CHARTER REVISION COMMITTEE MINUTES - Draft June 20, 2005

A meeting of the Troy Charter Revision Committee was held Monday, June 20, 2005, at City Hall, 500 W. Big Beaver Road. Chairman Bliss called the Meeting to order at 1:00 PM.

Roll Call: **PRESENT:** Lillian Barno, Daniel H. Bliss, Jerry E. Bloom, Shirley Kanoza, Robert Noce, Mark R. Solomon, Cynthia A. Wilsher

ALSO PRESENT: City Attorney Lori Grigg Bluhm, Assistant City Manager/Finance and Administration John M. Lamerato, City Clerk Tonni Bartholomew, and Deputy Clerk Barbara Holmes

Appointment of Chair and Vice-Chair

Vote on Resolution to Appoint Chair

Resolution #CR-2005-06-001
Moved by Kanoza
Seconded by Wilsher

RESOLVED, That Daniel H. Bliss hereby be **REAPPOINTED** as Chair to the Charter Revision Committee.

Yes: All-7

Vote on Resolution to Appoint Vice-Chair

Resolution #CR-2005-06-002
Moved by Bliss
Seconded by Barno

RESOLVED, That Shirley Kanoza hereby be **APPOINTED** as Vice-Chair to the Charter Revision Committee.

Yes: All-7

Approval of Minutes: Wednesday, November 5, 2003

Resolution #CR-2005-06-003
Moved by Kanoza
Seconded by Wilsher

RESOLVED, That the Charter Revision Committee Minutes of Wednesday, November 5, 2003 are hereby **APPROVED** as presented**.**

Yes: All-7

Proposed Charter Amendments:

Section 3.4 – Elective Officers and Terms of Office – Proposed Title Change and Text Amendment to Facilitate Implementation of State Law Election Consolidation

Member Solomon supports two-year terms of office for the offices of mayor and council member based on his belief that elected officials are more responsive when elected for shorter terms.

Member Kanoza supports three-year terms because she believes it takes at least two years for a council member to become acclimated to the position.

Vote on Resolution to Modify Recommended Charter Revision #2

Resolution #CR-2005-06-004
Moved by Solomon
Seconded by Bloom

RESOLVED, That the proposed language for *Recommended Charter Revision Proposal #2* be **MODIFIED** by **STRIKING** "four (4) year terms" and **INSERTING** "two (2) year terms".

Yes: Solomon
No: Barno, Bliss, Bloom, Kanoza, Noce, Wilsher

MOTION FAILED

1) Vote on Recommended Charter Revision Proposal #1

Resolution #CR-2005-06-005
Moved by Solomon
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #1* to read as follows, "Shall Section 3.4 of the Troy Charter be amended by moving and incorporating Section 7.5 of the Troy Charter in its entirety?"

Yes: All-7

2) Vote on Recommended Charter Revision Proposal #2

Resolution #CR-2005-06-006
Moved by Solomon
Seconded by Barno

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #2* to read as follows, "Shall Section 3.4 of the Troy Charter be amended to implement election consolidation revisions to Michigan Election Law, by revising the term of Troy City Council Members and the Mayor from the current three (3) year terms that expire at 8:00 PM of the third year of the term to provide for four (4) year terms that expire at 7:30 PM of the first Monday following the Regular Election of the fourth year of their term?"

Yes: All-7

Section 7.5.5 - Proposed Section Re-Numbering and Naming 3.4.1 – Elective Officers Term Limitations and Text Amendment

3) Vote on Recommended Charter Revision Proposal #3

Resolution #CR-2005-06-007
Moved by Kanoza
Seconded by Solomon

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #3* to read as follows, "Shall Section 7.5.5 of the Troy Charter be renumbered as 3.4.1 and titled as Elective Officers Term Limitations?"

Yes: All-7

4) Vote on Recommended Charter Revision Proposal #4

Resolution #CR-2005-06-008
Moved by Solomon
Seconded by Wilsher

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #4* to read as follows, "Shall Section 7.5.5 be amended to revise the definition of a term from the current language that 'any portion of a term served shall constitute one full term' to 'Any service greater than two (2) years plus one (1) month shall constitute a term.'?"

