; may exercise such powers beyond its corporate limits as may be necessary for the effective exercise of any powers granted herein as now authorized by law; and in addition thereto, the City of Sauk Centre shall have and exercise all powers, functions, rights, and privileges exercised by, or which are incidental to, or inherent in, municipal corporations and are not denied to it by the constitution or general laws of the State of Minnesota. The enumeration of powers herein shall not be construed to limit or restrict the powers granted in general terms, nor shall any specific power granted in this charter be construed to limit or restrict the powers granted in this section. In addition to the powers herein and hereafter granted, the City of Sauk Centre shall have full power to deal with all matters of municipal concern and have complete self-government in harmony with and subject to the constitution and laws of the State of Minnesota."

[2] This section is not really necessary since it merely repeats the general state law upon the subject. See *Gen. Stat.* 1913, sec. 1349, in Appendix 3.

CHAPTER 2

Form of government[4]

Sec. 5. **Form of government.** The form of government established by this charter shall be known as the "Council-Manager Plan." All discretionary powers of the city, both legislative and executive, shall vest in and be exercised by the city council, subject to the initiative, referendum, and recall powers of the people. It shall have complete control over the city administration, but shall exercise this control exclusively through the city manager and shall not itself attempt to perform any administrative work.

Sec. 6. **Boards.** The council shall itself be, and shall perform the duties and exercise the powers of, the local board of health, park board, library board, sinking fund commission, and city planning commission. It may, however, create temporary commissions with advisory powers to investigate any subject of interest to the municipality, and also a commission to prepare a city plan subject to the approval of the council. Such commissions may be given the power to administer oaths, and to compel the attendance of witnesses and the production of books, papers, and other documentary evidence.[5]

Sec. 7. **Elective officers.** The council shall be composed of a mayor and six councilmen who shall be qualified electors, and who shall be elected at large in the manner hereinafter provided. The six councilmen shall serve for a term of four years and until their successors are elected and qualified, except that at the first election held after the adoption of this charter the three candidates having the highest number of votes shall serve for four years, and the three candidates having the next highest number of votes shall serve for two years. The mayor shall serve for a term of two years and until his successor is elected and qualified. The council shall be judge of the election of the mayor and councilmen.[6]

[4] Cities which desire to adopt some other plan than is here described will need to rewrite much of this chapter. For the commission plan the best model in this state is the Duluth charter adopted in 1912; for the council and mayor plan the Sauk Centre charter of 1918. The latter could be transformed into a federal plan charter without much difficulty.

[5] The object of this section is to put every whit of responsibility for local administration upon the council, without depriving it of the assistance of purely advisory commissions.

[6] If provision is to be made for proportional representation or any other special method of election, it should be merely referred to in this section and dealt with more fully in Chapter 4.

Sec. 8. **Incompatible offices.** No member of the council shall be appointed city manager, nor shall any member hold any paid municipal office or employment under the city; and until one year after the expiration of his term as mayor or councilman no former member shall be appointed to any paid office or employment under the city which office or employment was created or the emoluments of which were increased during his term as councilman.

Sec. 9. **Vacancies in the council.** A vacancy in the council shall be deemed to exist in case of the failure of any person elected thereto to qualify on or before the date of the second regular meeting of the new council, or by reason of the death, resignation, removal from office, removal from the city, continuous absence from the city for more than three months, or conviction of a felony of any such person whether before or after his qualification, or by reason of the failure of any councilman without good cause to perform any of the duties of membership in the council for a period of three months. In each such case the council shall by resolution declare such vacancy to exist and shall forthwith appoint an eligible person to fill the same until the next regular municipal election, when the office shall be filled for the unexpired term; provided that any vacancy resulting from a recall election or from a resignation following the filing of a recall petition and any vacancy in the office of mayor shall be filled in the manner provided in such case.

Sec. 10. **The mayor.** The mayor shall be the presiding officer of the council, except that a president pro tempore shall be chosen who shall serve as president in the mayor's absence, and as acting mayor in case of the mayor's disability or absence from the city. The mayor shall be the chief executive officer of the city, and shall exercise all powers and perform all duties conferred and imposed upon him by this charter, the ordinances of the city, and the laws of the state. He shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil processes, and by the governor for the purposes of the military law. He shall study the operations of the city government and shall report to the council any neglect, dereliction of duty, or waste on the part of any officer or department of the city. In time of public danger or emergency he may, with the consent of the council, take command of the police, maintain order and enforce the law. In the event of a vacancy in the office of mayor, whether by death, resignation, or any other cause, the council shall order a special election to fill the vacancy for the unexpired term, but in the

case of a recall the vacancy shall be filled in the manner provided by this charter.

Sec. 11. **Salaries.** The members of the council shall serve without compensation, except that when meeting as a board of equalization they shall each receive not to exceed one dollar per hour of actual service. The city manager and all subordinate officers and employees of the city shall receive such salaries or wages as may be fixed by the council.[7]

Sec. 12. **Investigations of city affairs.** The council and the city manager, or either of them, and any officer or officers formally authorized by them, or either of them, shall have power to make investigations into the city's affairs, to subpoena witnesses, administer oaths, and compel the production of books and papers. The council may at any time provide for an examination or audit of the accounts of any officer or department of the city government.

Sec. 13. **Interferences with administration.** Neither the council nor any of its members shall dictate the appointment of any person to office or employment by the city manager, or in any manner interfere with the city manager or prevent him from exercising his own judgment in the appointment of officers and employees in the administrative service, but this shall not be construed to prohibit the council from passing ordinances for establishing the merit system. Except for the purpose of inquiry the council and its members shall deal with and control the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately.

CHAPTER 3

Procedure of council

Sec. 14. **Council meetings.** On the first Monday after the first Tuesday in July following a regular municipal election, the council shall meet at the usual place and time for the holding of council meetings. At this time the newly elected members of the council shall assume their duties. Thereafter the council shall meet at such times as may be prescribed by ordinance or resolution, except that they shall meet not less than once each month. The mayor, or any three mem-

[7] Since the mayor's duties will be numerous and time-consuming it may be wise to give him some salary in cities of from 3,000 to 20,000 population. Of course in the three largest cities salaries must be provided.

bers of the council, may call special meetings of the council upon at least twelve (12) hours' notice to each member of the council. Such notice shall be delivered personally to each member or shall be left with some responsible person at the member's usual place of residence. All meetings of the council shall be public, and any citizen shall have access to the minutes and records thereof at all reasonable times.

Sec. 15. **Secretary of council.** The council shall choose a secretary and such other officers and employees as may be necessary to serve at its meetings. The secretary shall be known as the secretary of the council, and shall keep such records and perform such other duties as may be required by this charter or by vote of the council. The council may designate any official or employee of the city, except the city manager or a member of the council, to act as secretary of the council.

Sec. 16. **Rules of procedure and quorum.** The council shall determine its own rules and order of business, and shall keep a journal of its proceedings. A majority of all members elected shall constitute a quorum to do business, but a less number may adjourn from time to time. The council shall provide by ordinance a means by which a minority may compel the attendance of absent members.

Sec. 17. **Ordinances, resolutions, and motions.** Except as in this charter otherwise provided, all legislation and all appropriations of money shall be by ordinance, save that where an obligation has been incurred by ordinance, payment thereof may be ordered by resolution if the amount exceeds five hundred dollars or by ordinary motion if the amount involved is less than that sum, and save also that licenses may be granted, property acquired for public uses, and local improvements ordered, by resolution. Every final vote upon all ordinances, resolutions, and motions, and upon all amendments thereto, shall be by ayes and noes, and the vote of each member shall be recorded in the minutes. The votes of at least four members shall be required for the passage of all ordinances, resolutions, and motions, except as otherwise provided in this charter.

Sec. 18. **Procedure on ordinances.** The enacting clause of all ordinances passed by the council shall be in the words, "The city of A———— does ordain." Every ordinance shall be presented in writing. Every ordinance, other than emergency ordinances, shall have two public readings in full, and at least three days shall elapse between the first and second readings thereof. Every ordinance ap-

propriating money in excess of five hundred dollars, and every ordinance and resolution authorizing the making of any contract involving a liability on the part of the city in excess of five hundred dollars, shall remain on file in the office of the secretary of the council at least one week, and shall be published at least once in the official newspaper of the city or posted on official bulletin boards in the manner provided by this charter, before its final passage, except in the case of emergency ordinances or resolutions.[8]

Sec. 19. **Emergency ordinances and resolutions.** An emergency ordinance or resolution is an ordinance or resolution for the immediate preservation of the public peace, health, or safety, in which the emergency is defined or declared in a preamble thereto, separately voted upon, and agreed to by at least five members of the council, as recorded by ayes and noes. An emergency ordinance or resolution must be in writing but may be enacted without previous filing or publication. No grant of any franchise shall be construed to be an emergency ordinance or resolution.

Sec. 20. **Procedure on resolutions.** Every resolution shall be presented in writing, and read in full before a vote is taken thereon, unless the reading of a resolution is dispensed with by unanimous consent.

Sec. 21. **Signing and publication of ordinances and resolutions.** Every ordinance or resolution passed by the council shall be signed by the mayor or by two other members, and shall be filed with the secretary of the council within two days after passage, and by him recorded and preserved. Every ordinance and resolution shall be published at least once in the official paper of the city within fifteen days after its passage by the council, or in lieu thereof may be posted on bulletin boards as in this charter provided, and shall be recorded in a book kept for that purpose, which record shall be attested by the secretary of the council; provided that the publication of resolutions not involving the expenditure of money may be dispensed with if so ordered by the council.

Sec. 22. **When ordinances and resolutions take effect.** Emergency ordinances and resolutions, and ordinances and resolutions making the annual tax levy, determining the annual budget, and providing for local improvements and assessments, shall take effect immediately upon their passage. All other ordinances and resolutions

[8] See sec. 98 of the charter, below. Bulletin boards may serve as a partial substitute for an official newspaper in the smallest cities and where there is no strictly local newspaper.

enacted by the council shall take effect thirty days after the date of their passage, unless a later date is fixed therein, in which event they shall take effect at such later date. Ordinances and resolutions adopted by the electors of the city shall take effect at the time fixed therein, or, if no such time is designated therein, then immediately upon the adoption thereof.

Sec. 23. **Amendment and repeal of ordinances and resolutions.** No ordinance or resolution or section thereof shall be amended or repealed by reference to its title alone, but such amending or repealing ordinance or resolution shall contain verbatim the ordinance or resolution or section thereof to be amended or repealed, together with the amended form thereof in case of amendment, and the

Sec. 24. **The regular municipal election.** A regular municipal election shall be held on the second Tuesday in June in the year

CHAPTER 4

Nominations and elections

Sec. 24. **The regular municipal election.** A regular municipal election shall be held on the second Tuesday in June in the year 1923 and biennially thereafter at such place or places as the city council may designate. At least fifteen days previous notice shall be given by the city clerk of the time and place of holding such election, and of the officers to be elected, by posting a notice thereof in at least five of the most public places in the city, or by publishing a notice thereof at least once in the official newspaper, or both, as the council may ordain, but failure to give such notice shall not invalidate such election. At the regular election there shall be elected, in addition to the municipal officers, such justices of the peace or municipal judges as may be provided by law.

Sec. 25. **Special elections.** The council may by resolution order a special election, fix the time of holding the same, and provide all means for holding such special election. The procedure at such election shall conform as nearly as possible to that herein provided for other municipal elections.

Sec. 26. **Judges and clerks of election.** The council shall at least ten days before each municipal election appoint three qualified voters of each election district to be judges of election therein. The judges of each election district shall appoint two qualified electors of the same district, or as many more as may be authorized by the council, to serve as clerks of election.

Sec. 27. **Nominations by petition.** The mode of nomination of all elective officers provided for by this charter shall be by petition. The name of any elector of the city shall be printed upon the ballot whenever a petition as hereinafter prescribed shall have been filed in his behalf with the city clerk. Such petition shall be signed by a number of electors equivalent to at least five per cent of the total number of votes cast at the last regular municipal election. No elector shall sign petitions for more candidates than the number of places to be filled at the election, and should he do so his signature shall be void as to the petition or petitions last filed. All nomination petitions shall be in the hands of the city clerk at least ten days before the election. The clerk shall prepare the ballots in a manner to be provided by ordinance.[9]

Sec. 28. **Nomination petitions.** The signatures to the nomination petition need not all be appended to one paper, but to each separate paper there shall be attached an affidavit of the circulator thereof stating the number of signers of such paper and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify the same. The form of the nomination petition shall be substantially as follows:

Nomination petition

We, the undersigned electors of the city of A————, hereby nominate John Doe, whose residence is ————, for the office of councilman, to be voted for at the election to be held on the ———— day of ————, 19—; and we individually certify that we are qualified electors and that we have not signed more nomination petitions of candidates for this office than there are persons to be elected thereto.

Name	Street and number
.....	.....
.....	.....

....., being duly sworn, deposes and says that he is the circulator of the foregoing petition paper containing ———— signatures, and that the signatures appended thereto were made in his

[9] Cities of 10,000 or more inhabitants may possibly find a non-partisan primary preferable to a system of nomination by petition.

presence and are the signatures of the persons whose names they purport to be.

Signed.....

Subscribed and sworn to before me this————day of————, 19—. This petition, if found insufficient by the city clerk, shall be returned to Richard Roe, at No.————, ————Street.

Sec. 29. **Canvass of elections.** The council shall meet and canvass the election returns within five days after any regular or special election, and shall make full declaration of the results as soon as possible, and file a statement thereof with the city clerk. This statement shall include: (a) the total number of good ballots cast; (b) the total number of spoiled or defective ballots; (c) the vote for each candidate, with an indication of those who were elected; (d) a true copy of the ballots used; (e) the names of the judges and clerks of election; and (f) such other information as may seem pertinent. The city clerk shall forthwith notify all persons elected of the fact of their election.

Sec. 30. **Procedure at elections.** The conduct of elections shall be regulated by ordinance, subject to the provisions of this charter and of the general laws of Minnesota.

CHAPTER 5

Initiative, referendum, and recall

Sec. 31. **Powers reserved by the people.** The people of A———— reserve to themselves the powers, in accordance with the provisions of this charter, to initiate and adopt ordinances and resolutions, to require measures passed by the council to be referred to the electorate for approval or disapproval, and to recall elected public officials. These powers shall be called the initiative, the referendum, and the recall, respectively.

Sec. 32. **Expenditures by petitioners.** No member of any initiative, referendum, or recall committee, no circulator of a signature paper, and no signer of any such paper, or any other person, shall accept or offer any reward, pecuniary or otherwise, for service rendered in connection with the circulation thereof, but this shall not prevent the committee from incurring an expense not to exceed twenty dollars for legal advice, stationery, copying, printing, and notaries' fees. Any violation of the provisions of this section shall constitute a misdemeanor.

Sec. 33. **Further regulations.** The council shall as soon as possible after the organization of the city government under this

charter provide by ordinance such further regulations for the initiative, referendum, and recall, not inconsistent with this charter, as may be deemed necessary. Such ordinance shall include the relevant provisions of this charter.

Initiative

Sec. 34. **Initiation of measures.** Any five electors may form themselves into a committee for the initiation of any measure of public concern. After formulating their measure they shall file a verified copy thereof with the city clerk together with their names and addresses as members of such committee. They shall also attach a verified copy of the proposed measure to each of the signature papers herein described, together with their names and addresses as sponsors therefor.

Sec. 35. **Form of petition and of signature papers.** The petition for the adoption of any measure shall consist of the measure, together with all the signature papers and affidavits thereto attached. Such petition shall not be complete unless signed by a number of voters equal to at least ten per cent of the total number of votes cast at the last preceding regular municipal election. All the signatures need not be on one signature paper, but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. Each signature paper shall be in substantially the following form:

Initiative petition

proposing an ordinance (or resolution, as the case may be) to ..... (stating the purpose of the measure), a copy of which ordinance (or resolution) is hereto attached. This measure is sponsored by the following committee of electors:

Name	Address
1.....	.....
2.....	.....
3.....	.....
4.....	.....
5.....	.....

