



MAY 2, 2022 - 7:00 PM

**AGENDA
MULTI-SERVICES COMMITTEE
PURSUANT TO RESOLUTION NO. 08-100, RULES I, II, AND III**

I. COMMUNICATIONS

II. RESOLUTIONS, MOTIONS, AND NOTICES

1. Resolution adopting Introductory Local Law No. 2 for the Year 2022 in relation to the amendment of Local Law No. 4 of the Year 1973 entitled "A Local Law to provide for the establishment of a County Charter for the County of Chemung, State of New York" relating to the provisions of Article 4 of the Municipal Home Rule Law of the State of New York (filed with the Department of State of the State of New York as Local Law No. 3 of the Year 1973), amending Article IV, Section 401; Article XX, Section 2001; Article XXI, Section 2101; Article XXII, Section 2301, Article XXVII, Section 2704 (adding Section 2706)

III. OLD BUSINESS

IV. NEW BUSINESS

V. ADJOURNMENT



CHEMUNG COUNTY ROUTE SLIP * PERSONNEL REQUISITION

Resolution adopting Introductory Local Law No. 2 for the Year 2022 in relation to the amendment of Local Law No. 4 of the Year 1973 entitled "A Local Law to provide for the establishment of a County Charter for the County of Chemung, State of New York" relating to the provisions of Article 4 of the Municipal Home Rule Law of the State of New York (filed with the Department of State of the State of New York as Local Law No. 3 of the Year 1973), amending Article IV, Section 401; Article XX, Section 2001; Article XXI, Section 2101; Article XXII, Section 2301, Article XXVII, Section 2704 (adding Section 2706)

Resolution #:

Slip Type: OTHER

SEQRA status

State Mandated False

Explain action needed or Position requested (justification):





CREATION:

Date/Time:	Department:
4/29/2022 1:12:44 PM	

APPROVALS:

Date/Time:	Approval:	Department:	
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ATTACHMENTS:

Name:	Description:	Type:
 Maggs MEMORANDUM re Local Law No. 2 for 2022.pdf	Memorandum	Cover Memo
 1974_NY_Opinion_of_the_Atty._General_No._162.pdf	Opinion of the NY Atty. General	Cover Memo
 1981_Opinion_of_the_NY_Atty._General_272.pdf	Opinion of the NY Atty. General	Cover Memo
 Local_Law_-_No._2_of_2022_-_Charter_Amendments.pdf	Resolution	Cover Memo

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MEMORANDUM

TO: David Manchester, Chairman
FROM: Bryan Maggs, Legislative Attorney
DATE: March 24, 2022
RE: Proposed Local Law (Charter Amendments)

I am offering this legal memorandum at your request, to accompany the proposed local law recommending Charter Amendments necessary to bring the Chemung County Charter into compliance with State Law.

Presently the Charter has five items that conflict with State Law:

1. The elected term of the Treasurer is three years (Charter § 401), while State Law mandates it to be four years (County Law § 400).
2. The elected term of the Clerk is three years (Charter § 2001), while State Law mandates it to be four years (County Law § 400)
3. The elected term of the District Attorney is three years (Charter § 2101), while State Law mandates it to be four years (County Law § 400).
4. The elected term of the Sheriff is three years (Charter § 2301), while State Law mandates it to be four years (County Law § 400).
5. The Charter gives IDA member appointment authority to the County Executive (Charter § 2704), while State Law mandates it to be “the governing body of the County of Chemung” (General Municipal Law § 896).

Both the NYS Constitution (Art. IX, § 2) and Municipal Home Rule (§ 34) are clear that no County Charter provision may be inconsistent with a general or special law adopted by New York State.

County Law § 400 is a general State Law that applies to all counties, and requires elected Sheriffs, Treasurers, District Attorneys and County Clerks to have 4-year terms. Ironically, when the Chemung County Charter was adopted, it called for the Treasurer to have a 4-year term, but at that time NYS law mandated a 3-year term. The NYS Attorney General issued an opinion (1974 Op Atty Gen 162) which said that the conflicting provision of the charter must yield to state law, and the Charter was updated by Local Law #3 of 1974, to change the Treasurer’s term to 3 years. County Law § 400 changed to make the terms 4 years, making the Charter out of compliance.

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March 24, 2022

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General Municipal Law § 856 is a general State Law that directs the formation and organization of IDAs. IDAs are established by “special act of the [NYS] legislature” (856[1][a]), and are “public benefit corporations” which “except as otherwise provided by special act of the [NYS] legislature * * * shall be appointed by the governing body of each municipality and who shall serve at the pleasure of the appointing authority” (856[2]).