Yes: All-7

Section 3.4.2 – Staggering Terms of Office - Proposed New Section to Facilitate Implementation of State Law Election Consolidation

5) Vote on Recommended Charter Revision Proposal #5

Resolution #CR-2005-06-009
Moved by Solomon
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #5* to read as follows, "Shall Section 3.4.2 be created to implement election consolidation revisions to Michigan Election Law, by providing for the re-establishment of the staggering of City Council terms by providing for three (3) City Council Members to be elected in one election cycle and the remaining three (3) Council Members and the Mayor to be elected in a subsequent election cycle, which will be accomplished through an election of a one-time two (2) year City Council Member term?"

Yes: All-7

Section 7.3 - Election Date – Existing Section in Conflict with State Law - Proposed Text Amendment

6) Vote on Recommended Charter Revision Proposal #6

Resolution #CR-2005-06-010
Moved by Wilsher
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #6* to read as follows, "Shall Section 7.3 of the Troy City Charter be amended to implement election consolidation revisions to Michigan Election Law, by changing the election date from the "first Monday in April of each year" to the "first Tuesday after the first Monday of every odd-year November" and eliminating "if some other date in the months of March, April or May is fixed by law for the holding of the state biennial election, then the regular city election shall be held on the date so fixed", since these provisions conflict with Michigan Election Law?"

Yes: All-7

Section 7.6 - Special Election – Existing Section in Conflict with State Law - Proposed Text Amendment

7) Vote on Recommended Charter Revision Proposal #7

Resolution #CR-2005-06-011
Moved by Kanoza
Seconded by Wilsher

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #7* to read as follows, "Shall Section 7.6 of the Troy City Charter be revised to implement election consolidation revisions to Michigan Election Law, by providing "Special City Elections shall be called as provided in Michigan Election Law" and eliminating "Special city elections shall be held when called by resolution of the Council at least 40 days in advance of such election, or when required by this charter or statute. Any resolution calling a special election shall set forth the purpose of such election. No more special city elections shall be called in anyone year than the number permitted by statute."

Yes: All-7

Section 7.9 – Nominations – Existing Section in Conflict with State Law -Proposed Text Amendment

8) Vote on Recommended Charter Revision Proposal #8

Resolution #CR-2005-06-012
Moved by Kanoza
Seconded by Bloom

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #8* to read as follows, "Shall Section 7.9 of the Troy City Charter be revised to eliminate a conflict with Michigan Election Law, by eliminating "No person shall sign his name to a greater number of petitions for any office than there are persons to be elected to said office at the following City election. If the signature of any persons appears on more petitions than permitted by this section, such signatures shall not be counted on any one of the petitions so signed for that office."?

Yes: All-7

Section 7.10 – Form of Petitions – Existing Section in Conflict with State Law - Proposed Text Amendment

9) Vote on Recommended Charter Revision Proposal #9

Resolution #CR-2005-06-013
Moved by Wilsher
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #9* to read as follows, "Shall Section 7.10 of the Troy City Charter be revised to eliminate a conflict with Michigan Election Law by striking, "The Council shall approve a form of nominating petition with spaces thereon for address and date of signing for each signer, an affidavit form for the circulator to sign affirming that he and the petitioners are registered electors and a summary of the qualifications required of candidates and the regulations governing the petition" and providing that "Nominating petitions shall be in a form as provided by Michigan Election Law"?

Yes: All-7

Member Bloom suggested inserting the words "by eliminating the following language" to clarify the intent of the recommended language.

City Attorney Bluhm replied that type of language is not included because of the 100-word limitation.

City Clerk Bartholomew recommended that the text also be italicized to distinguish it further.

Discussion Regarding Recommended Charter Revision Proposals #10, #11 and #12

City Clerk Bartholomew advised that Charter Revision Proposals 10, 11 and 12 are a result of a directive given to the City Attorney. City Clerk Bartholomew further advised that City Council has not reviewed the language and although this review is not a part of the initial charge given to the Charter Revision Committee, it is before the committee today due to time constraints.

City Attorney Bluhm asked the Charter Revision Committee to provide input on the proposals so that their recommendation could be forwarded to City Council.

10) Recommended Charter Revision Proposal #10

Shall Section 5.6(b) of the Troy City Charter, which requires an affirmative vote of a majority of the members elect of the Council for the effective thereof, be revised to add subsection "(8) Authorizing local financial contributions in State of Michigan I-75 Road Projects when local financial contributions are in excess of $1,000,000.00"?

Member Solomon noted that the proposed language should be corrected by inserting "ness" in the word "effective".