The undersigned electors, understanding the terms and the nature of the measure hereto attached, petition the council for its adoption, or, in lieu thereof, for its submission to the electors for their approval.

Name	Address
1.....	.....
2.....	.....
3.....	.....

At the end of the list of signatures shall be appended the affidavit of the circulator, mentioned above.

Sec. 36. **Filing of petitions and action thereon.** All the signature papers shall be filed in the office of the city clerk as one instrument. Within five days after the filing of the petition the city clerk shall ascertain by examination the number of electors whose signatures are appended thereto, and whether this number is at least ten per cent of the total number of electors who cast their votes at the last preceding regular municipal election. If he finds the petition insufficient or irregular, he shall at once notify one or more of the committee of sponsors of that fact, certifying the reasons for his finding. The committee shall then be given thirty days in which to file additional signature papers and to correct the petition in all other particulars. If at the end of that period the petition is found to be still insufficient or irregular the clerk shall file the same in his office and shall notify each member of the committee of that fact. The final finding of the insufficiency or irregularity of a petition shall not prejudice the filing of a new petition for the same purpose, nor shall it prevent the council from referring the measure to the electors at the next regular or any special election, at its option.

Sec. 37. **Action of council on petition.** Whenever the petition shall be found to be sufficient, the city clerk shall so certify to the council at its next meeting, stating the number of petitioners, and the percentage of the total number of voters which they constitute, and the council shall at once read the measure and refer it to an appropriate committee, which may be a committee of the whole. The committee or council shall thereupon provide for public hearings upon the measure, after the holding of which the measure shall be finally acted upon by the council not later than sixty-five days after the date upon which such measure was submitted to the council by the city clerk. If the council shall fail to pass the proposed measure, or shall pass it in a form different from that set forth in the petition and unsatisfactory to the petitioners, the proposed measure shall be submitted by the council to the vote of the electors at the next regular municipal election. But in case the number of signers of said petition

is equal to at least fifteen per cent of the total number of voters voting at the last regular municipal election, then the council shall call a special election upon the measure to be held not less than thirty nor more than forty-five days from such date, unless a regular election is to occur within three months, in which case it may be submitted at such regular municipal election. In case the council passes the proposed measure with amendments and at least four fifths of the committee of petitioners do not express their dissatisfaction with such amended form by a certificate filed with the city clerk within ten days from the passage thereof by the council, then the measure need not be submitted to the electors.

Sec. 38. **Initiative ballots.** The ballots used when voting upon any such proposed measure shall state the substance thereof, and shall give the voter the opportunity to vote either "For the measure" or "Against the measure." If a majority of the electors voting on any such measure shall vote in favor thereof, it shall thereupon become an ordinance or resolution of the city as the case may be. Any number of proposed measures may be voted upon at the same election, but in case there shall be more than one, the voter shall be allowed to vote for or against each separately.

Sec. 39. **Initiation of charter amendments.** Nothing in this charter contained shall be construed as in any way affecting the right of the electors under the constitution and statutes of Minnesota to propose amendments to this charter.

Referendum

Sec. 40. **The referendum.** If prior to the date when an ordinance or resolution takes effect a petition signed by qualified electors of the city equal in number to fifteen per cent of the total vote at the last regular municipal election be filed with the city clerk requesting that any such measure, or any part thereof, be repealed or be submitted to a vote of the electors, the said measure shall thereby be prevented from going into operation. The council shall thereupon reconsider the said measure at its next regular meeting, and either repeal the same, or repeal the sections thereof to which objection has been raised by the petitioners, or by aye and no vote reaffirm its adherence to the measure as passed. In the latter case the council shall immediately order an election to be held thereon, pending which the ordinance or resolution shall remain suspended. If a majority of the voters voting thereon are opposed to the measure,

it shall not become effective; but if a majority of the voters voting thereon favor the measure, it shall go into effect immediately or on the date therein specified.

Sec. 41. **Referendum petitions.** The requirements laid down in sections 34 and 35 above as to the formation of committees for the initiation of measures and as to the form of petitions and signature papers shall apply to the referendum as far as possible, but with such verbal changes as may be necessary. A referendum petition shall read as follows:

Referendum petition

proposing the repeal of an ordinance (or resolution, as the case may be) to (stating the purpose of the measure), a copy of which ordinance (or resolution) is hereto attached. The proposed repeal is sponsored by the following committee of electors:

Name	Address
1.....	.....
2.....	.....
3.....	.....
4.....	.....
5.....	.....

The undersigned petitioners, understanding the nature of the measure hereto attached, and believing it to be detrimental to the welfare of the city, petition the council for its submission to a vote of the electors for their approval or disapproval.

Name	Address
1.....	.....
2.....	.....
3.....	.....

Sec. 42. **Referendum ballots.** The ballots used in any referendum election shall conform to the rules laid down in section 38 of this charter for initiative ballots.

Recall

Sec. 43. **The recall.** Any five electors may form themselves into a committee for the purpose of bringing about the recall of any elected officer of the city. The committee shall certify to the city clerk the name of the officer whose removal is sought, a statement of the grounds for removal in not more than two hundred and fifty words and their intention to bring about his recall. A copy of this

certificate shall be attached to each signature paper and no signature paper shall be put into circulation previous to such certification.

Sec. 44. **Recall petitions.** The petition for the recall of any official shall consist of a certificate identical with that filed with the city clerk together with all the signature papers and affidavits thereto attached. All the signatures need not be on one signature paper, but the circulator of every such paper shall make an affidavit that each signature appended to the paper is the genuine signature of the person whose name it purports to be. Each signature paper shall be in substantially the following form:

Recall petition

proposing the recall of.....from his office as ....., which recall is sought for the reasons set forth in the attached certificate. This movement is sponsored by the following committee of electors:

Name	Address
1.....	.....
2.....	.....
3.....	.....
4.....	.....
5.....	.....

The undersigned electors, understanding the nature of the charges against the officer herein sought to be recalled, desire the holding of a recall election for that purpose.

Name	Address
1.....	.....
2.....	.....
3.....	.....

At the end of the list of signatures shall be appended the affidavit of the circulator, mentioned above.

Sec. 45. **Filing of petition.** Within thirty days after the filing of the original certificate, the committee shall file the completed petition in the office of the city clerk. The city clerk shall examine the same within the next five days, and if he finds it irregular in any way, or finds that the number of signers is less than twenty-five per cent of the total number of electors who cast their votes at the last preceding regular municipal election, he shall so notify one or more members of the committee. The committee shall then be given ten days in which to file additional signature papers and to correct the

petition in all other respects, but they may not change the statement of the grounds upon which the recall is sought. If at the end of that time the city clerk finds the petition still insufficient or irregular he shall notify all the members of the committee to that effect and shall file the petition in his office. No further action shall be taken thereon.

Sec. 46. **Recall election.** If the petition or amended petition be found sufficient, the city clerk shall transmit it to the council without delay, and shall also officially notify the person sought to be recalled of the sufficiency of the petition and of the pending action. The council shall at its next meeting, by motion, provide for the holding of a special recall election not less than thirty nor more than forty-five days thereafter, provided that if any other municipal election is to occur within sixty days after such meeting, the council may in its discretion provide for the holding of the recall election at that time.

Sec. 47. **Procedure at recall election.** In the published call for the election, whether posted on bulletin boards or printed in the official paper, there shall be given the statement of the grounds for the recall and also, in not more than five hundred words, the answer of the officer concerned in justification of his course in office. Candidates to succeed the officer to be recalled shall be nominated in the usual way, and the election shall be conducted as far as possible, in accordance with the usual procedure in municipal elections.

Sec. 48. **Form of recall ballot.** Unless the officer whose removal is sought shall have resigned within ten days after the receipt by the council of the completed recall petition, the form of the ballot at such election shall be as near as may be: "Shall A be recalled?," the name of the officer whose recall is sought being inserted in place of A, and the electors shall be permitted to vote separately "Yes" or "No" upon this question. The ballot shall also contain the names of the candidates to be voted upon to fill the vacancy, in case the recall is successful, under the caption: "Candidates to fill the place of A, if recalled." But the officer whose recall is sought shall not himself be a candidate upon such ballot. In case a majority of those voting for and against the recall of any official shall vote in favor of recalling such official, he shall be thereby removed from office, and in that event the candidate who receives the highest number of votes for his place shall be elected thereto for the remainder of the unexpired term. If the officer sought to be recalled shall have resigned within ten days after the receipt by the council of the completed recall petition, the

form of ballot at the election shall be the same, as nearly as may be, as the form in use at a regular municipal election.

CHAPTER 6

Administration of city affairs

Sec. 49. **The city manager.** The city manager shall be the chief administrative officer of the city. He shall be chosen by the council solely on the basis of his training, experience, and administrative qualifications. The choice shall not be limited to inhabitants of the city or state. The city manager shall be appointed for an indefinite period, and he shall be removable by the council at any time. If removed at any time after one year of service he may demand written charges and a public hearing on the same before the council prior to the date on which his final removal shall take effect, but pending and during such hearing the council may suspend him from office. During the absence or disability of the city manager the duties of his office shall be performed by some properly qualified person designated by the council.

Sec. 50. **Powers and duties of the city manager.** Subject to the provisions of this charter and any regulations consistent therewith which may be adopted by the council, the city manager shall control and direct the administration of the city's affairs. His powers and duties as city manager shall be:

(a) To see that this charter and the laws, ordinances, and resolutions of the city are enforced;

(b) To appoint and, except as herein provided, remove the city clerk, all heads of departments, and all subordinate officers and employees in the departments, all appointments to be upon merit and fitness alone;

(c) To exercise control over all departments and divisions of the city administration created by this charter or which may be hereafter created by the council;

(d) To attend all meetings of the council, with the right to take part in the discussions but having no vote; but the council may at its discretion exclude him from meetings at which his removal is considered;

(e) To recommend to the council for adoption such measures as he may deem necessary for the welfare of the people and the efficient administration of the city's affairs;

(f) To keep the council fully advised as to the financial condition and needs of the city, and to prepare and to submit to the council the annual budget;

(g) To prepare and to submit to the council for adoption an administrative code incorporating the details of administrative procedure, and from time to time to suggest amendments to the same; and

(h) To perform such other duties as may be prescribed by this charter or required of him by ordinances or resolutions adopted by the council.

Sec. 51. **Departments of administration.** The council may create such departments, divisions, and bureaus for the administration of the city's affairs as may seem necessary, and from time to time alter the powers and organization of the same. It shall, in conjunction with the city manager, prepare a complete administrative code for the city and enact the same in the form of an ordinance, which may be amended from time to time by ordinance.[10]

Sec. 52. **Subordinate officers.** There shall be a city clerk and such other officers subordinate to the city manager as the council may create by ordinance. The city clerk shall be subject to the direction of the city manager, and shall have such duties in connection with the keeping of the public records, the custody and disbursement of the public funds, and the general administration of the city's affairs as shall be ordained by the council. He may be designated to act as secretary of the council, and also as treasurer. The council may by ordinance abolish offices which have been created by ordinance, and it may combine the duties of various offices as it may see fit.

Sec. 53. **Purchases and contracts.** The city manager shall be the chief purchasing agent of the city. All purchases on behalf of the city shall be made, and all contracts let by the city manager subject to the approval of the council. Such approval must be given in advance whenever the amount of such purchase or contract exceeds five hundred dollars. All contracts, bonds, and instruments of every kind to which the city shall be a party shall be signed by the mayor on behalf of the city as well as by the city manager, and shall be executed in the name of the city.

Sec. 54. **Contracts. How let.** In all cases of work to be done by contract, or of the purchase of personal property of any kind,

[10] In the larger cities and in cities which adopt the commission plan the departments should be named and their chief functions specified, but the council should be empowered to make all necessary changes in administrative organization.

where the amount involved is more than five hundred dollars, unless the council shall by an emergency ordinance otherwise provide, the city manager shall advertise for bids in such manner as may be designated by the council. Contracts of this magnitude shall be let only by the council upon the recommendation of the city manager, and shall be let to the lowest responsible bidder. The council may, however, reject any and all bids. Nothing contained in this section shall prevent the council from contracting by five-sevenths vote for the doing of work with patented processes, or from the purchasing of patented appliances by the same majority. Further regulations for the making of bids and the letting of contracts shall be made by ordinance, subject to the provisions of this charter.

CHAPTER 7

Taxation and finance

Sec. 55. **Council to control finances.** The council shall have full authority over the financial affairs of the city, and shall provide for the collection of all revenues and other assets, the auditing and settlement of accounts, and the safekeeping and disbursement of public moneys, and in the exercise of a sound discretion shall make appropriations for the payment of all liabilities and expenses.

Sec. 56. **Fiscal year.** The fiscal year of the city shall end each year on the thirty-first day of December.

Sec. 57. **System of taxation.** Subject to the state constitution, and except as forbidden by it or by state legislation, the council shall have full power to provide by ordinance for a system of local taxation and to change the same from time to time. Insofar as the city procures a revenue from taxes upon real and personal property as such, it shall conform as fully as possible to the general state law as to the assessment of such property and the collection of such taxes.

Sec. 58. **Board of equalization.** The council shall constitute a board of equalization and shall meet as such in the usual place for holding council meetings on the last Monday in June to equalize the assessments according to law.

Sec. 59. **Preparation of the annual budget.** The city manager shall prepare the estimates for the annual budget. The estimates of expenditures shall be arranged for each department or division of the city under the following heads: (1) ordinary expenses (for operation, maintenance, and repairs); and (2) capital outlays (for

new construction, new equipment, and all improvements of a lasting character). Ordinary expenses shall be subdivided into: (a) salaries, with a list of all salaried offices and positions, with the salary allowance and the number of persons holding each; (b) wages; (c) printing, advertising, telephone, telegraph, express charges, and other like items; (d) supplies and repairs, with sufficient detail to be readily understood. All increases and decreases shall be clearly shown. In parallel columns shall be added the amounts granted and the amounts expended under similar heads for the past two completed fiscal years and, as far as possible, for the current year. In addition to the estimates of expenditures, the estimates shall include a statement of the revenues which have accrued for the past two completed fiscal years, with the amounts collected and the uncollected balances, together with the same information, as far as possible, for the current fiscal year, and an estimate of the revenues for the ensuing fiscal year. The statement of revenues for each year shall specify the following items: sums derived from (a) taxation, (b) fees, (c) fines, (d) interest, (e) miscellaneous, not included in the foregoing, (f) sales and rentals, (g) operation of public utilities, (h) special assessments, and (i) sales of bonds and other obligation. Such estimates shall be printed or typewritten, and there shall be at least twelve copies, one for each member of the council, one for the city manager, one for the city clerk, and three at least to be posted in public places in the city. The estimates shall be submitted to the council at its regular monthly meeting in August, and shall be made public. The city manager may submit with the estimates such explanatory statement or statements as he may deem necessary, and during the first three years under this charter he shall be authorized to interpret the requirements of this section as requiring only such comparisons of the city's finances with those of the previous government of the city as may be feasible and pertinent.

Sec. 60. **Passage of the budget.** The budget shall be the principal item of business at the regular monthly meeting of the council in August, and the council shall hold adjourned meetings from time to time until all the estimates have been considered. The meetings shall be so conducted as to give interested citizens a reasonable amount of time in which to be heard, and an opportunity to ask such questions as may seem pertinent to them. The budget estimates shall be read in full, and the city manager shall explain the various items thereof as fully as may be deemed necessary by the council. The

annual budget finally agreed upon shall be a resolution setting forth in detail the complete financial project of the city for the ensuing fiscal year. It shall indicate the sums to be raised and from what sources, and the sums to be spent and for what purposes, according to the plan indicated in section 59. The total sum appropriated shall be less than the total estimated revenue by a safe margin. The council shall adopt the budget resolution not later than the first day in October.