The special legislation creating the Chemung County IDA did not make an exception from GML § 856, and expressly requires that the “members shall be appointed by the governing body of the county of Chemung” (GML § 896).

Erie County’s IDA is an example of a county that has a different method of appointment of the IDA members, calling for its members to be the County Executive, various town supervisors, the chairmen of the chamber of commerce and labor-management counsel, president of AFL-CIO, president of NAACP (and several other individuals), plus five members of the community “appointed jointly by the county executive of Erie county and the chairman of the legislature of Erie county” (GML § 891-a).

An opinion of the Attorney General has addressed directly the issue facing the unauthorized Chemung County Charter provision: “neither a charter county nor any other municipality has the power to alter or restrict the statutory designation of the municipality’s “governing body” as the body that appoints members of an IDA. A municipality may seek special legislation to provide a different method of appointing members” (1981 Op Atty Gen 272).

An IDA is a “State-created instrumentality. The [IDA] is not part of the county government; the IDA’s powers are derived directly from the State, not from or through the county. This power status is specifically recognized by section 34 of the Municipal Home Rule Law, which limits a county’s home-rule charter power by prohibiting a provision superseding any general or special law “[i]nsofar as it relates to a public benefit corporation. A change in the power of appointment of members of an IDA would supersede both a general and a special law” (1981 Op Atty Gen 272).

Each of the above changes are required under NYS Law to bring our Charter into compliance with NYS Law.

If you have any further questions, please feel free to contact me at your convenience.

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1974 N.Y. Op. Atty. Gen. No. 162 (N.Y.A.G.), 1974 WL 324320

Office of the Attorney General

State of New York
Informal Opinion
June 17, 1974

NEW YORK STATE CONSTITUTION, Article IX, §§ 1(h)(1), 2(c) (1) and 3(d)(1); MUNICIPAL HOME RULE LAW, §§ 2(5), 10(1) (a)(1) and 33(1) and 3(b); COUNTY LAW, § 400(1).

*1 A provision of the County of Chemung Charter approved by the voters at the general election of 1973 and effective on January 1, 1974, whereby the office of County Treasurer was designated as a four-year term, must yield to the provisions of County Law, § 400(1), which provides that such term of office shall continue to be three years.

Hon. Louis J. Mustico
Chemung County Attorney

This is in response to your letter of June 7, 1974, wherein you state that, under the County of Chemung Charter, which was approved by the voters in the general election of 1973 and became effective as of January 1, 1974, the office of County Treasurer is designated as a four year term. Since the Charter provision is inconsistent with the County Law, which provides for a three-year term for such office, you ask for my opinion whether the Charter provision or the provision of County Law governs the term of said office.

County Law, § 400(1), provides, in part:

"There shall be elected a sheriff, county clerk, district attorney and county treasurer. * * * *The term of office of each such officer shall continue to be three years from and including the first day of January next succeeding his election.* * * *" (Emphasis supplied.)

New York State Constitution, Article IX, § 1(h) (1), provides that counties, other than those wholly included within a city shall be empowered by law to adopt, amend or repeal alternate forms of county government.

Municipal Home Rule Law, Article 4, Part 1, contains the "County Charter Law" and, in section 33 thereof, provides, in part: "1. *Subject to restrictions in the constitution, in this article or in any other applicable law*, the board of supervisors of any county as defined in section thirty-two of this article and including but not limited to a county which has heretofore adopted a charter enacted by the legislature shall have power to prepare, adopt, amend or repeal a county charter. (Emphasis supplied.)

* * *

"3. Such a county charter shall provide for:

* * *

"b. The agencies or officers responsible for the performance of the functions, powers and duties of the county and of any agencies or officers thereof and the manner of election or appointment, *terms of office*, if any, and removal of such officers." (Emphasis supplied.)

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New York State Constitution, Article IX, § 2(c)(1), empowers a local government to adopt and amend local laws in relation to: "The powers, duties, qualifications, number, mode of selection and removal, *terms of office*, compensation, hours of work, protection, welfare and safety of its officers and employees, except that cities and towns shall not have such power with respect to members of the legislative body of the county officers." (Emphasis supplied.)

*2 Municipal Home Rule Law, § 10(1) (a) (1), implements the constitutional provision.

However, in both New York State Constitution and the Municipal Home Rule Law, such power is prefaced by wording to the effect that *such local law shall not be inconsistent with the provisions of the Constitution or inconsistent with any general law*.