Member Solomon does not agree that this type of specific language should be included in the City Charter because he believes this type of issue should be voted on by the City Council.

City Attorney Bluhm read the directive given to her by City Council from her memo to the Mayor and Members of Troy City Council Dated May 18, 2005 regarding the I-75 Ballot Question, "the City Attorney is to research and draft ballot language for the Long Lake/Crooks Road/I-75 Interchange Improvement project that will allow voters to provide input on this project for the next scheduled city regular election." City Attorney Bluhm explained that the language is crafted in furtherance of the assignment given to her.

Members Wilsher and Kanoza agreed that the language is too specific to be included in the Charter.

Member Bloom questioned how this language would be of a benefit because he believes this issue already addressed in Item 5.

City Attorney Bluhm agreed that Item 5 arguably covers it.

Chair Bliss asked whether City Council is looking for a general recommendation from the Charter Revision Committee in regard to Charter Revision Proposals 10, 11 and 12.

City Attorney Bluhm responded that she would forward the Charter Revision Committees general thoughts as to what they believe to be appropriate or other recommendations as to how to address these issues. City Attorney Bluhm continued by stating that the committee may want to consider Charter Revision Proposal 12 separately because it differs somewhat from Charter Revision Proposals 10 and 11.

Chair Bliss advised that the Charter Revision Committee does not support Charter Revision Proposal 10.

Member Solomon added that although the Charter Revision Committee does support Charter Revision Proposals 10 and 11, the Charter Revision Committee is not expressing an opinion of the underlying issue.

11) Recommended Charter Revision Proposal #11

Shall Section 5.11.1 – Council Initiatory Referendary Petitions for I-75 Road Projects, of the Troy City Charter be added to provide a mechanism for referendum on City of Troy's financial participation in State of Michigan I-75 Road Projects when local financial contributions are in excess of $1,000,000.00?

Chair Bliss advised that the Charter Revision Committee does not support Charter Revision Proposal 11 for the same reasons as Charter Revision Proposal 10.

Recommended Charter Revision Proposal #12

Shall Section 7.9.5 – Council Initiated Ballot Questions, of the Troy City Charter be added to provide a mechanism for the City Council to place advisory ballot questions on the Regular City Election Ballot, by an affirmative majority vote of the members elect?

City Attorney Bluhm advised that the Charter Revision Proposal #12 provides for City Council to have the authority to place legislative advisory questions on ballots in future elections. City Attorney Bluhm explained that if approved by the voters in November, this ability would become effective for the next subsequent election. It is City Attorney Blum's opinion that such authority is not permissible without express authority in the City Charter.

Member Solomon understands that an advisory ballot question is not binding and that City Council may still take whatever action they deem to be appropriate.

City Attorney Bluhm agreed that advisory ballot questions are not binding and that is why there is no authority to expend city funds to do that. City Attorney Bluhm noted there is another element to this, which ties into her memo. She explained they have separated the legislative functions from the administrative and executive functions and noted that ballot proposals should be limited to legislative matters only, not administrative or executive matters. City Attorney Blum advised this concern was mentioned in her memo to City Council.

Member Bloom asked whether Charter Revision Proposal #12 would allow the I-75 question to appear on the ballot as a legislative advisory ballot question.

City Clerk Bartholomew advised that the I-75 question is an administrative question and not a legislative question.

City Attorney Bluhm explained that the proposed Charter revision language provides for questions that would be appropriate for voters to vote on such as ordinances.

Recommended Charter Revision Proposal #12

Resolution
Moved by Bloom
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #12* to read as follows, "*Shall Section 7.9.5 – Council Initiated Ballot Questions, of the Troy City Charter be added to provide a mechanism for the City Council to place advisory ballot questions on the Regular City Election Ballot, by an affirmative majority vote of the members elect?*

Member Solomon stated that it is difficult to object to something that is a way for City Council to find out what the public thinks. However, on the other hand he asked what do we need Council for?

Chair Bliss does not personally believe that advisory questions should appear on a ballot because there are other effective ways to poll the public on particular issues. He explained that there are many ways for the public to voice their opinions to elected officials such as going to City Council meetings, write letters, talk to Council Members directly or Council Members could poll the public directly. Further, there could be dozen of advisory questions appearing on a single ballot for the public to vote on. He believes that it is the responsibility of City Council to make decisions when appropriate.

Member Solomon interjected that advisory questions could also cause delays in the decision making process.