Sec. 61. **Enforcement of the budget.** It shall be the duty of the city manager to enforce strictly the provisions of the budget. He shall not approve any order upon the city treasurer for any expenditure unless an appropriation has been made in the budget, nor for any expenditure covered by the budget unless there is a sufficient unexpended balance left after deducting the total past expenditures and the sum of all outstanding orders and encumbrances. No officer or employee of the city shall place any orders or make any purchases except for the purposes and to the amounts authorized in the budget. Any obligation incurred by any person in the employ of the city for any purpose not authorized in the budget or for any amount in excess of the amount therein authorized shall be a personal obligation upon the person incurring the expenditure.

Sec. 62. **Alterations in the budget.** After the budget shall have been duly adopted, the council shall not have power to increase the amounts therein fixed, whether by the insertion of new items or otherwise, beyond the estimated revenues, unless the actual receipts shall exceed such estimates, and in that event not beyond such actual receipts. The sums fixed in the budget shall be and become appropriated at the beginning of the fiscal year for the several purposes named therein and no other. The council may at any time, by a resolution passed by a five-sevenths vote, reduce salaries or the sums appropriated for any other purpose, or authorize the transfer of sums from unexpended balances to other purposes.

Sec. 63. **Levy and collection of taxes.** On or before the first of October each year the council shall levy by resolution the taxes necessary to meet the requirements of the budget for the ensuing fiscal year. The city clerk shall transmit to the county auditor annually, not later than the tenth of October, a statement of all the taxes levied, and such taxes shall be collected and the payment thereof be enforced with and in like manner as state and county taxes. No tax shall be invalid by reason of any informality in the manner of

levying the same, nor because the amount levied shall exceed the amount required to be raised for the special purposes for which the same is levied, but in that case the surplus shall go into the fund to which such tax belongs.

Sec. 64. **Tax settlement with county treasurer.** The city treasurer shall see to it that all moneys in the county treasury belonging to the city are promptly turned over to the city according to law.

Sec. 65. **Disbursements. How made.** All disbursements shall be made only upon the order of the mayor and city manager, duly authorized by a resolution of the council, and every such resolution and order shall specify the purpose for which the disbursement is made, and indicate that it is to be paid out of the proper fund. Each such order shall be directed to the treasurer, and the latter shall issue a check payable to the order of the person in whose favor the order was drawn. The treasurer shall issue no check upon any city funds except upon such order. But no such order or check shall be issued until there is money to the credit of the fund out of which it is to be paid, sufficient to pay the same together with all then outstanding encumbrances upon such fund. Any order or resolution for the payment of money violating any provision of this section shall be void, and any officer of the city violating any provision of this section shall be personally responsible for the amount of such payment, if any such payment is made contrary to the provisions hereof. No contract requiring the payment of money by the city shall be valid unless the particular fund out of which the same is to be paid is specified in such contract. No claim against the city shall be allowed unless accompanied by an itemized bill and voucher, payroll, or time sheet signed by the responsible officer who has personal knowledge of the facts in the case and vouches for the correctness and reasonableness of the claim. The council may by ordinance make further regulations for the safe-keeping and disbursement of the city's funds.

Sec. 66. **Funds to be kept.** There shall be maintained in the city treasury the following funds for the support of which the council may levy taxes:

(a) A sinking fund for the purchase, or payment when due, of any bonds or any debt of the city and to pay the interest on all bonds and other obligations of the city. The council shall levy an annual tax sufficient to meet all obligations against this fund when due, unless otherwise provided for.

(b) A public utility fund or funds for the acquisition, construction, extension, maintenance, and operation of any public utility owned or operated by the city, including the payment of the interest on any bonds or other indebtedness which may be a lien upon such utility. There shall be paid into this fund all moneys derived from the sale of bonds issued on account of any utility, and from the operation of such utility, and from the sale of any property acquired for, or used in connection with, any such utility. There shall be paid out of this fund the cost of the purchase, construction, extension, operation, maintenance, and repair of such utility, including the interest upon all bonds or other indebtedness which may be a lien upon such utility. Any surplus in said fund may be used for the purchase of any bonds or certificates of indebtedness issued against said utility, and for the payment of such bonds or other indebtedness upon their maturity. Separate funds and accounts shall be kept for each such utility operated separately, and in case two or more utilities are operated together the funds and accounts shall be kept separate as far as practicable.

(c) A general fund for the support of such other funds and for the payment of such expenses of the city as the council may deem proper. Into this fund shall be paid all moneys not herein provided to be paid into any other fund.

(d) A permanent improvement revolving fund, which shall not be supported by general taxation. There shall be paid into this fund moneys received from special assessments levied for local improvements. The council may by resolution determine the aggregate amount of the assessments for local improvements which, in its judgment, shall be extended for payment, as is provided in chapter 8 of this charter, but in no case shall such aggregate amount exceed eighty per cent of the total estimated cost of such improvement, it being understood that no local improvement, a part or all of the cost of which is to be paid by special assessments shall be commenced until twenty per cent of the amount to be raised by special assessment has been paid in cash to the city treasurer. The council may order the issuance and sale of bonds representing such aggregate sum, which shall entitle the holder thereof to demand and receive from the city of A——— upon the surrender of such bonds to the treasurer on or after the date of payment thereof, the amount of money named therein to be paid, with the rate of interest stipulated to be paid thereon to the due date thereof and not after such date. Such bonds may be issued in such amounts and become due on such

dates as the council may determine, subject to the provisions of section 70. The proceeds of the sale of said bonds shall be paid in to the permanent improvement revolving fund. The council may, in its discretion, either sell said bonds direct to investors, or may contract for the sale of all such bonds that may be issued during any calendar year. No sale of such bonds, by contract, shall be made except after advertising for bids, at least one week prior to sale and such sales shall be made to the highest responsible bidder. Bids may be asked on the basis of a rate of interest specified in the proposals and on the net interest basis on which the bidder will pay par for the same.

Sec. 67. **Receipts to go to city treasurer.** All receipts of money belonging to the city, or any branch thereof, excepting only those funds collected by the county treasurer, shall be paid in to the city treasurer by the person authorized to receive the same at the close of each business day. All such moneys, and also all moneys received upon tax settlements from the county treasurer, shall be deposited as soon as received in a bank or banks approved by the city council. Any person in the employ of the city guilty of a violation of this provision shall be liable to be reduced in rank and salary or to be dismissed from his office or position, as the council may determine after a hearing.

Sec. 68. **Accounts and reports.** The city manager shall be the chief accounting officer of the city and of every branch thereof, and the council may prescribe and enforce proper accounting methods, forms, blanks, and other devices consistent with the law, this charter, and the ordinances in accord with it. He shall submit to the council a statement each month showing the amount of money in the custody of the city treasurer, the status of all funds, the amount spent or chargeable against each of the annual budget allowances and the balances left in each, and such other information relative to the finances of the city as the council may require. Once each year, on or before the last day of January, the city manager shall submit a report to the council covering the entire financial operations of the city for the past year. This report shall show the actual total receipts and actual total expenditures, omitting duplications, and stating the cash balance at the beginning of the last fiscal year and at the close; the total outlays for operation and maintenance, and the total capital outlays; the condition of each of the funds; the total receipts by sources and the total expenditures by general purposes; the total outstanding bonds and debts of the city, when due, the amount of new

bonds issued and the amount redeemed, the interest rate of each; the condition of all the annual budget allowances; and an inventory of all the property owned by the city; and such further information as the council and other city officials and the taxpayers should have.

Sec. 69. **Bonded debt and debt limit.** No bonds shall ever be issued to pay current expenses or to refund certificates of indebtedness issued to provide for temporary deficiencies in the revenues to cover current expenses; but bonds may be issued by a five-sevenths vote of the council, subject to the referendum powers of the people, for the purchase of real estate, for new construction, for new equipment, and for all improvements of a lasting character, including public utilities. The total bonded debt of the city shall never exceed ten per cent of the last assessed valuation of the taxable property therein, including moneys and credits; but in computing the total bonded debt, certificates of indebtedness or bonds issued before or after the adoption of this charter shall not be included or counted if (1) held in a sinking fund maintained by such city; or (2) issued for the acquisition, equipment, purchase, construction, maintenance, extension, enlargement, or improvement of street railways, telegraph or telephone lines, water, lighting, heat and power plants, or either, or any other public convenience from which a revenue is or may be derived, owned, and operated by such city, or the acquisition of property needed in connection therewith, or for the construction of public drainage ditches or the acquisition of lands for, or for the improvement of streets, parks, or other public improvements, to the extent that they are payable from the proceeds of assessments levied upon property especially benefited by such ditches or improvements; or (3) issued for the creation or maintenance of a permanent improvement revolving fund; or (4) for the purpose of anticipating the collection of general taxes for the year in which issued.[11]

Sec. 70. **Form and repayment of bonds.** All bonds issued by the city shall be in regular numbered series. As nearly as practica-

[11] This section incorporates the maximum debt limit now allowed by law. See Appendix 3, *Gen. Stat.* 1913, sec. 1346, as amended by *Laws* 1921, ch. 120. Any city may fix a lower limit if desired, and it may be desirable to make it perfectly clear that this section does not authorize the issuance of bonds or certificates of indebtedness for anticipating the collection of taxes for the year, but merely specifies such bonds or certificates, if any there be, as exempted from the debt limit.

ble, an equal amount of each series shall fall due each year.[12] No bonds shall be issued to run for a longer term than the reasonable life expectancy of the property or improvement for which the bonds are authorized, as ascertained and set forth in the ordinance authorizing such bonds, and in no case shall bonds be issued to run for more than thirty years. The purposes for which bonds are authorized shall be set forth in the ordinance authorizing them, and the proceeds from such bonds shall not be diverted to any other purpose. It shall be the duty of the city manager to include in his estimates each year a sum or sums amply sufficient to pay the principal of, and the interest on, any bonds which are to fall due in the coming fiscal year, and another sum sufficient to pay the interest for the same year on the bonds which will be still outstanding. It shall be the duty of the council, enforceable by mandamus upon the suit of any bondholder or taxpayer, to include such sum or sums as may be necessary for this purpose in the annual budget which it passes.

Sec. 71. **Emergency debt certificates.** If in any year the receipts from taxes or other sources should from some unforeseen cause become insufficient for the ordinary expenses of the city, or if any calamity or other public emergency should subject the city to the necessity of making extraordinary expenditures, then the council may authorize the sale by the city treasurer of emergency debt certificates to run not to exceed one year and to bear interest at six per cent per annum. A tax sufficient to redeem all such certificates at maturity shall be levied as part of the budget of the following year. The authorization of an issue of such emergency debt certificates shall take the form of an ordinance approved by five sevenths of the members of the council; the ordinance may, if deemed necessary, be passed as an emergency ordinance.

Sec. 72. **Bonds outside the debt limit.** Subject to the referendum powers of the voters, the council may issue bonds for legal purposes outside of the debt limit, subject to the following limitations as to the total amount which may be outstanding at any time: (a) for the creation and maintenance of a permanent improvement revolving fund, not to exceed.....thousand dollars;

[12] This section provides for the serial bond system. If it is adopted the city will pay off indebtedness from year to year, and it will be able, when all old debts have been paid off, to dispense with the sinking fund entirely, simply taking out of current revenue each year the money needed to pay off bonds maturing and interest payable that year.

(b) for extending, enlarging, or improving water and lighting and heat and power plants, or either, or other revenue-producing public utilities of whatever nature, owned and operated by the city, or of acquiring property needed in connection therewith, not to exceed .....thousand dollars; (c) for public improvements payable from special assessments, without limit as to amount.

CHAPTER 8

Public improvements and special assessments

Sec. 73. **The city plan.** The city council shall, with the assistance of the city manager and, if desired, of an advisory city planning commission, prepare and adopt a complete plan for the future physical development of the city. Such plan may be altered from time to time. It may include provisions for zoning, for the platting and development of new areas, for the planning and location of public works of art, public buildings, parks, playgrounds, harbors, bridges, transportation lines, and other public facilities, and for the laying out, grading, and improving of streets and public places, as well as for all other matters which may seem essential to such a plan.

Sec. 74. **Enforcement of city plan.** The council shall have all necessary power, acting through the city manager, to enforce complete adherence by all persons to the plan adopted as provided above. The city manager shall report to the council all departures from the city plan by individuals or corporations.

Sec. 75. **Power to make improvements and levy assessments.** The city of A——— shall have the power to make any and every type of public improvement not forbidden by the laws of this state, and to levy special assessments for all such as are of a local character. The amounts assessed to benefited property to pay for local improvements may equal the cost of the improvement with interest until paid, but shall in no case exceed the value of the benefits received by such property. In no case shall any local improvement be commenced until at least twenty per cent of the amount to be raised by special assessments has been paid into the city treasury in cash.

Sec. 76. **Local improvements regulations.** After this charter takes effect local improvements shall continue for the time being to be made as far as possible according to the charter provisions and laws previously applicable thereto. As soon as possible, however, the council shall prepare and adopt a complete ordinance covering every

type of public improvement, and when this ordinance takes effect it shall supplant other provisions of law or charter upon the same subject. It may be amended from time to time as other ordinances. It shall classify public improvements into three groups, as follows: *first,* those which shall be constructed or provided entirely from the general revenues of the city; *second,* those which shall be constructed or provided partly from general revenues and partly from special assessments; and *third,* those which shall be constructed or provided entirely by special assessments. The second class may be further subdivided. The ordinance shall provide a complete working code, covering petitions of resident property owners, the determination of assessments and assessment districts, public hearings, appeals from assessments and the trial thereof, reassessments, the spreading of not to exceed eighty per cent of the assessments over a period of not to exceed ten years, the collection of assessments along with other taxes or otherwise, penalties for delinquency in making payments, and all other matters appropriate to the subject of local improvements and assessments.[18] After the passage of such ordinance, all resolutions providing for public improvements shall conform to the regulations laid down in such ordinance.

Sec. 77. **Public works. How performed.** Public works, including all local improvements, may be constructed, extended, repaired, and maintained either directly by day labor or by contract. Except in cases of extraordinary emergencies, not to exceed eight hours shall constitute a day's work and not to exceed forty-eight hours a week's work, for any person employed upon public works of the city, whether employed by a contractor or by the city. Every such employee shall receive at least $2.50 per day of such work, and every contractor upon public work of the city shall guarantee, to pay each of his employees not less than the city itself pays for similar work, and every contractor shall observe such guarantee upon penalty of forfeiting to the city treble the amount of the difference between what was actually paid and what should have been paid to such employees. This amount may be recovered by the city in an appropriate action and the net amount, after deduction of costs, shall be divided equally between the employees and the city treasury, each employee receiving his appropriate share considering the wages to which he was entitled

[18] Where a city has in existence a perfectly well-understood, simple, flexible, and inexpensive system of levying special assessments, it may be better to incorporate its provisions in the charter.

and the wages actually paid him. The city may require contractors to give bonds for the protection of the city, the employees, and materialmen.

CHAPTER 9

Eminent domain

Sec. 78. **Power to acquire property.** The city of A———— is hereby empowered to acquire, by purchase, gift, devise, or condemnation, any property, corporeal or incorporeal, either within or without its corporate boundaries, which may be needed by said city for any public use or purpose. In addition to the power to acquire property for other public purposes, the city may also acquire, as herein provided, any gas, water, heat, power, light, telephone, or other plant, or other public utility; but no proceedings to acquire any such public utility shall be consummated unless the city has the money in its treasury to pay for the same or has by vote of the people made provision for paying for the property proposed to be acquired. Easements for slopes, fills, sewers, building lines, poles, wires, pipes, and conduits for water, gas, heat, and power may be acquired by gift, devise, purchase, or condemnation in the manner provided by law.

Sec. 79. **Proceedings in taking property.** The necessity for the taking of any property by the city shall be determined by the council and shall be declared by a resolution which shall describe such property as nearly as may be and state the use to which it is to be devoted. The acquisition of such property may be accomplished by proceedings at law, as in taking land for public use by right of eminent domain according to the laws of this state, except as otherwise provided in this chapter.