County Law, § 400(1), as it relates to terms of office of county treasurer is a general law, since, in terms and in effect, it applies to all counties other than those wholly included within a city (New York State Constitution, Article IX, § 3[d][1]; Municipal Home Rule Law, § 2[5]).

From all of the foregoing, I conclude that a provision of the County of Chemung Charter approved by the voters at the general election of 1973 and effective on January 1, 1974, whereby the office of County Treasurer was designated as a four-year term, must yield to the provisions of County Law, § 400(1), which provides that such term of office shall continue to be three years.

Louis J. Lefkowitz

1974 N.Y. Op. Atty. Gen. No. 162 (N.Y.A.G.), 1974 WL 324320

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1981 N.Y. Op. Atty. Gen. (Inf.) 272 (N.Y.A.G.), 1981 WL 145770

Office of the Attorney General

State of New York

Informal Opinion No. 81-117

October 19, 1981

GENERAL MUNICIPAL LAW, ART 18-A, §§ 854(5), 856(1)(a) and (2), 891-a, 912 (second entry), 917; MUNICIPAL HOME RULE LAW, §§ 33, 34(3)(f); L 1972, CH 390; L 1978, CH 143.

*1 Neither a charter county nor any other municipality has the power to alter or restrict the statutory designation of the municipality's 'governing body' as the body that appoints members of an industrial development agency. A municipality may seek special legislation to provide a different method of appointing members.

Henry J. Holley, Esq.
Orange County Industrial Development Agency
76 E. Main Street
Port Jervis, New York 12771

Dear Mr. Holley:

You have asked whether Orange County by charter amendment may transfer from the county legislative body to the county executive the power to appoint members of the Orange County Industrial Development Agency established by chapter 390 of the Laws 1972 (General Municipal Law, § 912 [second entry]). You have supplied us with a copy of the charter amendment, which has been passed and takes effect on January 1, 1982.

An industrial development agency ('IDA') is 'a corporate governmental agency, constituting a public benefit corporation' (*id.*, § 856[2]). An IDA is established by a special act of the Legislature for the benefit of a municipality (*ibid.*, subd [1][a]). Thus, an IDA is a creature of the State and has only the powers granted to it by the general law authorizing IDAs (*id.*, Art 18-A), and, for any particular IDA, the special act establishing it (see our informal opinion of April 29, 1980, copy enclosed). The special act establishing the Orange County IDA states: 'Its members shall be appointed by the governing body of the county of Orange' (*id.*, § 912 [second entry]). Moreover, the general law authorizing IDAs states:


'Except as otherwise provided by special act of the legislature, an agency shall consist of not less than three nor more than seven members who shall be appointed by the governing body of each municipality and who shall serve at the pleasure of the appointing authority.' (*Id.*, § 856[2].)

In light of 'Except as otherwise provided by special act', it is clear that the Legislature anticipated that some municipalities might wish appointments of members to be made by someone other than the 'governing body', which is the 'board or body in which the general legislative powers of the municipality are vested' (*id.*, § 854[5]).^{a1} Orange County can request amendment of the special act to provide that its county executive appoints the members.

You mention that the case of *Heimbach v. Mills*, 67 AD2d 731 (2d Dept, 1979), is relied upon to justify the county's charter power to 'amend' Article 18-A. We recognize that a county in fashioning its form of government may supersede general laws (Municipal Home Rule Law, § 33). Here, however, the issue concerns a State-created instrumentality. The Orange County IDA is not a part of the county government; the IDA's powers are derived directly from the State, not from or through the county. The county's relationship to the Orange County IDA is determined not by home rule but by the Legislature. This power status is specifically recognized by section 34 of the General Municipal Law, which limits a county's home-rule charter power by prohibiting a provision superseding any general or special law '[i]nsofar as it relates to a public benefit corporation' (subd [3][f]). A change in the power of appointment of members of an IDA would supersede both a general and a special law.

*2 We note that the charter amendment also increases the membership of the Orange County IDA from five to seven as authorized by section 856 of the General Municipal Law as amended in 1978 by chapter 143. We think that a resolution adding two members to the agency followed by filing a certificate of appointment with the Secretary of State is all that is required. (See our informal opinion No. 81-43, copy enclosed.)

We note also that the charter amendment specifies that two of the seven members are to be appointed from the county at large and the other five from 'areas' consisting of combinations of districts from which county legislators are chosen. For the reasons given earlier, we doubt that a county's charter power permits it to restrict the power granted by the Legislature to the 'governing body' to make appointments. (Compare sections 891-a and 917, the only special acts that specify who are to be members.) The county legislative body by resolution can make appointments under such a policy and presumably could declare the policy in the resolution, a policy that would remain in effect until changed by resolution. To go beyond that by using a charter or local law might be considered an assertion of home-rule power over a subject that the Legislature has withheld.