Chair Bliss agreed and continued by stating that it could add additional costs because there is a cost for everything.

Member Wilsher believes that most people who are concerned about a particular issue will make their concerns known. She added that none of the people she knows in Troy were contacted whenever any survey has been conducted by the city.

City Attorney Bluhm reminded the Charter Revision Committee members that there is a mechanism already in place in the City Charter to bring forward a new ordinance that would be binding.

Member Bloom sympathizes with City Council. He does not know if there is any governing body that is wise enough to make a decision about issues such as the I-75 interchange because the public seems to be closely divided. He continued by stating that to a certain extent it would be nice to determine what the public wants using a scientific measure such as elections. He further stated that this proposed language would only apply to a legislative proposition and that the Committee agrees that because the I-75 issue is an administrative issue, that it would not be appropriate to place it on a ballot anyway.

Member Wilsher suggested inserting “legislative” to clarify the intent of the proposed language.

City Attorney Bluhm agreed that inserting the word “legislative” would be appropriate to clarify that a advisory ballot question could not be used for administrative or executive issues.

Member Bloom stated he would support the resolution because he believes City Council is the appropriate governing body to determine whether or not this particular question should appear on the ballot.

Vote on Resolution to Amend Recommended Charter Revision Proposal #12

Resolution #CR-2005-06-014
Moved by Wilsher
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **AMENDS** the Resolution to *Support Recommended Charter Revision Proposal #12* language by **INSERTING** "nonbinding legislative" **BEFORE** "advisory".

Yes: All-7

12) Vote on Resolution to Support Recommended Charter Revision Proposal #12 as Amended

Resolution #CR-2005-06-015
Moved by Bloom
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **SUPPORTS** the proposed language for *Recommended Charter Revision Proposal #12* to read as follows, "*Shall Section 7.9.5 – Council Initiated Ballot Questions, of the Troy City Charter be added to provide a mechanism for the City Council to place nonbinding legislative advisory ballot questions on the Regular City Election Ballot, by an affirmative majority vote of the members elect?*

Yes: Bloom, Noce
No: Barno, Bliss, Kanoza, Solomon, Wilsher

MOTION FAILED

Audience Participation: No audience present.

13) Vote on Resolution to Recommend a Charter Revision Provision for City Council to Hold Study Sessions

Resolution #CR-2005-06-016
Moved by Solomon
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee hereby **RECOMMENDS** that the City Charter have a provision permitting City Council to hold "Study Sessions" whereby no City Council action is taken; and

BE IT FURTHER RESOLVED, That the Charter Revision Committee hereby **RECOMMENDS** that if City Council supports the Charter Revision Committee recommendation that City Council **DIRECT** the City Attorney to **DRAFT** the appropriate ballot language.

Yes: Bloom, Kanoza, Noce, Solomon, Wilsher, Barno
No: Bliss

MOTION CARRIED

14) Vote on Resolution to Adjourn

Resolution #CR-2005-06-017
Moved by Wilsher
Seconded by Kanoza

RESOLVED, That the Charter Revision Committee meeting of Monday, June 20, 2005 hereby be adjourned.

Yes: All-7

Attached to and made a part of the original Minutes of this meeting is a memorandum dated May 18, 2005 to the Mayor and Members of Troy City Council from Lori Grigg Bluhm, City Attorney regarding, *"I-75 Ballot Question".*

The meeting **ADJOURNED** at 2:40 PM.

Daniel H. Bliss, Chair	Tonni L. Bartholomew, City Clerk

TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: May 18, 2005
SUBJECT: I-75 Ballot Question

Assignment

In resolution #2004-07-368, the Troy City Council "DIRECTS the City Attorney to RESEARCH and draft ballot language for the Long Lake/ Crooks Road/ I-75 Interchange Improvement project that will allow voters to provide input on this project for the next scheduled city regular election." The next regular City election is November 2005, which means that the Troy City Council should approve the ballot proposals on or before August 1, 2005. The Charter Revision Committee meeting is on June 20, 2005, and the recommendations of the Charter Revision Committee are expected to be forwarded to the Troy City Council at the July 11, 2005 City Council meeting.