Sec. 80. **Payment of award.** Whenever an award of damages shall be confirmed in any proceeding for the taking of property under this chapter, or whenever the court shall render final judgment in any appeal from any such award, and the time for abandoning such proceedings by the city shall have expired, the city shall be bound to, and shall, within sixty days of such final determination, pay the amount of the award with interest thereon at the rate of six per cent per annum from the date of the confirmation of the award or judgment of the court, as the case may be; and if not so paid, judgment therefor may be had against the city.

Sec. 81. **City may abandon proceedings.** The city may, by resolution of the council at any stage of the condemnation proceed-

ings, or at any time within thirty days after any commissioners appointed by the court hereunder shall have filed their report with the clerk of court, or in case of an appeal to the district or supreme court at any time within thirty days after final determination thereof, abandon such proceedings as to all or any parcel of the property sought to be acquired and shall pay all costs thereof.

Sec. 82. **City may take entire plant.** In case the city shall condemn a public utility which is operated at the time of the commencement of condemnation proceedings as one property or one system, it shall not be necessary in such condemnation proceedings or any of the proceedings of the council, to describe or treat separately the different kinds of property composing such system, but all of the property, lands, articles, franchises, and rights which enter into and go to make up such system may, unless otherwise ordered by the court, be treated together as constituting one property and an award for the whole property in one lump sum may be made by the commissioners on condemnation or other body assessing the damages. But this shall not prevent the city, in cases where the plant and property is separable into distinct parts, from taking only such part or parts thereof as may be necessary in the public interests.

CHAPTER 10

Franchises

Sec. 83. **Franchises defined.** The word "franchise" as used in this chapter shall be construed to mean any special privilege granted to any person, co-partnership, or corporation, in, over, upon, or under any of the highways or public places of the city, whether such privilege has heretofore been granted by it or by the state of Minnesota, or shall hereafter be granted by the city or by the state of Minnesota.

Sec. 84. **Franchise ordinances.** The council may grant franchises by ordinance adopted by a five-sevenths vote, but in no case shall a franchise be granted by an emergency ordinance. Franchise rights shall always be subject to the superior right of the public to the use of streets and public places. All corporations, co-partnerships, or persons desiring to make an especially burdensome use of the streets or public places, inconsistent with the public's right in such places, or desiring the privilege of placing in, over, upon, or under any street or public place any permanent or semi-permanent fixtures for the purpose of constructing or operating street or other

railways, or for telephoning, or telegraphing, or transmitting electricity, or transporting by pneumatic tubes, or for furnishing to the city or its inhabitants or any portion thereof transportation facilities, water, light, heat, power, or any other public utility, or for any other purpose, shall be required to obtain a franchise before proceeding to make such use of the streets or public places or before proceeding to place such fixtures in such places.

Sec. 85. **Publication of franchises.** Every ordinance granting or extending any franchise shall contain all the terms and conditions of the franchise. A franchise shall be without any validity whatever until it has been accepted by the grantee, and until it has been given adequate publicity, either by the publication of the franchise verbatim in the official paper of the city at least once a week for four successive weeks after its passage, or by the posting of authentic copies of the franchise upon bulletin boards in at least ten of the most public places in the city for a period of thirty days after its passage. Nothing herein contained shall be construed as in any way preventing the electors from exercising their powers under the referendum to reject such franchise.

Sec. 86. **Term of franchises limited.** No perpetual franchise shall ever be granted, nor shall any franchise be granted for a longer term than twenty-five years.

Sec. 87. **Power of regulation reserved.** The city shall have the right and power to regulate and control the exercise by any corporation, co-partnership, or person, of any franchise however acquired, and whether such franchise has been heretofore granted by it or by the state of Minnesota, or shall hereafter be granted by the city or by the state of Minnesota.

Sec. 88. **Regulation of rates and charges.** All corporations, co-partnerships, and persons exercising franchises in the city shall give courteous, efficient, and adequate service at reasonable rates. A reasonable rate shall be construed to be one which will, with efficient management, normally yield, above all operating expenses and depreciation, a fair return upon all money honestly and efficiently invested in the plant and equipment used by the company in the public service within the city. This shall not be construed as a guarantee of a return and in no case shall there be any return upon franchise value. Within these limits, the determination of the maximum price or rate to be charged by any company for service rendered to the city or to any person or persons within the city shall be made,

if possible, by direct negotiations between the company and the council at public hearings. In case of failure to reach an agreement by this method, the council shall, not less than thirty days before the expiration of any existing rate schedule or agreement, appoint the city manager or some other expert as its representative; the company shall appoint a representative; and these two shall by mutual agreement select a third person, preferably an expert in valuation and rate-making, who shall together constitute a board of arbitration. This board shall report its findings as soon as possible and the rate which it shall agree upon by a majority vote shall be the legal rate, subject to revision by any court of competent jurisdiction. Schedules of rates thus fixed shall be as flexible as may be, and shall in no case fix a definite rate for a period of more than five years. The city and the company may, by mutual agreement, revise existing schedules of rates at any time, proceeding in each case as provided for the original fixing of the rates.

Sec. 89. **Arbitration of labor disputes.** If any controversy, dispute, or disagreement shall arise between any public service corporation, co-partnership, or person, operating in the city, and its employees, which, in the opinion of the council, interferes or threatens to interfere with the service to which the city or its inhabitants are entitled, the council shall have power to compel the parties involved in the controversy to submit the same to a board of arbitration under such procedure as may be provided by ordinance. The findings of such arbitral authority shall be advisory, unless the parties shall agree in advance to make such findings mandatory.

Sec. 90. **Conditions in every franchise.** Every franchise which does not contain the provisions prescribed in this section shall be absolutely void and incapable of ratification by estoppel or otherwise. Every franchise shall contain the following provisions:

(a) That the grantee shall be subject to and will perform on its part all the terms of sections 83 to 91, inclusive, as well as all other pertinent provisions of this charter.

(b) That the grantee shall in no case claim or pretend to exercise any power to fix fares, rates, and charges; but that such fares, rates, and charges shall at all times be just, fair, and reasonable for the services rendered, and shall in all cases be fixed and from time to time changed in the manner provided in section 88 of this charter.

(c) That the council shall have the right to require reasonable extensions of any public service system from time to time, and to

make such rules and regulations as may be required to secure adequate and proper service and to provide sufficient accommodations for the public.

(d) That the grantee shall not issue any capital stock on account of the franchise or the value thereof, and that the grantee shall have no right to receive, upon condemnation proceedings brought by the city to acquire the public utility exercising such franchise, any return on account of the franchise or its value.

(e) That no sale or lease of said franchise shall be effective until the assignee or lessee shall have filed in the office of the city clerk an instrument, duly executed, reciting the fact of such sale or lease, accepting the terms of the franchise, and agreeing to perform all the conditions required of the grantee thereunder. The assignee or lessee shall also file a bond in such amount and with such conditions as the council may require, which bond shall run to the city as obligee, with sureties satisfactory to the council, and shall obligate the assignee or lessee to discharge all obligations and liabilities imposed by said franchise.

(f) That every grant in said franchise contained of permission for the erection of poles, masts, or other fixtures in the streets and for the attachment of wires thereto, or for the laying of tracks in, or of pipes or conduits under the streets or public places, or for the placing in the streets or other public places of any permanent or semi-permanent fixtures whatsoever, shall be subject to the conditions that the council shall have the power to require such alterations therein, or relocation or rerouting thereof, as the council may at any time deem necessary for the safety, health, or convenience of the public, and particularly that it shall have the power to require the removal of poles, masts, and other fixtures bearing wires and the placing underground of all wires for whatsoever purpose used.

(g) Every franchise and every extension or renewal of such franchise, shall contain a provision for its acceptance in writing by the grantee within thirty days after its passage by the council and before its submission to a vote of the people in case of a referendum. No such franchise shall be binding upon the city until its acceptance by the grantee. Such acceptance shall be construed to be an acceptance of, and consent to, all the terms, conditions, and limitations contained in the ordinance granting the franchise as well as of the provisions of this charter.

The violation by the holder of any franchise of any of the express provisions prescribed by this section shall be a sufficient cause for the forfeiture of the franchise by a resolution of the council.

Sec. 91. **Further provisions of franchises.** The enumeration and specification of particular matters which must be included in every franchise or renewal or extension thereof, shall not be construed as impairing the right of the city to insert in any such franchise or renewal or extension thereof such other and further conditions and restrictions as the council may deem proper to protect the city's interests, nor shall anything contained in this charter limit any right or power possessed by the city over existing franchises.

CHAPTER 11

Public ownership and operation of utilities

Sec. 92. **Acquisition and operation of utilities.** The city shall have power to acquire public utilities as provided in chapter 9 of this charter. The operation of all public utilities owned by the city shall be under the supervision of the city manager.

Sec. 93. **Rates and finances.** Upon recommendations made by the city manager or upon its own motion the council shall have the power to fix all rates and charges for water, light, heat, and all other utilities provided by plants owned by the city, but such rates and charges shall be just and reasonable. In like manner the council may prescribe the time and manner in which payments for all such services shall be made, and the manner in which water and electric current shall be computed or measured, whether by meter or flat rate, and make such other regulations as may be necessary, and may prescribe penalties for violations of such regulations.

Sec. 94. **Purchase in bulk.** The council may, in lieu of providing for the local production of gas, electricity, water, and other utilities, purchase the same in bulk and resell them to local consumers at such rates as it may fix.

Sec. 95. **City to pay for services.** The council shall make a reasonable charge, based on the cost of service, for lighting the streets and public buildings, or for supplying heat, power, or any other utility, and a reasonable hydrant rental and other charges for supplying the city with water, and shall credit the same to the publicly owned utility supplying the service. Such rentals and other charges for light, heat, power, water, and other services, shall be collected in the same manner as from other consumers, unless the council provides some other plan.

Sec. 96. **Lease of plant.** The council may, if the public interests will be served thereby, contract with any responsible person, co-partnership, or corporation, for the operation of any utility owned by the city, upon such rentals and conditions as it may deem necessary, but such contract shall be embodied in and let only by an ordinance approved by five sevenths of the council and subject to popular referendum. In no case shall such contract be for a longer term than ten years. The contractor shall be subject as far as possible to the rules as to rates and service, and as to council control, laid down for the holders of franchises in chapter 10 of this charter.

Sec. 97. **Public utility. How sold.** No public utility owned by the city, whether acquired prior to the adoption of this charter or thereafter, shall be sold or otherwise disposed of by the city, unless the full terms of the proposition of said sale or other disposition thereof, together with the price to be paid therefor, shall have been embodied in an ordinance passed by a five-sevenths vote of the council in the usual way, and submitted to the electors at a general or special election and approved by a majority vote of the electors voting thereon.

CHAPTER 12

Miscellaneous and transitory provisions

Sec. 98. **Official publications.** The council shall regulate by ordinance the manner in which official publicity shall be given to the holding of elections, to ordinances, resolutions, initiative, referendum, and recall petitions, to requests for bids upon contemplated purchases and contracts, and to all other matters whatsoever which require publication either by the terms of this charter or by the laws of Minnesota. It shall annually designate a newspaper of general circulation in the city as the official paper in which shall be published such measures and matters as are by the laws of this state required to be so published, and such other matters as the council may deem it wise to have published in this manner, or in lieu thereof it may establish a municipal publication, which shall then be the official newspaper. The council may in its discretion provide for the publication of the annual budget, ordinances, resolutions, initiative, referendum, and recall petitions, election notices, and such other measures and matters as it may deem wise by the posting of typewritten, mimeographed, or printed copies thereof upon at least ten bulletin boards located in the most public places of the city, near street car stops, at important street intersections, at the fire station, the city hall, and so on, and

for such period of time as the council may direct in each case. If the latter method of publication is adopted, the council may provide that it shall be in lieu of other methods of publication or in addition thereto at its option. Wherever in this charter there is a requirement of the publication of any measure or matter, it shall be understood that the city council may designate the manner of such publication, subject to the options permitted by this section; but nothing herein contained shall be construed as authorizing or as attempting to authorize any violation of the constitution or the statutes of the state in any matter which is of state concern or which is exclusively under state control.

Sec. 99. **Oath of office.** Every officer of the city shall, before entering upon the duties of his office, take and subscribe an oath of office in substantially the following form: "I do solemnly swear (or affirm) to support the constitution of the United States and of this state, and to discharge faithfully the duties devolving upon me as [mayor, or councilman, or city manager, etc.] of this city to the best of my judgment and ability."

Sec. 100. **City officers not to accept favors or contracts.** No officer or employee of the city shall solicit or receive any pay, commission, money, or thing of value, or derive any benefit, profit, or advantage, directly or indirectly, from, or by reason of, any improvement, alteration, or repair required by authority of the city, or any contract to which the city shall be a party, except his lawful compensation or salary as such officer or employee. No officer or employee of the city, except as otherwise provided in this charter, or by law, shall solicit, accept, or receive, directly or indirectly from any public utility corporation or the owner of any public utility or franchise, any pass, frank, free ticket, free service, or any other favor, upon terms more favorable than those granted the public generally. A violation of any of the provisions of this section shall disqualify the offender from continuing in office or in the employment of the city, and he shall be removed therefrom. Any contract with the city in which any officer or employee of the city is, or becomes, directly or indirectly interested, personally, or as a member of a firm, or as an officer or director of a corporation, shall be void; and any money which shall have been paid on such contract by the city may be recovered from any or all the persons interested therein by joint or several action.

Sec. 101. **Official bonds.** The city manager, the city clerk, and such other officers of the city as may be provided for by ordinance, shall each before entering upon the duties of their respective offices, give bond to the city in such sum as may be fixed by the council as an additional security for the faithful performance of their respective official duties and the safe-keeping of the public funds. Such bonds shall be approved by the city council and shall be endorsed by at least three members of the council as having been so approved. They shall be filed with the secretary of the council. The provisions of the laws of the state relating to official bonds, not inconsistent with this charter, shall be complied with. The first city manager under this charter shall give bond in the sum of five thousand dollars, but the council may increase this sum at any time.

Sec. 102. **City property not lost by adverse possession.** No right, title, estate, or easement of the city in any property shall be lost by adverse possession or occupancy, and no statute of limitations shall operate against the city in favor of any person occupying any public property or highway, whether such highway shall have been improved or not.

Sec. 103. **Sales of real property.** No real property of the city shall be disposed of except by ordinance or resolution. The proceeds of any such sale shall be used as far as possible to retire any outstanding indebtedness incurred by the city in the purchase, construction, or improvement of this or other property used for the same public purpose; but if there be no such outstanding indebtedness, then the council may by a resolution adopted by a five-sevenths vote designate some other public use for such proceeds.

Sec. 104. **Vacation of streets.** No street or alley within the city shall be discontinued except by ordinance approved by a five-sevenths vote of the council and subject to popular referendum. A record of such vacation shall be made in the office of the Register of Deeds of the county.

Section 105. **Damage suits.** No action shall be maintained against the city on account of any injuries or damages to persons or property, unless such action shall be commenced within one year from the occurrence of such injury or damage, nor unless notice shall have been given in writing to the city clerk within thirty days of the occurrence of such injury or damage, stating the time when and the specific place where, and the circumstances under which, the

same occurred, and that the person injured or damaged will claim damages of the city therefor.

Sec. 106. **Recovery of judgment for damages.** If any judgment shall be recovered in any action against the city for any injury or damage caused by any obstruction, excavation, opening, or defect in any street or alley or public ground caused or occasioned by the act or omission of any person or corporation, the city shall have the right to recover the amount of any such judgment from the person or corporation so responsible for such obstruction, excavation, opening, or defect; and such person or corporation is hereby declared to be liable to the city in the amount of such damages.

Sec. 107. **City to succeed to rights and obligations of former city.** The city shall succeed to all the property, rights, and privileges, and shall be subject to all the legal obligations, of the city under the former charter.

