

## **LEGAL MEMO ON STEPS REQUIRED TO TRANSITION FROM WALSH ACT TO ONE OF THE FOUR OPTIONAL FORMS OF GOVERNMENT UNDER THE FAULKNER ACT**

THE Optional Municipal Charter Law of 1950 ("the Faulkner Act") N.J.S. 40:69A-1 et seq. provides for four distinct forms of municipal government as follows:

- (1) Mayor-Council Form;
- (2) Council Manager Form;
- (3) Mayor-Council-Administrator Form and
- (4) Small Municipality Form.

The Small Municipal Form is only available to municipalities under 12,000 in population and consequently can be removed from consideration at the outset. Each of the three remaining forms with the exception of the Mayor-Council-Administrator Form includes a number of necessary options which must be considered and selected at the same time the form is adopted. See Pane, 34 N.J. Prac., Local Government Law § 5.10 (4<sup>th</sup> ed.).

There are two methods for adopting one of the Faulkner Act forms of government. The first one is to adopt an ordinance for a referendum on whether or not a Charter Study Commission should be elected. The referendum would also provide for the election of five members of the Charter Study Commission. *Id.* at § 5.11.

"It shall be the function and duty of the Charter Commission to study the form of the municipality, to compare it with other available forms under the laws of this State, to determine whether or not in its judgment the government of the municipality could be strengthened, made more clearly responsive or accountable to the people or whether its operation could become economical or efficient, under a changed form of government." N.J.S. 40:69A-7.

The Charter Study Commission would then have nine months (from the election) to file a report containing its recommendations to the Municipal Clerk. N.J.S. 40:69A-10. By statute its report may recommend several different options including a referendum submitting the public question of whether or not one of the Faulkner Act forms should be adopted. N.J.S. 40:69A-12. If the Commission recommends the adoption of a Faulkner Act form of government, the governing body shall adopt a referendum submitting this question to the voters. N.J.S. 40:69A-16. The statute requires that the referendum question contain specific language ("shall") phrasing it in the mandatory. *Id.*

A chart prepared by the New Jersey County & Municipal Government Commission sets forth the myriad number of options available under each Faulkner Act form of government. See Exhibit "A". These options all must be considered and selected by the Charter Study Commission in its report. N.J.S. 40:69A-12.

The second method of adoption is by "direct petition", e.g. by adopting an ordinance placing the referendum question for a specific Faulkner Act form of government together with all the selected options on the ballot without a Charter Study. N.J.S. 40:69A-18. In his treatise Michael Pane (probably the prominent expert on Municipal Law in New Jersey) disapproves of the direct petition method unless there has been a previous formal or informal Charter Study:

"In general, in those instances in which a municipality has not, as a community, examined the question of changing its form of government to a Faulkner Act form, it is usually considered advisable to have a Charter Study Commission formed so that the question can receive adequate study.

\* \* \*

In lieu of the Charter Study procedure, a municipality may place the question of adopting a particular form of the Faulkner Act on the ballot directly. This method, usually referred to as the "direct petition" method is traditionally employed in those instances where a particular form of government has resulted from a Charter Study, but has failed of sufficient votes or in the alternative, where a civic group or the League of Women Voters or an informal "blue ribbon" Charter Study Advisory Group has recommended a particular form without undertaking a formal Charter Study. In other words, it is a method which can be used where the proponents feel that there is a sufficient community consensus to enable its adoption." Pane, 34 N.J. Prac., Local Government Law § 5.11 (4<sup>th</sup> ed.).

Pane goes on to say that while the direct petition may save time:

"[o]n the other hand, since the time saved is usually spent discussing the benefits of adopting a charter, a direct petition referenda may be defeated precisely because the voters may not be willing to change their form of government before the community has adequate study and debate on the issue. Another disadvantage for proponents of a direct petition charter change is that, absent adequate community knowledge about the issues, opponents may attack the 'take it or leave it' nature of a direct petition referendum and advocate that it be defeated and that a Charter Study be undertaken instead." *Id.*

When a new form of government is adopted under the Faulkner Act, a new governing body must be elected according to a schedule set forth in N.J.S. 40:69A-205. Pane supra at § 5.20. The Faulkner Act also provides that during the period between the election of the first governing body and their assuming office, no significant appointments can be made by the outgoing governing body or its members. N.J.S. 40:69A-208.