Placement of Advisory Questions on the Ballot

In a letter dated September 13, 2004, Christopher M. Thomas, the Director of Elections for the State of Michigan, stated "please be advised that absent express legal sanction, a local unit of government in Michigan does not have the authority to call or expend public funds for an election for the purpose of submitting an advisory question to the electors of the jurisdiction." (Attached) Advisory ballot questions are defined in *Southeastern Michigan Fair Budget Coalition v. Killeen, 153* Mich. App. 370 (1986), as questions when the "passage by an affirmative vote of the electorate would not, per se, have the force of law or require action by the city council." (p. 378)

An advisory question cannot be submitted to the electorate without explicit constitutional or statutory or charter authority. (OAG No. 6411 (1986)) In spite of this unequivocal provision, advocates for advisory questions cite language from the *Killeen* case to support their argument. Specifically, they rely on the language where the Michigan Court of Appeals states: "advisory questions are not per se excluded from ballot in elections. " This statement should not be taken out of context, however, especially since the Court continues by recognizing and restating the undisputed legal requirement that there needs to be express authority to allow for advisory questions. In *Killeen*, this express legal authority was lacking, and the court stated that there is no authority for advisory questions under the current state law or under the constitutional provisions. Similarly, there was no express authority for advisory questions in the City of Detroit charter. The *Killeen* court then concluded that absent such express legal authority, advisory questions cannot be submitted to the electorate. Detroit was not permitted to include an advisory question on their ballot.

Just as in *Killeen*, there is no express authority under the constitution, Michigan statutes, or the Troy Charter that expressly allows Troy to submit advisory questions to the voters. Advisory questions cannot be submitted to the Troy voters at this time.

For future elections, Council may wish to submit a question about including this express authority for advisory questions into the Troy Charter. This could be done for the November 2005 ballot, and if passed, it would allow for advisory questions in future election cycles. Until such a charter amendment is adopted, however, there is no authority to submit advisory questions to the voters.

Initiative and Referendum Are Limited To The Scope of Powers of the City

According to the Home Rule Cities Act, MCL 117.4 (i) (g), municipalities are permitted to incorporate the power of "the initiative and referendum on all matters within the scope of the powers of that city" into their charter. As succinctly stated by Frank Kelley, "the authority of a governmental board to submit questions to its electors is also limited by its general powers. It lacks inherent power to expend funds for the purpose of submitting questions to its electors on matters not within its control or competence." (OAG No. 6143, (1983), quoting a letter opinion to Mr. Ken Dorman, dated October 13, 1975.)

In OAG No. 6411 (1986), Dickinson County unsuccessfully sought to include an advisory question on the ballot that would obtain input on whether a county hospital should be transferred to a private non-profit corporation. The Attorney General first held that there was no express authority for an advisory question. Second, the Attorney General found that the County did not have the authority to transfer a public hospital to a private non-profit corporation, and would have precluded the ballot question on that ground as well.

Similarly, in a letter to the Honorable Michael J. Griffin, dated April 12, 1985, Attorney General Frank Kelley stated "research reveals no authority in either Const. 1963 or in statute for a county board of commissioners to schedule an election on an advisory question dealing with (selling) unclaimed animals in the county animal shelter (to facilities outside of Michigan)." The state statute provided no authority for the county to do what was proposed in the ballot question.

In *Stolorow v. Pontiac*, 339 Mich. 199 (1954), an ordinance that would prohibit the City and officials from using public funds for the acquisition and development of parking facilities was void, since it prohibited both the present and also the future city officials from expending, disbursing, or committing funds for purposes that are expressly authorized by the Charter.

Ballot Questions Cannot Improperly Shift Administrative Decisions to the Electorate

According to *Scovill v. Ypsilanti*, 207 Mich. 288 (1919), "the city council may not place propositions on the ballot that shift to the electorate the responsibility for making decisions that they themselves are required to make." In *Scovill,* the Ypsilanti City Council wanted voter input before deciding how much money would be paid out of the general fund, and how much money would be levied against affected property owners for a paving project. In rejecting the ballot question, the Michigan Supreme Court stated:

The authority to order and direct paving and other improvements to the city's highways, and the power of taxation to raise fund for that and other municipal purposes rests in the city council. The council cannot by resort to a 'special election' under the statute referred to shirk that duty, delegate its authority and divest itself of or restrict its taxing power conferred by charter in the absence of some express provision to that effect.