Sec. 108. **Present officers to hold office till when.** The present officers of the city shall continue in their respective offices and functions, and shall continue to govern the city in the usual manner until the..... They shall make such financial and other provisions for the fiscal year .... as will serve to carry on the government until a government has been set up under this charter, and they shall make provision for the election of the first city council as provided for in chapter 4 of this charter.

Sec. 109. **Statutes not affected by charter.** All general laws and statutes of the state applicable to all cities operating under home rule charters, or applicable to cities of the same class as the city of A——— operating under home rule charters, and not inconsistent with the provisions of this charter, shall apply to the city of A———, and shall be construed as supplementary to the provisions of this charter.[14]

Sec. 110. **Existing ordinances continued.** All ordinances and regulations of the city in force when this charter takes effect, and not inconsistent with the provisions thereof, are hereby continued in full force and effect until amended or repealed.

[14] No city should adopt this provision without a careful study of the statutes in question. It may be found desirable to exempt the city from the operation of certain laws, and the statutes expressly authorize this to be done. See *Gen. Stat.* 1913, sec. 1345, as amended in 1921, and printed in Appendix 3 of this book.

Sec. 111. **Pending condemnations and assessments.** Any condemnation or assessment proceeding in progress when this charter takes effect shall be continued and completed under the laws under which such proceedings were begun. All assessments made by the city prior to the time when this charter takes effect shall be collected and the lien thereof enforced in the same manner as if this charter had not been adopted.

Sec. 112. **Ordinances to make charter effective.** The council is hereby empowered to, and it shall by ordinance, make such regulations as may be necessary to carry out and make effective the provisions of this charter.

APPENDIX 2

THE MINNESOTA MUNICIPAL HOME RULE PROVISION

(Minnesota Constitution, art. 4, sec. 36)
(Adopted November 8, 1898)

In general. This section does not violate the Federal guarantee to the states of the republican form of government. Hopkins *v.* City of Duluth, (1900), 81 *Minn.* 189, 83 *N. W.* 536.

Any city or village in this state

See p. 62 for meaning of terms "city" and "village." See p. 178 for a list of the cities in Minnesota to-day, and p. 181 for a list of villages having over 1,000 population in 1920. The second home rule enabling act (*Laws* 1899, ch. 351) limited the right to frame home rule charters to villages, and to cities organized before 1899. This statute was sustained as constitutional. State *ex rel.* Getchell *v.* O'Connor, (1900), 81 *Minn.* 79, 83 *N. W.* 498. In 1907 the statute was changed to conform to the constitution by permitting all cities, whenever organized, as well as all villages, to avail themselves of the right to adopt home rule. (*Laws* 1907, ch. 375).

may frame a charter

What is a charter? It is "an act of a legislative body creating a municipal or other corporation and defining its powers and privileges." Webster, *New International Dictionary.* The charter commission and the voters of the city together constitute the "legislative body" which enacts a home rule charter.

Contents of a home rule charter. In general. "The people of a city in adopting a charter have not power to legislate upon all subjects, but as to matters of municipal concern they have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld." Park *v.* City of Duluth, (1916), 134 *Minn.* 296, 159 *N. W.* 627, and cases there cited.

"Subject to the limitations in this chapter provided, it [the home rule charter] may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions,

as fully as the legislature might have done before the adoption of section 33, article 4 of the constitution." *G. S.* 1913, sec. 1345; reënacted without change by *Laws* 1921, ch. 343.

Contents of a home rule charter. Specific illustrations. (1) *A department of health* "very properly belongs and is incident to the government of municipalities." Such department may be provided for in a home rule charter, and may be authorized to require *vaccination* as a condition precedent to the admission of children to schools. State *ex rel.* Freeman *v.* Zimmerman, (1902), 86 *Minn.* 353, 90 *N. W.* 783. (2) By and under a home rule charter a city may claim and exercise the power of *eminent domain,* the right to *levy special assessments* for local improvements, and to *confer certain powers and impose certain duties upon the local district court* in connection with condemnation proceedings. State *ex rel.* Ryan *v.* District Court of Ramsey County, (1902), 87 *Minn.* 146, 91 *N. W.* 300. See also Turner *v.* Snyder, (1907), 101 *Minn.* 481, 112 *N. W.* 868. (3) The subject of the *presentation of claims against the city* is appropriate to a home rule charter, and in this connection the charter may *confer jurisdiction on the district court.* State *ex rel.* Barber Asphalt Paving Co. *v.* District Court of St. Louis County, (1903), 90 *Minn.* 457, 97 *N. W.* 132; Peterson *v.* City of Red Wing, (1907), 101 *Minn.* 62, 111 *N. W.* 840. (4) *"City contracts for public improvements,* and *bonds to secure performance of them and the payment of laborers and materialmen,"* and the *conditions and limitations as to the enforcement of such bonds,* are all subjects appropriate to be dealt with in home rule charters. Grant *v.* Berrisford, (1904), 94 *Minn.* 45, 101 *N. W.* 940, 1113; Standard Salt & Cement Co. *v.* National Surety Co., (1916), 134 *Minn.* 120, 158 *N. W.* 802. (5) Under a home rule charter, if so provided, *special assessments* may be levied *without a preliminary petition by property owners.* Wolfe *v.* City of Moorhead, (1906), 98 *Minn.* 113, 107 *N. W.* 728. (6) In a St. Paul case in 1907 it was not questioned that a home rule city may have as much *police power* over woodyards as any other city. City of St. Paul *v.* Schleh, (1907), 101 *Minn.* 425, 112 *N. W.* 532. (7) A home rule charter may even *limit the city's common law liability for negligent maintenance of streets and sidewalks.* Schigley *v.* City of Waseca, (1908), 106 *Minn.* 94, 118 *N. W.* 259. (8) In the days before national prohibition, a fourth class home rule city was sustained in its *regulation of the liquor traffic* in a manner other than that provided in the general law, and a home

rule city of the first class (Duluth) was within its rights in *voting out the saloons* without general statutory authority. Thune *v.* Hetland, (1911), 114 *Minn.* 395, 131 *N. W.* 372; State *ex rel.* Zien *v.* City of Duluth, (1916), 134 *Minn.* 355, 159 *N. W.* 792. But under *Laws* 1915, ch. 23 (County Option Law), a county vote to prohibit the liquor traffic overruled a city vote to permit saloons. State *ex rel.* Smith *v.* City of International Falls, (1916), 132 *Minn.* 298, 156 *N. W.* 249. (9) It is not unconstitutional to *levy special assessments according to the frontage rule.* State *ex rel.* Oliver Iron Mining Co. *v.* City of Ely, (1915), 129 *Minn.* 40, 151 *N. W.* 545. (10) In the case of State *ex rel.* Grenville *v.* Nash, (1916), 134 *Minn.* 73, 158 *N. W.* 730, neither party contended that it was not within the power of the city of St. Paul under a home rule charter to *provide a building code.* (11) In the Duluth wheelage tax case, in which the court sustained a local wheelage tax authorized by the charter but not authorized by any general state law the supreme court broadly intimated that a home rule city may *adopt its own scheme of local taxation.* The home rule charter was itself held to be ample "legislative authority" for the wheelage tax ordinance. "The adoption of such a charter is legislation." Park *v.* City of Duluth, (1916), 134 *Minn.* 296, 159 *N. W.* 627. (12) The charter may authorize the creation of sewer districts in the city, and the levying of special taxes therein for relief sewers. *In re* Delinquent Taxes in Polk County, (1920), 147 *Minn.* 344, 180 *N. W.* 240.

Contents of a home rule charter. Exceptions. But *only the legislature may establish a municipal court;* "a vote of the electors of a city on the adoption of a charter is not the establishment of a court, as required by the constitution." State *ex rel.* Simpson *v.* Fleming, (1910), 112 *Minn.* 136, 127 *N. W.* 473; *Minn. Const.* art. 6, sec. 1. Municipal courts are state courts; the judges are state officers. A municipal judge can not be voted out of office or have his term shortened by the voters in adopting a charter. See also Gordon *v.* Freeman, (1910), 112 *Minn.* 482, 128 *N. W.* 834, 1118; Brown *v.* Smallwood, (1915), 130 *Minn.* 492, 153 *N. W.* 953.

Furthermore, while a home rule charter may provide that the contracts of the city shall be void or voidable under certain conditions, *it can not as to contracts merely irregular,* because of unintentional failure to comply with charter provisions, *"abrogate established equitable doctrines,* which in certain cases permit a recovery of the reasonable value of goods delivered in good faith

thereunder to the municipality, and by it used for authorized and legitimate purposes." Laird Norton Yards *v.* City of Rochester, (1912), 117 *Minn.* 114, 134 *N. W.* 644.

Where the state law expressly provided that *actions involving the title to real estate should be tried in the county where the property is located,* held that a city can not in its home rule charter make a contrary regulation. Hjelm *v.* City of St. Cloud, (1915), 129 *Minn.* 240, 152 *N. W.* 408.

Preferential voting, as provided in the Duluth charter of 1912, was held *unconstitutional.* Brown *v.* Smallwood, (1915), 130 *Minn.* 492, 153 *N. W.* 953.

It is *not a municipal function to gather evidence as to illegal combinations in restraint of trade.* Neither does the public policy of the state permit city councils or other bodies *to punish witnesses for contempt* where they refuse to produce books, papers, etc., demanded by the council. Instead there must be a resort to the courts in such cases. State *ex rel.* Peers *v.* Fitzgerald, (1915), 131 *Minn.* 116, 154 *N. W.* 750.

Force and effect of charter. The provisions of a home rule charter "have all the force and effect of legislative enactments." State *ex rel.* Freeman *v.* Zimmerman, (1902), 86 *Minn.* 353, 90 *N. W.* 783.

A home rule charter is of equal force with a "charter granted by a direct act of the legislature." Grant *v.* Berrisford, (1904), 94 *Minn.* 45, 101 *N. W.* 940, 1113. See also Park *v.* City of Duluth, (1916), 134 *Minn.* 296, 159 *N. W.* 627.

"The rule which requires a statute to be so construed as not to infringe constitutional inhibitions, if reasonably susceptible of such construction, is equally applicable to such [home rule] charters." State *ex rel.* Oliver Iron Mining Co. *v.* City of Ely, (1915), 129 *Minn.* 40, 151 *N. W.* 545.

Even where a state law exists as to a particular municipal subject, if a home rule charter has a provision upon the same matter. such home rule charter provision will provide the exclusive rule upon the subject. Grant *v.* Berrisford, (1904), 94 *Minn.* 45, 101 *N. W.* 940, 1113; Standard Salt & Cement Co. *v.* National Surety Co., (1916), 134 *Minn.* 120, 158 *N. W.* 802.

for its own government

See case of City of Duluth *v.* Orr, (1911), 115 *Minn.* 267, 132 *N. W.* 265, where it was held that a home rule charter may not

extend the powers of the city government beyond the city limits. The city had attempted to forbid the storage of explosives within, or within one mile of, the city limits.

as a city

Any village which frames and adopts a home rule charter becomes a city thereby. The charter should provide for the government of a city only "as a city," i.e., in its municipal concerns.

consistent with and subject to the laws of this state as follows:

Where the subject dealt with in the charter is "appropriate to the orderly conduct of municipal affairs" the charter provision on that subject may provide a rule different from, and exclusive of, that which is contained in general laws of the state upon the same subject." Grant *v.* Berrisford, (1904), 94 *Minn.* 45, 101 *N. W.* 940, 1113.

In cases where the subject is one of municipal concern and "where the charter covers the entire subject-matter, the intention to supersede all general laws on the subject will be presumed, unless otherwise expressed." Turner *v.* Snyder, (1907), 101 *Minn.* 481, 112 *N. W.* 868.

In another decision the court said: "We have held in recent cases that the provisions of home rule charters upon all subjects proper for municipal regulation prevail over the general statutes relating to the same subject-matter, except in those cases where the charter contravenes the public policy of the state, as declared by the general laws and in those instances where the legislature expressly declares that a general law shall prevail, or a purpose that it shall so prevail appears by fair implication, taking into consideration the subject and the general nature of the charter and general statutory provisions." American Electric Co. *v.* City of Waseca, (1907), 102 *Minn.* 329, 113 *N. W.* 899.

But where the purpose that an enactment of the legislature upon a municipal matter is intended to overrule home rule charter provisions upon the same subject is either expressed or clearly implied, there can be no question that the legislation "is paramount while in force to the provisions relating to the same matter included in the local charter." *Minn. Const.*, art. 4, sec. 36. See State *ex rel.* Smith *v.* City of International Falls, (1916), 132 *Minn.* 298, 156 *N. W.* 249, where the *County Option Law of 1915* was held to require cities in any county to abide by a county vote to prohibit the liquor traffic. Other laws relating to municipal affairs, which

are also paramount over home rule charters, are the following: (1) *The motor vehicle law,* (*Laws* 1911, ch. 365, sec. 18; *G. S.* 1913, sec. 2637), as to the use and speed of motor vehicles. See **Park** *v.* City of Duluth, (1916), 134 *Minn.* 296, 159 *N. W.* 627. (2) The act as to *notice of claims for damages* (*Laws* 1913, ch. 391; *G. S.* 1913, secs. 1786-89). See Johnson *v.* City of Duluth, (1916), 133 *Minn.* 405, 158 *N. W.* 616. (3) The law requiring *accurate records and publication of costs of public work* (*Laws* 1921, ch. 274). (4) The *per capita tax limit* law (*Laws* 1921, ch. 417). (5) The *wheelage tax limit* law (*Laws* 1921, ch. 454). This list is not exhaustive.

The legislature shall provide, under such restrictions as it deems proper, for a board of fifteen freeholders,

The legislation carrying this provision into effect will be found in the following appendix. A "freeholder" is a person who owns a freehold estate; "one who owns land in fee or for life, or for some indeterminate period. The estate may be equitable or legal. State *v.* Ragland, 75 *N. C.* 13." *Bouvier's Law Dictionary.*

who shall be and for the past five years shall have been qualified voters thereof,

Women were given complete suffrage, including the right to vote in city elections, by the nineteenth amendment to the Federal constitution in 1920. Previously the women of Minnesota had not been qualified voters of the city except for school and library affairs. Some question, based on purely technical grounds, might be raised as to the right of women to be appointed to charter commissions before 1925.

to be appointed by the district judges of the judicial district in which the city or village is situated, as the legislature may determine,

for a term in no event to exceed six years,

The term has been set at four years. There is nothing to prevent reappointments indefinitely.

which board shall within six months after its appointment

When does this six months period begin? It has been decided that "in determining the date from which to compute the six months within which a proposed charter shall be submitted to the mayor under *Const.* art. 4, sec. 36, a date earlier than the date of the appointment of the last member of the charter commission will not be taken." (Headnote). State *ex rel.* Lowe *v.* Barlow, (1915), 129 *Minn.* 181, 151 *N. W.* 970.

return to the chief magistrate of said city or village a draft of said charter signed by the members of said board, or a majority thereof.