 We conclude that neither a charter county nor any other municipality has the power to alter or restrict the statutory designation of the municipality's 'governing body' as the body that appoints members of an industrial development agency. A municipality may seek special legislation to provide a different method of appointing members.

The Attorney General renders formal opinions only to officers and departments of the State government. This performe is an informal and unofficial expression of views of this office.

Very truly yours,

Robert Abrams
Attorney General

By:

George D. Braden
Assistant Attorney General In Charge of Opinions

Footnotes

- a) We note that there are over 150 IDAs created by special act. Only ten of the special acts provide for appointing members other than by the governing body.

1981 N.Y. Op. Atty. Gen. (Inf.) 272 (N.Y.A.G.), 1981 WL 145770

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RESOLUTION NO. 22-

RESOLUTION ADOPTING INTRODUCTORY LOCAL LAW NO. 2 FOR THE YEAR 2022 IN RELATION TO THE AMENDMENT OF LOCAL LAW NO. 4 OF THE YEAR 1973 ENTITLED "A LOCAL LAW TO PROVIDE FOR THE ESTABLISHMENT OF A COUNTY CHARTER FOR THE COUNTY OF CHEMUNG, STATE OF NEW YORK" RELATING TO THE PROVISIONS OF ARTICLE 4 OF THE MUNICIPAL HOME RULE LAW OF THE STATE OF NEW YORK (FILED WITH THE DEPARTMENT OF STATE OF THE STATE OF NEW YORK AS LOCAL LAW NO. 3 OF THE YEAR 1973), amending Article IV, Section 401; Article XX, Section 2001; Article XXI, Section 2101, Article XXIII, Section 2301, Article XXVII, Section 2704 (adding Section 2706)

By:

Seconded by:

WHEREAS, Introductory Local Law No. 2 for the Year 2022 has been introduced and filed with the County Legislature seven (7) calendar days prior to consideration, exclusive of Sunday, upon the desks of the members of the Chemung County Legislature as required by Section 20 of the Municipal Home Rule Law; and the Clerk of the County Legislature has made her affidavit of service of filing the same; and

WHEREAS, Municipal Home Rule Law, Section 20 requires the Chief Executive Officer of the County to hold a Public Hearing thereon within the time limits as stated therein; and

WHEREAS, the Chemung County Charter, Article II, provides for adoption of Local Laws by the Chemung County Legislature; now, therefore, be it

RESOLVED, that the following Introductory Local Law No. 2 for the Year 2022, be and the same is hereby enacted and promulgated by the Chemung County Legislature as follows:

COUNTY OF CHEMUNG INTRODUCTORY
LOCAL LAW NO. 2 FOR THE YEAR 2022

A Local Law in relation to the amendment of Local Law No. 4 of the Year 1973 entitled "A Local Law to provide for the establishment of a County Charter for the County of Chemung, State of New York" relating to the provisions of Article 4 of the Municipal Home Rule Law of the State of New York (filed with the Department of State of the State of New York as Local Law No. 3 of the Year 1973) (Terms of County Treasurer and Sheriff, amend Section 2704, add Section 2706).

BE IT ENACTED by the Chemung County Legislature of the County of Chemung, State of New York, as follows:

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Section 1. Article I of the Chemung County Charter enacted by Local Law No. 4 of the year 1973 and filed with the Department of State of the State of New York as Local Law No. 3 of the year 1973 be and hereby is amended as follows:

ARTICLE IV
DEPARTMENT OF FINANCE

Section 401. Department of Finance; County Treasurer; Elections; Qualifications.

Section 402. Powers and Duties.

Section 403. Deputies.

Section 401. Department of Finance; County Treasurer; Elections; Qualifications.

There shall be a Department of Finance, headed by a County Treasurer who shall be elected from the County at large. His term of office shall be for ~~four (4) three (3)~~ years beginning with the first day of January immediately succeeding his election except that the provisions of this section with respect to such election shall not take effect until the General Election of 1974, at which time the County Treasurer shall be elected for a ~~four (4) three (3)~~ year term to commence on ~~January 1, 1975~~ January 1, 2023, and every County Treasurer thereafter shall have a term of ~~four (4) three (3)~~ years.

ARTICLE XX
DEPARTMENT OF RECORDS

Section 2001. Department of Records; County Clerk; Election; Qualifications.

Section 2002. Powers and Duties.