This rule was further clarified in *West v. City of Portage*, 392 Mich. 458, 221 NW2d 303 (1974):

Another major limitation on initiative and referendum arises from the distinction drawn by the courts between administrative and legislative action. Only legislative action is subject to initiative and

referendum. This exception applies only to actions of local governments in which the administrative and legislative functions are combined in one body. The courts look to the substance of the matters passed by the governing units and not to the form in which they are passed. An 'ordinance' might be either legislative or administrative. (3 Stan. L. Rev. 497, as quoted in *West,* p. 464)

The rationale for limiting the power of initiative and referendum is found in *McKinley v. Fraser*, 366 Mich. 104 (1962), which was reconsidered by the *West* court:

The understandable objection to an unlimited power of local initiation is that such power can be employed to interfere with the necessary administration of municipal affairs and that it vests with the disgruntled or otherwise misguided minorities the power to impede the efficiency which is necessary to the due execution of local government.

Elliott v. Clawson, 21 Mich. App. 363 (1970) also addresses a rationale for limiting the power of initiation and referendum to legislative, as opposed to administrative matters. It states:

Government by representation is still the rule. Direct action by the people is the exception.... The statutory scheme specifically designed for amending city ordinances properly emphasizes the high level of expertise required for the efficient administration of such complex legislation.

According to the Michigan Attorney General:

Statutory powers specifically delegated by the Legislature to a municipal corporation or board of education may not be redelegated by that body to the electors." (OAG No. 4434 (1965-66, p. 258)

In *Rollingwood Homeowners Corp, Inc. v. City of Flint*, 386 Mich. 258, 191 NW2d 325 (1971), the Court found that the City's acquisition of property for a public housing project was advisory, and that there was no right to submit a question concerning the acquisition of property to the voters. According to *Rollingwood*, "There is nothing inherently legislative about a decision to acquire real estate."

Similarly, in *Wayne County Jail Inmates v. Wayne County Sheriff*, 391 Mich. 359; 216 NW2d 910 (1974), the Michigan Supreme Court determined that the decision about whether to provide jail facilities was an executive or administrative function of the County Board of Commissioners.

In *Beach v. Saline*, 412 Mich. 729 (1982), the Court expressly held that the purchase of property is an administrative act which is not subject to the right of referendum.

In *Green Oak Township v. Munzel*, 255 Mich. App. 235 (2003), the Michigan Court of Appeals recently held that there is no authority to challenge a consent judgment through the referendum process. Consent judgments are negotiated and approved by the local legislative body.

In *Citizens Lobby of Port Huron, MI v. Port Huron City Clerk*, 132 Mich. App. 412 (1984), the Court held:

The implementation by a home rule city of a general policy, program or plan by ordinance is an administrative act which is not subject to voter initiative or referendum... To permit the electorate to initiate piecemeal measures affecting land development is as inconceivable to us as allowing the

electorate to initiate ordinances affecting the fiscal affairs of the city without regard to the budget or to the overall fiscal program.

In 1979, Attorney General Frank Kelley concluded that the decision on whether or not to accept funds from the FAA for the purpose of expanding and improving a county airport was an administrative decision. There was no authority to defer that decision to the voters of Menominee County, and therefore "there is no justification for an advisory vote which would be a useless and empty act." (Letter to Donald W. Riegle, Dec. 4, 1979)

In OAG 6143 (1983), Attorney General Frank Kelley opined that a township board had no authority to place an advisory question regarding the levy of summer property taxes on its special election ballot. Kelley stated that the state statute "does not authorize either a school board or a township board to redelegate such determination to its electors."

According to OAG 6383 (1986), the City of Muskegon properly denied an initiative petition to revise the city retirement benefits ordinance, since the City determined that it was an administrative issue, rather than a legislative issue. According to the opinion, "court decisions have limited the application of initiatory procedures to proposed ordinances which are legislative rather than administrative." The opinion also provided some out of state cases as guidance for municipalities that are wrestling with the legislative vs. administrative issue. According to *Shapiro v. Essex County Board of Chose Freeholders*, 177 NJ Super 87 (1980), "In determining whether an act is administrative or legislative... Matters of a permanent or general character are considered legislative, while acts which are temporary or routine are considered to be administrative..." The Attorney General opinion also cites the "practicality test" from *Shriver v. Bench*, 6 Utah 2d 329:

It can readily be seen ... that analyzing the factors which should be taken into consideration in fixing salaries, together with other considerations which must be weighted in individual cases, presents a problem of such complexity that it is not practical for the public to give it sufficient time and attention to make a proper determination of the matter, and further, that the changes which are continually occurring make it highly desirable that there be some expeditious method of re-examining the situation at frequent intervals. This points to the conclusion that it is much simpler, easier, and comports more with reason and the practical exigencies of the operation of city government that the salaries be adjusted by the administrative procedure set up in the charter.