Such charter shall be submitted to the qualified voters of such city or village

The court will allow a writ of mandamus to compel the city or village council to submit such charter regardless of whether an intervening election was one at which the charter might properly have been submitted. State *ex rel.* Lowe *v.* Barlow, (1915), 129 *Minn.* 181, 151 *N. W.* 970. The language of the statute is "*shall* be submitted." The local authorities have no option in this matter.

at the next election thereafter,

Since the wording here is not "at the next *general* election," it has been held that legislature is within its constitutional rights in authorizing the submission of home rule charters at special elections. Naturally it is easier to get a charter adopted at a special election. State *ex rel.* Nichols *v.* Kiewel, (1902), 86 *Minn.* 136, 90 *N. W.* 160.

and if four-sevenths of the qualified voters voting at such election shall ratify the same,

In the Duluth home rule election of 1900, 6,707 ballots were deposited in the boxes, the entire election being on one ballot. Of these, 5 were marked with initials or otherwise identified and therefore fraudulent; 15 others were entirely unintelligible; and 6 were entirely blank. There being a contest, the court excluded these 26 ballots for all purposes, reducing the total number of voters actually voting *(effectively voting)* to 6,681. Upon this basis the court declared the charter carried. The supreme court sustained this view. A voter must actually vote to be counted. Hopkins *v.* City of Duluth, (1900), 81 *Minn.* 189, 83 *N. W.* 536.

it shall at the end of thirty days thereafter,

"At the end of thirty days thereafter" means after the election, not after the courts have determined the election to be valid. Davis *v.* Hugo, (1900), 81 *Minn.* 220, 83 *N. W.* 984. And see also Standard Salt & Cement Co. *v.* National Surety Co., (1916), 134 *Minn.* 120, 158 *N. W.* 802.

become the charter of such city or village as a city,

This clause also indicates that a village which adopts a home rule charter becomes a city thereby.

and supersede any existing charter and amendments thereof;

"Any existing charter." In this state it has been held that "the charter provisions need not be comprised in a single act, . . . Parts

of the charter may be found in independent legislative acts, the charter not being named in their titles. If independent acts relate to the rights, powers, duties, and obligations of the city, they are to be regarded as parts of the city charter." State *ex rel.* Arosin *v.* Ehrmantraut, (1895), 63 *Minn.* 104, 65 *N. W.* 251, citing Morton *v.* Power, (1885), 33 *Minn.* 521, 24 *N. W.* 194.

The provisions of a home rule charter, "of which we are required to take judicial notice, have all the force and effect of legislative enactments." State *ex rel.* Freeman *v.* Zimmerman, (1902), 86 *Minn.* 353, 90 *N. W.* 783. A home rule charter is of equal force with a "charter granted by a direct act of the legislature." Grant *v.* Berrisford, (1904), 94 *Minn.* 45, 101 *N. W.* 940, 1113.

Provided, That in cities having patrol limits now established, such charter shall require a three-fourths majority vote of the qualified voters voting a [at] such election to change the patrol limits now established.

Formerly certain cities had "patrol limits" for the regulation of the liquor traffic. This clause, now obsolete, was probably inserted to allay the fears of that element in Minneapolis who were always afraid that the patrol limits would be extended.

Before any city shall incorporate under this act,

The first "enabling act," under the home rule amendment of 1896, was passed in 1897. (*Laws* 1897, ch. 255). In 1899 a new enabling act was passed to conform to the present home rule provision, adopted in 1898. (*Laws* 1899, ch. 351) While the enabling act had to be passed "before" any home rule charter could be adopted, it has never been questioned that the legislature could subsequently amend the act.

the legislature shall prescribe by law the general limits within which such charter shall be framed.

This provision is equivalent to saying that the legislature shall prescribe limits "beyond which the charter may not go." It does not require the legislature "to prescribe general and uniform limits or a broad framework on each topic to which the charter may relate, prescribing in detail the powers and authority within which the charter must be framed." To adopt this view "would wholly nullify the purposes intended to be subserved and secured by the constitution," by practically denying to cities the right to "frame their own

charters." State *ex rel.* Getchell *v.* O'Connor, (1900), 81 *Minn.* 79, 83 *N. W.* 498.

Duplicate certificates shall be made setting forth the charter proposed and its ratification,

which shall be signed by the chief magistrate of said city or village, and authenticated by its corporate seal.

One of said certificates shall be deposited in the office of secretary of state,

See White Townsite Co. *v.* City of Moorhead, (1912), 120 *Minn.* 1, 138 *N. W.* 939.

and the other, after being recorded in the office of the register of deeds for the county in which such city or village lies, shall be deposited among the archives of such city or village,

and all courts shall take judicial notice thereof.

This simply means that for the purposes of any case the courts will accept the home rule charter of the city as printed under its authority, or as kept on file in its archives or deposited with the secretary of state, as the charter of such city without requiring proof to be submitted as to its adoption, and so forth. Judicial notice is not conclusive, however; the opponent in any case "is not prevented from disputing the matter by evidence, if he believes it disputable." *Bouvier's Law Dictionary.* The courts will take judicial notice of charter amendments as well as of the original charter. White Townsite Co. *v.* City of Moorhead, (1912), 120 *Minn,* 1, 138 *N. W.* 939.

Such charter so deposited may be amended by proposal therefor made by a board of fifteen commissioners aforesaid,

published for at least thirty days in three newspapers of general circulation in such city or village,

Where an amendment had been published in 27 issues of one daily newspaper, covering 31 days, and in 5 issues each of two weekly papers, covering 29 days, but the election did not occur until 32 days after the first insertions in the two weeklies, held that the provision as to publication had been fully complied with. The constitutional provision does not require 30 different publications, but only publication in three newspapers through a period of 30 days. Wolfe *v.* City of Moorhead, (1906), 98 *Minn.* 113, 107 *N. W.* 728.

and accepted by three-fifths of the qualified voters of such city or village voting at the next election

This does not mean three fifths of those voting on the proposition, but "three-fifths of the total vote cast for any purpose at the election at which proposed amendments to city charters are submitted." State *ex rel.* Greene *v.* Hugo (1901), 84 *Minn.* 81, 86 *N. W.* 784. The courts will take judicial notice of charter amendments. White Townsite Co. *v.* City of Moorhead, (1912), 120 *Minn.* 1, 138 *N. W.* 939.

and not otherwise;

This and the following sentence in sec. 36 provide the only method or methods by which a home rule charter may be amended. The legislature may not authorize the council in a home rule city to amend the charter in fact by authorizing it to adopt the terms of a permissive state law upon a charter matter. Lodoen *v.* City of Warren, (1920), 146 *Minn.* 181, 178 *N. W.* 741. (But the legislature may itself directly, and upon its own responsibility, by a general law, change home rule charters. Thus the effect of the decision in the Warren case has been overcome by statute. *Laws* 1921, ch. 419.)

but such charter shall always be in harmony with and subject to the constitution and laws of the state of Minnesota.

This clause is a variant of the language used above, namely "consistent with and subject to the laws of this state," and is designed to forbid subsequent amendments which might bring about lack of harmony between the charter and the laws of the state.

The legislature may prescribe the duties of the commission relative to submitting amendments of charter to the vote of the people,

and shall provide that upon application of five per cent of the legal voters of any such city or village, by written petition, such commission shall submit to the vote of the people, proposed amendments to such charter, set forth in said petition.

The board of freeholders above provided for shall be permanent

and all the vacancies by death, disability to perform duties, resignation or removal from the corporate limits, or expiration of term of office, shall be filled by appointment in the same manner as the original board was created

and said board shall always contain its full complement of members.

It shall be a feature of all such charters that there shall be provided, among other things, for a mayor or chief magistrate,

The commission form of government in which the mayor has some executive and some legislative functions, and the other members of the commission likewise some of each, is not unconstitutional. A separation of powers is not required. The mayor need not be the real chief executive. State *ex rel.* Simpson *v.* City of Mankato, (1912), 117 *Minn.* 458, 136 *N. W.* 264.

Tho there has been no supreme court decision directly on the subject, the city-manager plan is also constitutional. See *Minnesota Municipalities,* Dec. 1921, vol. 6, pp. 163-69.

and a legislative body of either one or two houses;

The requirement of a legislative body does not prevent a city from having an appointive board of public works with sweeping powers of reassessment. State *ex rel.* Otis *v.* District Court of Ramsey County, (1906), 97 *Minn.* 147, 106 *N. W.* 306.

The commission form of government is not unconstitutional. State *ex rel.* Simpson *v.* City of Mankato, (1912), 117 *Minn.* 458, 136 *N. W.* 264.

The initiative and referendum, tho they confer some legislative power on the voters, are not unconstitutional. State *ex rel.* Zien *v.* City of Duluth, (1916), 134 *Minn.* 355, 159 *N. W.* 792.

if of two houses, at least one of them shall be elected by general vote of the electors.

The statutes make it clear that when there is only one house it also must be elected by the voters. See sec. 1345 of *Gen. Stat.* 1913, in the following appendix.

In submitting any such charter or amendment thereto to the qualified voters of such city or village any alternate section or article may be presented for the choice of the voters and may be voted on separately without prejudice to other articles or sections of the charter or any amendments thereto.

The language here is permissive, not mandatory. That is, several amendments or provisions may be submitted on the same subject which are so nearly alike that a voter might desire to vote for both or all in the hope that if one does not carry another will. If the voter is permitted to do this, however, care must be taken in wording the amendments so that confusion will not result in case two or more amendments on the same subject are adopted.

The legislature may provide general laws relating to affairs of cities, the application of which may be limited to cities of over fifty thousand inhabitants, or to cities of fifty and not

less than twenty thousand inhabitants, or to cities of twenty and not less than ten thousand inhabitants, or to cities of ten thousand inhabitants or less,

This provision constitutes in effect a modification of art. 4, sec. 33, (1892), prohibiting special legislation, but it does not entirely supersede that section. Le Tourneau *v.* Hugo, (1903), 90 *Minn.* 420, 97 *N. W.* 115; State *ex rel.* Corriston *v.* Rogers, (1904), 93 *Minn.* 55, 100 *N. W.* 659; State *ex rel.* City of Virginia *v.* County Board of St. Louis County, (1913), 124 *Minn.* 126, 129-30, 144 *N. W.* 756; Lodoen *v.* City of Warren, (1920), 146 *Minn.* 181, 178 *N. W.* 741.

In a case involving the proper classification of cities arising after the state census of 1905, held that "the census went into legal effect upon its compilation and publication by the superintendent," not before. Wolfe *v.* City of Moorhead, (1906), 98 *Minn.* 113, 107 *N. W.* 728.

In addition to the four population classes here described, sec. 36 really creates two subdivisions of each class, namely cities which have, and cities which do not have, home rule charters. A statute enacted for cities of a particular population group but exempting home rule cities in that group from its operation is, therefore, constitutional. Hunter *v.* City of Tracy, (1908), 104 *Minn.* 378, 116 *N. W.* 922.

It is within the power of the legislature to determine which census shall be referred to for the purpose of classification of cities. State *ex rel.* City of Virginia *v.* County Board of St. Louis County, (1913), 124 *Minn.* 126, 144 *N. W.* 756.

which shall apply equally to all such cities of either class,

This is as much as to say that the laws must be uniform in operation. See *Minn. Const.* art. 4, sec. 33; Lodoen *v.* City of Warren, (1920), 146 *Minn.* 181, 178 *N. W.* 741.

and which shall be paramount while in force to the provisions relating to the same matter included in the local charter herein provided for.

In fact, any general law "relating to affairs of cities," whether limited in application to one or more of the population groups or not, is paramount to the provisions of a home rule charter on the same subject, if the law either expressly or by clear implication shows the intent of the legislature to overrule home rule charter provisions. See notes and a suggestive list of laws above under caption "consistent with and subject to the laws of this state."

But no local charter, provision or ordinance passed thereunder shall supersede any general law of the state defining or punishing crimes or misdemeanors.

The St. Paul home rule charter (1900) empowered the council "to define, restrain, regulate and license hawkers, peddlers, porters," etc. The council enacted an ordinance giving a broad and unusual definition to peddling, under which a wholesaler's agent was convicted for "peddling" without a license. Ordinance held invalid, because definition of peddling did not conform to the common law meaning. "The exercise by municipal corporations of the delegated power to enact ordinances must, therefore, be confined within the general principles of the law applicable to the subject of such ordinances." City of St. Paul *v.* Briggs, (1902), 85 *Minn.* 290, 88 *N. W.* 984. But see also City of Virginia *v.* Erickson, (1918), 141 *Minn.* 21, 168 *N. W.* 821, where the ordinance did not attempt to supersede but merely supplemented a criminal law of the state; and State *v.* Collins, (1900), 107 *Minn.* 500, 120 *N. W.* 1081.

APPENDIX 3

LEGISLATION GOVERNING HOME RULE CHARTERS

(From *General Statutes* 1913.)

Sec. 1339. How classified—Cities are hereby divided, for legislative purposes, into classes as follows:

First class. Those having more than fifty thousand inhabitants.

Second class. Those having twenty thousand, and not more than fifty thousand, inhabitants.

Third class. Those having more than ten thousand, and not more than twenty thousand, inhabitants.

Fourth class. Those having not more than ten thousand inhabitants.

Changes in classification resulting from any future state or national census shall not take effect until the first Monday in January next after the taking thereof. Meanwhile the council or other governing body shall take measures for the election of proper officials, and for dividing the city into wards, if necessary, and otherwise prepare for the coming change. (*R. L.* 1905, sec. 746.)

Sec. 1340. Classification of cities—Census to govern—That for the purpose of determining the classification of the several cities of this state, and for the purpose of construing any law relating to the affairs of cities applicable only to cities of a prescribed population, the population of every such city shall be ascertained and determined by adding five per cent of the total population of every such city, as shown by the last state or federal census, to such population, and the population as so computed shall be taken to be the population of each such city in this state for said purposes. This shall not be construed as amending or repealing any provision of a home rule charter providing a different method for ascertaining the population of the city governed by such charter.

In case the provision of this act for an addition of five per cent to the census figures shall be held invalid, the remainder of the act shall not be invalidated by reason thereof but shall remain in full force and effect. (As amended by *Laws* 1921, ch. 12.)

Sec. 1341. Existing charters preserved—Until otherwise provided in accordance with this subdivision, all cities existing at the time of the taking effect of the Revised Laws shall continue to be governed by the laws then applicable thereto. (*R. L.* 1905, sec. 747.)

Sec. 1342. Home rule charters—Patrol limits—Any city or village in the state of Minnesota, whenever incorporated, may frame a city charter for its own government in the manner hereinafter prescribed, provided, that in such cities having patrol limits established by charter, such limits shall not be altered unless the charter proposing such alteration be adopted by a three-fourths majority. (*Laws* 1907, ch. 375.)

Sec. 1343. Board of freeholders—Whenever the judges of the judicial district in which such city or village is situated, shall deem it for the best interests of the municipality so to do, they may appoint a board of freeholders to frame such charter, composed of fifteen members, each of whom shall have been a qualified voter of such city or village for five years last past; and, upon presentation to them of a petition requesting such action, signed by at least ten per cent. of the number of voters of such municipality, as shown by the returns of the election last held therein, they shall appoint such board. The members shall severally hold office for the term of four years, or until they cease to be such resident voters and freeholders, and vacancies in said board shall be filled by appointment of said judges for the unexpired terms. Upon the expiration of such four-year term, the judges shall appoint a new board, in case for any reason the judges shall fail to appoint a new board within thirty (30) days then thereafter at any time the judges upon their own motion may, and upon the written petition of ten (10) freeholders of said city, shall appoint said new board. Every appointment shall be made by order filed with the clerk of the court. Every appointee who shall neglect to file with the clerk within thirty days a written acceptance and oath of office shall be deemed to have declined such appointment and his place shall be filled as though he had resigned. The judges within thirty (30) days thereafter shall make such rules with reference to such board, and require such reports, as may appear desirable or necessary. Any appointee who has qualified by filing his written acceptance and oath of office within thirty (30) days, may thereafter be removed at any time from office, by written order of the district court, the reason for such removal being stated in the order; and upon receiving a certificate in writing, signed by a majority of the entire board of freeholders, setting forth that any member has failed to perform the duties of his office and has failed to attend four (4) consecutive meetings, without being excused by the board, and requesting a removal of such member, the district court shall thereupon

make its order of removal, and fill the vacancy created as in the case of a resignation. (*Laws* 1913, ch. 535.)

Sec. 1344. Compensation—Expenses—The members of such board shall receive no compensation, but the board may employ an attorney and stenographer to assist in framing such charter, and any amendment or revision thereof, and their reasonable compensation and the cost of printing such charter, or any amendment or revision thereof, when so directed by the board, shall be paid by such city or village. Provided, however, that the cost of preparation, printing and legal services in framing and submitting such charter in the first instance shall not exceed $500. (*Laws* 1907, ch. 216.)