Section 2003. Deputy County Clerks.

Section 2001. Department of Records; County Clerk; Election; Qualifications.

There shall be a Department of Records headed by a County Clerk, who shall be elected from the County at large. His term of office shall be for ~~four (4) three (3)~~ years beginning with the first day of January immediately succeeding his election, except that the provisions of this section with respect to such election shall not take effect until the General Election of 1974, at which time the County Clerk shall be elected for a ~~four (4) three (3)~~ year term to commence on ~~January 1, 1975~~ January 1, 2023, and every County Clerk thereafter shall have a term of ~~four (4) three (3)~~ years.

ARTICLE XXI
DISTRICT ATTORNEY

Section 2101. District Attorney; Election; Term; Qualifications.

Section 2102. Powers and Duties.

Section 2103. Assistant District Attorneys.

Section 2101. District Attorney; Election; Term; Qualifications. There shall be a District Attorney who shall be elected from the County at large. His term of office shall

be for four (4) ~~three (3)~~ years beginning with the first day of January immediately succeeding his election, except that the provisions of this section with respect to such election shall not take effect until the General Election of 1976 at which time the District Attorney shall be elected for a four (4) ~~three (3)~~ year term to commence on January 1, 2024 ~~January 1, 1977~~, and every District Attorney thereafter shall have a term of four (4) ~~three (3)~~ years.

ARTICLE XXIII SHERIFF

Section 2301. Sheriff; Election; Term; Qualifications.

Section 2302. Powers and Duties.

Section 2303. Deputies.

Section 2301. Sheriff; Election; Term; Qualifications. There shall be a Sheriff who shall be elected from the County at large. His term of office shall be for four (4) ~~three (3)~~ years beginning with the first day of January immediately succeeding his election, except that the provisions of this section with respect to such election shall not take effect until the General Election of 1974 at which time the Sheriff shall be elected for a four (4) ~~three (3)~~ year term to commence on January 1, 2024 ~~January 1, 1975~~, and every Sheriff thereafter shall have a term of four (4) ~~three (3)~~ years.

ARTICLE XXVII OTHER COUNTY BOARDS, OFFICES, INSTITUTIONS AND FUNCTIONS

Section 2704. Additional Appointments by County Executive. The following offices, boards and administrative units are hereby continued, and its head and members as presently authorized shall continue in offices for the terms established thereof, and upon expiration of the term of said head or member, shall be appointed by the County Executive subject to confirmation by the County Legislature for terms presently authorized ~~by~~ by to wit: Civil Service Commission (Civil Service Law Sec. 15-a); Drug Abuse Council (Gen. Mun. Law Art. 12-E Sec. 239-u); Economic Opportunity; Fire Advisory Board (pursuant to Sec. 225-A County Law); Fish and Wildlife Management Board(pursuant to Sec. 198, Fish and Game Law); Forest Practice Board(Conservation Law Art. 3-1105); Historical Association; Human Relations Commission; ~~Industrial Development Agency (N.Y.S. I. D. A. Art. Sec. 856)~~; Jury Board (Judicial Law Art. 18); Medical Advisory Committee; Mental Health Board (Mental Hygiene Sec. 190-B); Soil Conservation Board; Southern Tier Central Regional Planning and Development Board (Art. 12-C Gen. Mun. Law); Finger Lakes Commission; Newtown-Hoffman Creeks Watershed; Harris Hill Soaring; Southern Tier Crime Control Planning Committee; Civil Defense Director; Veterans' Service Director; representatives on the County Extension Service; Dog Warden; Alcoholic Beverage Control Board; County Agriculture Society; County Conservation Commission; County Historian; Reforestry.

By adding the following Section to Article XXVII OTHER COUNTY BOARDS, OFFICES, INSTITUTIONS AND FUNCTIONS

Section 2706

The following offices, boards and administrative units are hereby continued, and its head members as presently authorized shall continue in office for the terms established thereof, and upon expiration of the term of said head or member shall be appointed by the Chemung County Legislature for terms presently authorized by to wit: Industrial Development Agency (N.Y.S.I.D.A. Art. Sec. 856)

Section 2. This Local Law is subject to referendum on petition as provided by law.

Section 3. This Local Law shall take effect immediately upon appropriate filing with the Department of State pursuant to the provision of the Municipal Home Rule Law.

and, be it further

RESOLVED, that the Clerk of the Chemung County Legislature be and hereby is authorized to transmit the same to the County Executive for a public hearing and said County Executive shall hold said public hearing within twenty (20) days after the presentation of said Local Law Introductory No. 2 for the Year 2022 to him.