Through comparisons with the existing case law of Michigan and other jurisdictions, Council can determine what ballot questions would be administrative or executive, and would constitute an improper delegation of authority. Administrative or executive decisions should not be placed on the ballot.

Potential Ramifications of Placing An Improper Question on a Ballot

Some members of the public have erroneously urged City Council that there is no harm in placing an improper question on the ballot. Attorney General Frank Kelley had the opportunity to specifically refute this assertion in his April 12, 1985 letter to Michael J. Griffin, who asked, "What penalties, if any, apply if a county board of commissioners expends funds on an election on such an advisory question?" Kelley responded:

Since an election on such advisory question is not authorized by law, injunctive relief by a taxpayer is appropriate to restrain expenditure of public funds to hold an election on such an advisory question. *Mosier, Johnson v. Gibson,* 240 Mich. 515, 215 NW 333 (1927).

In the event that such a scheduled election were held and public moneys were expended therefore, the action taken to authorize the election and the expenditure of funds would be *ultra vires*. Public moneys paid out therefore may be recovered and mandamus will lie to compel a county board of commissioners to bring such an action. *Johnson, supra,* 240 Mich. at 523.

Based on this strong opinion, if an improper ballot question is placed on a ballot, then this could result in an injunctive lawsuit against the City, or in lawsuits against individual City Council members who acted outside the scope of their responsibilities (ultra vires activities). Our office could not represent any such individual, and the City would similarly not be responsible for any individual judgments if there is ultra vires activity. Placement of an improper question on a ballot may also constitute misconduct in office, which could result in potential criminal prosecution and/or removal from office by the Governor.

City of Troy Election Provisions

As long as the City doesn't run afoul of the previous provisions, Troy does have the ability to place legislative ballot proposals before the voters, as authorized by Chapter 5 of the Troy Charter (Legislation). As stated in Section 5.10, "An ORDINANCE may be initiated by petition, or a referendum on an enacted ORDINANCE may be had by petition, as hereafter provided." (Emphasis added).

Troy could also submit a proposed Charter amendment to the voters in the November 2005 election. Under state statute (the Home Rule Cities Act), Charter amendments can be submitted through the initiation process. (MCL 117.21) Another avenue for placing a Charter Amendment issue on the ballot is to have a 3/5 majority of the members of the Troy City Council approve placement of the proposed Charter Amendment Proposal for the ballot.

Some opponents of the I-75/ Crooks/ Long Lake interchange project have proposed a Charter Amendment that would elevate the current voting requirement for appropriating the local share of the cost of a road project. However, Section 5.6 (b) of the Troy Charter already sets forth the applicable voting requirements. It states:

The following actions shall require the affirmative vote of a majority of the members elect of the Council for the effectiveness thereof:

(1) Vacating, discontinuing or abolishing any highway, street, lane, alley or other public place or part thereof;
(2) Purchasing, selling or leasing of any real estate or interest therein;
(3) Authorizing the condemning of private property for public use;
(4) Creating or abolishing any office;
(5) Appropriating any money;
(6) Imposing any tax or assessment;
(7) Reconsidering or rescinding any vote of the Council

Under this section, only four votes are required for these actions. Absent a change to the City Charter, City Council cannot by impose a more stringent voting requirement than the City Charter. However, Council could submit a Charter Revision question to the voters in November 2005, which would ask whether the Charter should require five of the members elect to transact business. The potential impact to such a change should be carefully considered, however, since such a change may result in unintended negative consequences. For example, five votes would be required, even if there were a vacancy on City Council. In such a case, an amendment to the Charter could provide veto power to any one individual member of Council. Even without such a vacancy, a minority would wield unlimited authority.

If Council chooses to submit an amendment to the voting requirements of the Charter, this could be done for the November 2005 election, and would be effective immediately if approved by the voters.

It should also be noted that under the election laws, a City cannot use public funds in support of or in opposition to any ballot proposal. Private groups do not have such limitations placed on their advocacy of ballot proposals.

If you have any questions concerning the above, please let me know.

CC: City of Troy Charter Revision Committee