Sec. 1345. Proposed charter—How framed—Within six months after such appointment, the board of freeholders shall deliver to the chief executive of said city or village the draft of a proposed charter, signed by at least a majority of its members. Such draft shall fix the corporate name and the boundaries of the proposed city, and provide for a mayor, and for a council, consisting of either one or two branches; one in either case to be elected by the people. Subject to the limitations in this chapter provided, it may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions, as fully as the legislature might have done before the adoption of section 33, article 4 of the constitution. It may omit provisions in reference to any department contained in special or general laws then operative in said city or village, and provided that such special or general laws, or such parts thereof as are specified, shall continue and be in force therein, including any such special or general laws authorizing the city or village to incur indebtedness or issue its bonds for municipal purposes. It may prescribe methods of procedure in respect to the operation of the government thereby created, and the duties thereunder of all courts and officers of the district and county in which the city is situated, which duties such courts and officers shall perform. And by such charter the city may be authorized to acquire, by gift, devise, purchase, or condemnation, any property, within or without its boundaries, needed for the full discharge of any public function which it is permitted to exercise. Nothing in this section shall authorize a change of boundaries, except that boundaries may be changed so as to include lands and property contiguous thereto when not lying at a distance of more

than three miles from the boundaries of the original corporation and when used for industrial or mining purposes or occupied or leased for such purposes, if the person, association or corporation so using, occupying or leasing the same by writing presented to the board of freeholders at any time before a draft of the proposed charter is delivered to the chief executive of such city or village so request. (As amended by *Laws* 1921, ch. 343.)

Sec. 1346. Limit of bonded indebtedness—Except as authorized in Section 1345, General Statutes 1913, no such charter shall permit the issue of any bonds of the city whereby its bonded indebtedness would be made to exceed ten per cent of the last assessed valuation of the taxable property therein, including moneys and credits. But any such charter may provide that certificates of indebtedness or bonds issued before or after its adoption shall not be included in or counted as a part of such bonded indebtedness, if (1) held in a sinking fund maintained by such city or village; or (2) issued for the acquisition, equipment, purchase, construction, maintenance, extension, enlargement or improvement of street railways, telegraph or telephone lines, water, lighting, heat and power plants, or either, or any other public convenience from which a revenue is or may be derived, owned and operated by such city or village, or the acquisition of property needed in connection therewith, or for the construction of public drainage ditches or the acquisition of lands for, or for the improvement of streets, parks, or other public improvements, to the extent that they are payable from the proceeds of assessments levied upon property especially benefited by such ditches or improvements, or (3) issued for the creation or maintenance of a permanent improvement revolving fund; or (4) for the purpose of anticipating the collection of general taxes for the year in which issued. And any such charter may provide that the city may issue certificates of indebtedness or bonds to any limit prescribed therein, without approval of the voters, if such issue be for either of the last two mentioned purposes, or for the purpose of extending, enlarging or improving water and lighting and heat and power plants, or either, owned and operated by such city, or of acquiring property needed in connection therewith, or for the purpose of funding floating indebtedness incurred by the city or village before the adoption of the charter, or for any municipal purposes or improvements in respect to which the city or village is authorized by any special or general law to incur indebtedness or issue certificates of indebtedness or bonds at the time of the adoption of the charter. (As amended by *Laws* 1921, ch. 120.)

Sec. 1347. Regulation of franchises—Such proposed charter may provide for regulating and controlling the exercise of privileges and franchises in or upon the streets and other public places of the city, whether granted by the city or village, by the legislature, or by any other authority; but no perpetual franchise or privilege shall ever be created, nor shall any exclusive franchise or privilege be granted, unless the proposed grant be first submitted to the voters of the city or village, and be approved by a majority of those voting thereon, nor in such case for a period of more than twenty-five years. (*R. L.* 1905, sec. 753.)

Sec. 1348. Charter—How submitted—Ballots—Upon delivery of such draft, the council or other governing body of the city or village shall cause the proposed charter to be submitted at the next general election thereafter occurring in said city or village within six months after the delivery of such draft, and if there is no general city or village election occurring in said city or village within six months after the delivery of such draft, then the council or other governing body of said city or village shall cause the proposed charter to be submitted at a special election to be held within ninety days after the delivery of such draft as aforesaid. Provided, that said council or other governing body may call a special election for that purpose only at any time. If said election is held at the same time with the general election, the voting places and election officers shall be the same for both elections. The ballot shall bear the printed words, "Shall the proposed new charter be adopted? Yes—No," with a square after each of the last two words, in which the voter may place a cross to express his choice. And if any part of such charter be submitted in the alternative, the ballot shall be so printed as to permit the voter to indicate his preference in any instance by inserting a cross in like manner. If any charter so submitted be rejected the board may propose others from time to time until one is adopted. (*Laws* 1909, ch. 214.)

Sec. 1349. How adopted—Judicial notice—If four-sevenths of those lawfully voting at such election shall declare in favor of the proposed charter, it shall be considered adopted; and, if any provisions thereof were submitted in the alternative, those ratified by a majority of the votes cast thereon shall prevail. The certificates provided for in sec. 36, art. 4, of the constitution, being deposited and

recorded as thereby required, said charter shall take effect at the end of thirty days from the date of the election, and shall then supersede all other charter provisions relating to such city or village. Thereupon the courts shall take judicial notice of said new charter, and, upon the election of officers thereunder, the officials of the former corporation shall deliver to them the records, money, and other public property in their control. (*R. L.* 1905, sec. 755.)

Sec. 1350. Amendments—The board of freeholders may propose amendments to such charter, and shall do so upon the petition of five per cent. of the voters of the city, setting forth in substance the amendment desired. Amendments shall be submitted as in the case of the original charter, and the proposal shall be published for at least thirty days in not exceeding three newspapers of general circulation in such city. The form of ballot and mode of voting shall be similar to those used upon the adoption of such charter, the general nature of each amendment being briefly indicated. If three-fifths of those lawfully voting at such election shall declare in favor of any amendment so proposed, the same shall be certified, deposited and recorded, and shall take effect, as in the case of the original charter; provided that, if it be proposed that any amendment shall take effect at a specified time, it shall take effect as proposed. (*Laws* 1911, ch. 343.)

Sec. 1351. Amendments in cities of fourth class—Postponing election—The city council of any city of the fourth class governed by a home rule charter may postpone the city election in said city for a period not to exceed five (5) weeks, when a special election has been called to vote on any proposed amendment to said city charter, which amendment if adopted will not take effect prior to the date fixed for the city election in said city charter, and which amendment provides for holding said city election at a later date than is provided in its charter. (*Laws* 1913, ch. 35.)

Sec. 1352. Alternative proposals—In submitting a charter or an amendment to the voters any alternative section or article may be presented and voted on separately, without prejudice to other articles or sections of the charter or any amendments thereto. (*R. L.* 1905, sec. 757.)

Sec. 1353. Succession—Subsisting rights—The new city so organized shall be in all respects the legal successor of the former corporation, and no charter so adopted, nor any amendment thereof, shall prejudice any subsisting right, lien, or demand against the city

or village superseded, or affect any pending action or proceeding to enforce the same. All rights, penalties, and forfeitures accrued or accruing to such former corporation, all property vested therein or held in trust therefor, all taxes and assessments levied in its behalf, and all its privileges and immunities not inconsistent with the new charter, shall pass to said successor. And all ordinances, resolutions, and by-laws in force at the adoption of such new charter, and not in conflict with its provisions, shall continue in force until duly altered or repealed. (*R. L.* 1905, sec. 758.)

Sec. 1354. Commission form of city government—That the board of freeholders appointed under the provisions of sections 748 to 755, inclusive, Revised Laws, 1905 [1342-1349], of the state of Minnesota, and the amendments thereof, are hereby authorized and empowered, in addition to all powers now granted to any such board of freeholders, to incorporate as part of the proposed charter for any city the commission form of city government, and to provide that all elective city officers, including mayor and members of the council, shall be elected at large or otherwise. (*Laws* 1909, ch. 170, sec. 1.)

Sec. 1355. Same—Officers, how nominated and elected—Such board of freeholders may also provide in such proposed charter that all candidates to be voted for at all general municipal elections shall be nominated by a primary election, and that no other names shall be placed upon the ballot to be voted upon at such election, except the names of those elected in the manner which may be prescribed by such charter; and such charter may provide for a primary election to be held at such time as may be fixed preceding the general municipal elections, and that the judges of election for the general municipal election shall be the judges of the primary election, and may provide in what manner any person desiring to become a candidate for any elective municipal office may become a candidate for nomination at such primary election, and may provide for the publication of statements and petitions of candidates, the form of the primary election and municipal election ballots and for publication thereof, and may provide that there shall or shall not be any party designation or mark indicating that any candidate is a member of any party whatsoever, whether on said primary election ballot or upon said municipal election ballot, and may make provisions with reference to the printing, delivery and authentication of ballots and for the counting and canvass of results of such primary election or municipal election. (*Laws* 1909, ch. 170, sec. 2.)

Sec. 1356. Same—Distribution of administrative powers—Such board of freeholders may also provide that the administrative powers, authority and duties in any such city shall be distributed into and among departments and may provide that the council may determine the powers and duties to be performed by and assign them to the appropriate department and determine who shall be the head of each department and prescribe the powers and duties of all officers and employes thereof, and may assign particular officers or employes to perform duties in two or more departments, and make such other rules and regulations as may be necessary or proper for the efficient and economical conduct of the business of the city. (*Laws* 1909, ch. 170, sec. 3.)

Sec. 1357. Same—Powers of mayor and council—Said board of freeholders may incorporate in such charter provisions defining the powers and duties of the mayor and each member of the council, and may provide that each member of the council shall perform such administrative duties as may be designated in such charter. (*Laws* 1909, ch. 170, sec. 4.)

Sec. 1358. Same—Recall and removal of officers—Ordinances—Such board of freeholders may also provide for the re-call of any elective municipal officer and for his removal by vote of the electors of such city, and may also provide for submitting ordinances to the council by petition of the electors of such city and for the repeal of ordinances in like manner; and may also provide that no ordinance passed by the council except an emergency ordinance shall take effect within a certain time after its passage, and that if, during such time, a petition be made by a certain percentage of the electors of the city protesting against the passage of such ordinance until the same be voted on at an election held for such purpose, and then such ordinance to take effect or not as determined by such vote. (*Laws* 1909, ch. 170, sec. 5.)

Sec. 1359. Same—Application of general election laws—The provisions of any charter of any such city adopted pursuant to this act shall be valid and shall control as to nominations, primary elections and elections for municipal offices, notwithstanding that such charter provisions may be inconsistent with any general law relating thereto, and such general laws shall apply only in so far as consistent with such charter. (*Laws* 1909, ch. 170, sec. 6.)

Sec. 1360. Same—Submission of amendments—Nothing in this act contained shall be held to abridge, impair or diminish the

right of electors in any city now having or which shall hereafter have such a board of freeholders and a home rule charter, to require the submission of amendments to the charter of such city, as provided in section 756 of the Revised Laws of 1905 [1350], but, in addition to the provisions of said section 756, five per cent of the electors may, by petition, as provided in said section 756, require the submission of amendments to such charter, embodying the commission plan of government, in whole or in part, as more particularly described and set forth in sections 1, 2, 3, 4, 5 and 6 [1354-1359] of this act. (*Laws* 1909, ch. 170, sec. 7.)

Sec. 1361. New charter authorized—Any city in this state which now has, or may hereafter adopt, a so-called "home rule" charter by and under the provisions of section 36, article 4 of the constitution, and of any statutes enacted in pursuance thereof, is hereby authorized and empowered to frame, submit and adopt a new charter in the same manner and mode as is by law provided for the original adoption of such so-called "home rule" charter. (*Laws* 1909, ch. 236, sec. 1.)

Sec. 1362. Same—Amendments authorized—Any city named in section one [1361] hereof is hereby authorized and empowered to amend its present so-called "home rule" charter in the nature of a revision and submit and adopt such revision as is by law provided for the original adoption of such so-called "home rule" charter. (*Laws* 1909, ch. 236, sec. 2.)

Sec. 1363. Same—Not obligatory to report to chief magistrate within six months—It shall not be necessary or obligatory for the board of freeholders framing such new charter, or making such revision hereunder, to return the same to the chief magistrate of such city within six months. (*Laws* 1909, ch. 236, sec. 3.)

Sec. 1364. Act regulating cities of first class not applicable unless expressly declared—No act regulating any of the affairs of cities, of the first class, shall be deemed applicable to any city therein existing under a charter framed and adopted under section 36 of article 4 of the state constitution, authorizing the adoption by cities of charters for their own government, unless the intention to make the same so applicable shall by such act be expressly declared. (*Laws* 1909, ch. 172.)

APPENDIX 4

SPECIAL LEGISLATION PROHIBITED

Note: The following two sections of the Minnesota constitution are the ones discussed in sections 20 and 21, and 28 to 34, above. They are further explained in the small number of leading cases which are cited in the note following sec. 34.

Art. 4, sec. 33. In all cases when a general law can be made applicable, no special law shall be enacted; and whether a general law could have been applicable in any case, is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject. The legislature shall pass no local or special law; regulating the affairs of, or incorporating, erecting or changing the lines of any county, city, village, township, ward or school district, or creating the offices, or prescribing the powers and duties of the officers of or fixing or relating to the compensation, salary or fees of the same or the mode of election or appointment thereto; authorizing the laying out, opening, altering, vacating or maintaining roads, highways, streets or alleys; remitting fines, penalties or forfeitures; regulating the powers, duties and practice of justices of the peace, magistrates and constables; changing the names of persons, places, lakes or rivers; for opening and conducting of elections, or fixing or changing the places of voting; authorizing the adoption or legitimation of children; changing the law of descent or succession; conferring rights upon miners [sic.]; declaring any named person of age; giving effect to informal or invalid wills or deeds, or affecting the estates of minors or persons under disability; locating or changing county seats; regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes; exempting property from taxation, or regulating the rate of interest on money; creating corporations, or amending, renewing, extending or explaining the charters thereof; granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever, or authorizing public taxation for a private purpose. Provided, however, that the inhibitions of local or special laws in this section shall not be construed to prevent the passage of general laws on any of the subjects enumerated. The legislature may repeal any existing

special or local law but shall not amend, extend or modify any of the same.

Art. 4, sec. 34. The legislature shall provide general laws for the transaction of any business that may be prohibited by section one (1) of this amendment, and all such laws shall be uniform in their operation throughout the state.

Note: The following leading cases may be supplemented by the reading of Dunnell, *Minnesota Digest,* secs. 1676-94. State *ex rel.* Board of Court House and City Hall Commissioners *v.* Cooley, (1893-94), 56 *Minn.* 540, 58 *N. W.* 150; Alexander *v.* City of Duluth, (1894), 57 *Minn.* 47, 58 *N. W.* 866; State *ex rel.* City of Duluth *v.* District Court of St. Louis County, (1895), 61 *Minn.* 542, 64 *N. W.* 190; State *ex rel.* Childs *v.* Copeland, (1896), 66 *Minn.* 315, 69 *N. W.* 27; State *ex rel.* Anderson *v.* Sullivan, (1898), 72 *Minn.* 126, 75 *N. W.* 8; State *ex rel.* Douglas *v.* Ritt, (1899), 76 *Minn.* 531, 79 *N. W.* 535; Alexander *v.* City of Duluth, (1899), 77 *Minn.* 445, 80 *N. W.* 623; State *ex rel.* Board of Education of Minneapolis *v.* Minor, (1900), 79 *Minn.* 201, 81 *N. W.* 912; State *v.* Walker, (1901), 83 *Minn.* 295, 86 *N. W.* 104; State *ex rel.* Minnesota Loan and Trust Co. *v.* Ames, (1902), 87 *Minn.* 23, 91 *N. W.* 18; Hetland *v.* Board of County Commissioners of Norman County, (1903), 89 *Minn.* 492, 95 *N. W.* 305; Le Tourneau *v.* Hugo, (1903), 90 *Minn.* 420, 97 *N. W.* 115; Thomas *v.* City of St. Cloud, (1903), 90 *Minn.* 477, 97 *N. W.* 125; State *ex rel.* Corriston *v.* Rogers, (1904), 93 *Minn.* 55, 100 *N. W.* 659; State *ex rel.* Board of Education of City of Minneapolis *v.* Brown, (1906), 97 *Minn.* 402, 106 *N. W.* 477; Hunter *v.* City of Tracy, (1908), 104 *Minn.* 378, 116 *N. W.* 922; Wall *v.* County of St. Louis, (1908), 105 *Minn.* 403, 117 *N. W.* 611; State *ex rel.* Simpson *v.* Wasgatt, (1911), 114 *Minn.* 78, 130 *N. W.* 76.