This memo is a very superficial treatment of the Faulkner Act. Obviously, significant and thorough deliberations will be required either by a Charter Study Commission or the Board of Commissioners as to which of the Faulkner Act forms of government would be best for Millville, how many members of council should there be, should the new government be partisan or non-partisan, should there be at large and ward elections, how

should the Mayor be selected, should there be a strong manager/administrator who is not elected but serves at the pleasure of Council, should elected officials terms be staggered or concurrent and many other considerations too numerous to list here.

### **CONCLUSIONS**

Given all the different options that must be selected for each of the four alternative Faulkner Act forms of government, there really needs to be a study done in order to determine which form and which options would be most suitable for Millville. This is why the Act provides for a two step process beginning with a referendum electing a Charter Study Commission. One problem with such a referendum is that the current Commissioners would lose control over the process once the Charter Study Commissioners are elected.

On the other hand a problem with the "direct petition" alternative is that the current Board of Commissioners would in effect be voting to remove themselves from office before the end of their terms. My recommendation would be to instead consider an informal Commission appointed advisory charter study group which could conduct a thorough and deliberate investigation into what government would be best for the City and could then make non-binding recommendations to the Board. The Board would then be in a position to pass an ordinance for a direct petition referendum placing the adoption of a specific Faulkner Act form of government before the voters. Finally, I would suggest that this whole issue be placed on the agenda on our next work session if you are interested in moving forward.

EXHIBIT "A"

OPTIONS AVAILABLE AND USE OF THEM UNDER THE FAULKNER ACT FORMS OF GOVERNMENT (As of 1 January 1992)										
Options Available for Form <sup>1</sup>		Mayor-Council Form 64 Mun's		Council-Manager Form 38 Mun's		Small Municipality Form 17 Mun's		Mayor-Council-Administrator Form 1 Mun's		Total Using Option
<b>SIZE OF COUNCIL</b>										
(a)	3 Member	No		No		Yes	(0)	No		(0)
(b)	5 Member	Yes	(29)	Yes	(24)	Yes	(14)	No		(67)
(c)	7 Member	Yes	(24)	Yes	(13)	Yes	(3)	No		(40)
(d)	9 Member	Yes	(11)	Yes	(1)	No		No		(12)
<b>PARTISAN OR NON-PARTISAN</b>										
(a)	General Elections	Yes	(36)	Yes	(21)	Yes	(13)	Yes	(1)	(71)
(b)	Regular Municipal Election									
(i)	with run off provisions	Yes	(9)	Yes	(8)	Yes	(1)	No		(18)
(ii)	without run off provisions	Yes	(19)	Yes	(9)	Yes	(3)	No		(31)

<b>WARDS &amp; AT-LARGE OR AT-LARGE ONLY ELECTIONS</b>										
(a)	At-large only	Yes	(33)	Yes	(30)	Yes	(17)	Yes	(1)	(81)
(b)	Wards & At-large									
(i)	5 Member—2 Wards	Yes	(0)	Yes	(0)	No		No		(0)
(ii)	5 Member—3 Wards	Yes	(7)	Yes	(3)	No		No		(10)
(iii)	7 Member—4 Wards	Yes	(13)	Yes	(4)	No		No		(17)
(iv)	9 Member—5 Wards	Yes	(2)	Yes	(1)	No		No		(3)
(v)	9 Member—6 Wards	Yes	(9)	Yes	(0)	No		No		(9)
<b>VOTER ELECTION OF MAYOR OR SELECTION OF MAYOR BY GOVERNING BODY</b>										
(a)	Mayor elected separately	Yes	(64)	Yes	(6)	Yes	(16)	Yes	(1)	(87)
(b)	Mayor selected by Council	No		Yes	(32)	Yes	(1)	No		(33)
<b>CONCURRENT OR STAGGERED</b>										
(a)	Concurrent terms	Yes	(9)	Yes	(3)	Yes	(2)	No		(14)
(b)	Staggered terms	Yes	(55)	Yes	(35)	Yes	(15)	Yes	(1)	(106)

Source: The New Jersey County & Municipal Government Study Commission.