APPENDIX 5

OTHER CONSTITUTIONAL PROVISIONS AFFECTING CITY CHARTERS

Note: Charter commissions should take care in drafting charters and amendments not to violate any of the following provisions of the Minnesota constitution. It is not necessary for the charter to include any of these provisions.

Suffrage and elections

Art. 1, sec. 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the state. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this state; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

Note: Several cities have attempted to forbid persons who are not property owners from holding elective municipal offices. Such attempts are unconstitutional.

Art. 7, sec. 1. What persons are entitled to vote: Every male person of the age of twenty-one (21) years or upwards belonging to either of the following classes who has resided in this state six (6) months next preceding any election shall be entitled to vote at such election in the election district of which he shall at the time have been for thirty (30) days a resident, for all officers that now are, or hereafter may be, elective by the people. First. Citizens of the United States who have been such for the period of three (3) months next preceding any election. Second. Persons of mixed white and Indian blood, who have adopted the customs and habits of civilization. Third. Persons of Indian blood residing in this state, who have adopted the language, customs and habits of civilization, after an examination before any district court of the state, in such manner as may be provided by law, and shall have been pronounced by said court capable of enjoying the rights of citizenship within the state.

Note: It is not within the power of a city to increase the length of the residence requirement established for voters in the constitution, nor to add other requirements.

Art. 7, sec. 6. All elections shall be by ballot, except for such town officers as may be directed by law to be otherwise chosen.

Art. 7, sec. 7. Every person who by the provisions of this article shall be entitled to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the district wherein he shall have resided thirty days previous to such election; except as otherwise provided in this constitution, or the constitution and laws of the United States.

Note: Any person who is entitled to vote is by that fact entitled also to run for any elective office under a city charter. Any charter provision which attempts to lay down additional requirements is unconstitutional.

Art. 15, sec. 3. The legislature shall provide for a uniform oath or affirmation to be administered at elections, and no person shall be compelled to take any other or different form of oath to entitle him to vote.

Note: The legislature has made provision for the uniform oath here mentioned. See *Gen. Stat.* 1913, sec. 458.

Municipal courts

Art. 6, sec. 1. The judicial power of the state shall be vested in a supreme court, district courts, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, as the legislature may from time to time establish by a two-thirds vote.

Note: This section of the constitution provides the only lawful method for the creation or establishment of courts in Minnesota. A municipal home rule charter may impose certain duties upon the courts but it may not establish or disestablish any courts whatever.

Art. 6, sec. 8. The legislature shall provide for the election of a sufficient number of justices of the peace in each county, whose term of office shall be two years, and whose duties and compensation shall be prescribed by law; provided, that no justice of the peace shall have jurisdiction of any civil cause where the amount in controversy shall exceed one hundred dollars, nor in a criminal cause where the punishment shall exceed three months imprisonment, or a fine of over one hundred dollars, nor in any cause involving the title to real estate.

Art. 6, sec. 9. All judges other than those provided for in this constitution shall be elected by the electors of the judicial district, county or city, for which they shall be created, not for a longer term than seven years.

Art. 6, sec. 10. In case the office of any judge shall become vacant before the expiration of the regular term for which he was

elected, the vacancy shall be filled by appointment by the governor until a successor is elected and qualified, and such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.

Municipal finances

Art. 8, sec. 3. The legislature shall make such provisions, by taxation or otherwise, as, with the income arising from the school fund, will secure a thorough and efficient system of public schools in each township in the state. But in no case shall the moneys derived as aforesaid or any portion thereof, or any public moneys or property be appropriated or used for the support of schools wherein the distinctive doctrines, creed or tenets of any particular Christian or other religious sect, are promulgated or taught.

Art. 8, sec. 6. The permanent school and university fund of this state may be invested in the bonds of any county, school district, city, town or village of this state, and in first mortgage loans secured upon improved and cultivated farm lands of this state. But no such investment or loan shall be made until approved by the board of commissioners designated by law to regulate the investment of the permanent school fund and the permanent university fund of this state; nor shall such loan or investment be made when the bonds to be issued or purchased would make the entire bonded indebtedness exceed 15 per cent of the assessed valuation of the taxable property of the county, school district, city, town or village issuing such bonds; nor shall any farm loan or investment be made when such investment or loan would exceed 30 per cent of the actual cash value of the farm land mortgage to secure said investment; nor shall such investments or loans be made at a lower rate of interest than 3 per cent per annum, nor for a shorter period than five years, nor for a longer period than thirty years, and no change of the town, school district, city, village or of county lines shall relieve the real property in such town, school district, county, village or city in this state at the time of issuing of such bonds from any liability for taxation to pay such bonds.

Art. 9, sec. 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, and all seminaries of learning, all churches, church property, and houses of worship, institutions of

purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation, and there may be exempted from taxation personal property not exceeding in value $200. for each household individual or head of a family, as the legislature may determine: Provided, that the legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to a cash valuation, and, provided further, that nothing herein contained shall be construed to affect, modify or repeal any existing law providing for the taxation of the gross earnings of railroads.

Note: A home rule charter may provide for a system of local taxation, and also for a system of special assessments, as fully as the legislature might have done previous to the adoption of the constitutional amendment which prohibits special legislation. At the same time, however, the home rule charter must conform to the provisions of the state constitution as printed above.

Art. 9, sec. 15. The legislature shall not authorize any county, township, city or other municipal corporation to issue bonds, or to become indebted in any manner to aid in the construction or equipment of any or all railroads to any amount that shall exceed five (5) per centum of the value of the taxable property within such county, township, city or other municipal corporation. The amount of such taxable property to be ascertained and determined by the last assessment of said property made, for the purpose of state and county taxation, previous to the incurring of such indebtedness.

Art. 16, sec. 3. The legislature is hereby authorized to provide, by law, for the taxation of motor vehicles, using the public streets and highways of this state, on a more onerous basis than other personal property, provided, however, that any such tax on motor vehicles shall be in lieu of all other taxes thereon, except wheelage taxes, so-called, which may be imposed by any borough, city or village. Any such law may, in the discretion of the legislature, provide for the exemption from taxation of any motor vehicle owned by a non-resident of the state, and transiently or temporarily using the streets and highways of the state. The proceeds of such tax shall be paid into said Trunk Highway Sinking Fund.

Note: In the 1921 session the legislature authorized cities to levy wheelage taxes, but limited such levies to not over 20 per cent of the amount of the state wheelage tax. *Laws* 1921, ch. 454.

Eminent domain

Art. 1, sec. 13. Private property shall not be taken, destroyed or damaged for public use, without just compensation therefor first paid or secured.

Note: A home rule city may exercise the power of eminent domain, but it must conform fully with this provision of the constitution.

Oath of office

Art. 5, sec. 8. Each officer created by this article shall, before entering upon his duties, take an oath or affirmation to support the constitution of the United States, and of this state, and faithfully discharge the duties of his office to the best of his judgment and ability.

Note: The legislature has provided that: "The oath of office to be taken by members and officers of either branch of the legislature shall be that prescribed by sec. 29, art. 4 of the constitution. Every person elected or appointed to any other public office whatsoever, including every official commissioner, or member of any public board or body, before transacting any of the business or exercising any privilege of such office, shall take and subscribe the oath defined in sec. 8 of art. 5 of the constitution." *Gen. Stat.* 1913, sec. 5733. A city charter should therefore, provide for this form of oath rather than some other.

Regulation of peddling

Art. 1, sec. 18. Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.

Consolidation of city and county

Art. 11, sec. 2. The legislature may organize any city into a separate county when it has attained a population of twenty thousand inhabitants, without reference to geographical extent, when a majority of the electors of the county in which such city may be situated, voting thereon, shall be in favor of a separate organization.

Note: The legislature has at no time made use of the power granted to it by this section. It is probable that if the legislature ever desires to use this power in the future, it will have to proceed by general act rather than by special law. See sec. 33 of art. 4, above.

A. CLASSES OF CITIES IN MINNESOTA (with dates of charters or of adoption of general law)

Constitutional Population Classes	Home Rule Cities	Non-Home Rule Cities			
		Special Charter	General Act, 1870–1894	General Act, 1895	General Act, 1921
1. Population of 50,001 and over	Duluth, 1900, 1912 Minneapolis, 1920 St. Paul, 1900, 1912				
2. Population of 20,000 to 50,000		Winona, 1867, 1887			
3. Population of 10,000 to 20,000	Austin, 1903 Brainerd, 1908 Faribault, 1911 Mankato, 1910 Rochester, 1904 St. Cloud, 1908, 1911 Virginia, 1909				
4. Population of 10,000 and less	Ada, 1908 Albert Lea, 1902 Alexandria, 1909 Anoka, 1913 Barnesville, 1898 Bemidji, 1905 Benson, 1908 Blue Earth, 1899 Breckenridge, 1907 Cannon Falls, 1905 Columbia Heights, 1921 Crookston, 1906 Dawson, 1911 Detroit, 1903 Ely, 1903, 1916 Eveleth, 1913 Fairmont, 1901 Fergus Falls, 1903 Glencoe, 1909 Glenwood, 1913 Granite Falls, 1907 Hastings, 1907 Hutchinson, 1913 International Falls, 1910 Jackson, 1920 Lake City, 1909 Lake Crystal, 1912 Little Falls, 1902, 1920 Montevideo, 1908 Moorhead, 1900 Morris, 1913 Northfield, 1907 Ortonville, 1908 Owatonna, 1909 Pipestone, 1913 Red Wing, 1904 Renville, 1906 St. James, 1918 Sauk Centre, 1918 Sleepy Eye, 1903 South St. Paul, 1905 Staples, 1906 Stillwater, 1915 Tower, 1912 Tracy, 1912 Two Harbors, 1907 Wabasha, 1920 Warren, 1914 Waseca, 1904 West St. Paul, 1907 White Bear Lake, 1921 Willmar, 1901 Windom, 1920 Winthrop, 1907 Worthington, 1909	Chaska, 1891 Chatfield, 1891 Henderson, 1891 Jordan, 1891 Le Sueur, 1891 New Prague, 1891 New Ulm, 1887 Redwood Falls, 1891 Rushford, 1869 St. Charles, 1879 St. Peter, 1891 Shakopee, 1875	Canby, 1902 Laverne 1904 Madison, 1902 Marshall. 1901 Montgomery, 1894 Waterville, ??	Cloquet, 1904 East Grand Forks. 1898 Melrose, 1897 Red Lake Falls, 1897 Thief River Falls 1896	Nashwauk, 1921 North Mankato, 1922 Waconia, 1921

APPENDIX 6

APPENDIX 6

B. POPULATION OF CITIES IN MINNESOTA

(Figures taken from 1920 census.)

Name	Population	Name	Population
Ada	1,411	Hutchinson	3,379
Albert Lea	8,056	International Falls	3,448
Alexandria	3,388	Jackson	2,144
Anoka	4,287	Jordan	1,106
Austin	10,118	Lake City	2,846
Barnesville	1,564	Lake Crystal	1,204
Bemidji	7,086	Le Sueur	1,795
Benson	2,111	Little Falls	5,500
Blue Earth	2,568	Luverne	2,782
Brainerd	9,591	Madison	1,838
Breckenridge	2,401	Mankato	12,469
Canby	1,754	Marshall	3,092
Cannon Falls	1,315	Melrose	2,529
Chaska	1,966	Minneapolis	380,582
Chatfield	1,382	Montevideo	4,419
Cloquet	5,127	Montgomery	1,297
Columbia Heights	2,968	Moorhead	5,720
Crookston	6,825	Morris	2,320
Dawson	1,511	Nashwauk	2,414*
Detroit	3,426	New Prague	1,540
Duluth	98,917	New Ulm	6,745
East Grand Forks	2,490	North Mankato	1,840
Ely	4,902	Northfield	4,023
Eveleth	7,205	Ortonville	1,758
Fairmont	4,630	Owatonna	7,252
Faribault	11,089	Pipestone	3,325
Fergus Falls	7,581	Red Lake Falls	1,549
Glencoe	1,747	Red Wing	8,637
Glenwood	2,187	Redwood Falls	2,421
Granite Falls	1,611	Renville	1,142
Hastings	4,571	Rochester	13,722
Henderson	766	Rushford	1,142

* This figure is for the village of Nashwauk; the city is reported to include a larger area.

St. Charles	1,351	Two Harbors	4,546
St. Cloud	15,873	Virginia	14,022
St. James	2,673	Wabasha	2,249
St. Paul	234,698	Waconia	901†
St. Peter	4,335	Warren	1,772
Sauk Centre	2,699	Waseca	3,908
Shakopee	1,988	Waterville	1,211
Sleepy Eye	2,449	West St. Paul	2,962
South St. Paul	6,860	White Bear Lake	2,022
Staples	2,570	Willmar	5,892
Stillwater	7,735	Windom	2,123
Thief River Falls	4,685	Winona	19,143
Tower	706	Winthrop	1,147
Tracy	2,463	Worthington	3,481

† This is the 1920 figure for the village of Waconia; the present city includes a larger area.

APPENDIX 7

Alphabetical list of Minnesota villages and boroughs of 1,000 population and over, 1920.

Name	Population	Name	Population
Adrian	1,087	Long Prairie	1,346
Aitkin	1,490	Madelia	1,447
Appleton	1,579	Mahnomen	1,076
Aurora	2,809	Milaca	1,347
Belle Plaine borough	1,251	Monticello	1,024
Biwabik	2,024	Mora	1,006
Blooming Prairie	1,012	Mountain Iron	1,546
Bovey	1,324	Mountain Lake	1,309
Browns Valley	1,073	North Mankato	1,840
Buffalo	1,438	North St. Paul	1,979
Buhl	2,007	Olivia	1,488
Caledonia	1,570	Osakis	1,480
Cambridge	1,080	Park Rapids	1,603
Cass Lake	2,109	Paynesville	1,060
Chisholm	9,039	Pelican Rapids	1,156
Cokato	1,014	Perham	1,370
Coleraine	1,300	Pine City	1,303
Crosby	3,500	Plainview	1,370
Deer River	1,044	Preston	1,227
Edina	1,833	Princeton	1,685
Fairfax	1,066	Proctorknott	2,378
Farmington	1,449	Richfield	2,411
Fosston	1,014	Robbinsdale	1,369
Frazee	1,277	Roseau	1,012
Gilbert	3,510	St. Louis Park	2,281
Graceville	1,022	Sandstone	1,200
Grand Rapids	2,914	Sauk Rapids	2,349
Hallock	1,012	Slayton	1,045
Hibbing	15,089	South Stillwater	1,936
Ironton	1,165	Spring Valley	1,871
Janesville	1,261	Springfield	1,849
Kasson	1,150	Wadena	2,186
Keewatin	1,879	Warroad	1,211
Kenyon	1,362	Wells	1,894
Kinney	1,200	West Minneapolis	3,055
Lakefield	1,346	Wheaton	1,337
Lanesboro	1,015	Winnebago City	1,641
Litchfield	2,790	Zumbrota	1,265

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