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# Referendum Handbook

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# Referendum Handbook

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## Foreword

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Recent years have seen renewed interest in citizen involvement in local government matters. Federal assistance programs of the 1960's and 1970's included requirements for citizen participation in decision making in the form of public hearings. State laws guaranteeing open public hearings. State laws guaranteeing open public records and open meetings have given citizens access to local government processes.

Questions are variously authorized to be placed on the ballot by citizen petition or at the request of the governing body. The outcome of the voting on an issue determines if the proposal becomes established as public policy.

Public awareness of the referendum process has been greatly increased in recent years. Innovative and controversial initiatives placed on the ballot in other states, particularly California, have focused political activity and media attention on a number of celebrated referendum contests. These have included rolling back local taxes, limiting state taxes, term limits for elected officers, nuclear power, abortion, gun control, and various environmental concerns.

Unlike many other states, Pennsylvania has no general constitutional or statutory provision for voter initiative and referendum at the state or local level. Any statewide question in Pennsylvania must be authorized by a separate act of the legislature. Even amendments to the state constitution can only be placed on the ballot by legislative action, there being no method to amend the constitution through voter initiative.

While citizen access to the ballot and use of the referendum are limited in Pennsylvania, they are available in some cases. A number of state laws authorize local referenda on specific matters. Each law specifies how the question is to be placed on the ballot, either by voter petition or action of a local governing body. In addition, many of the home rule charters adopted by local jurisdictions since 1972 contain general authorizations for initiative and referendum.

This publication is for informational purposes only and does not constitute legal opinion or any exercise of regulatory authority by this Department.



# **1. The Role of Referendum in Pennsylvania Government**

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American governments in general and especially Pennsylvania governments are built on the theory of representative democracy. The people govern themselves through their elected representatives. These persons, chosen for limited terms by direct popular vote, represent the will of the people and are given the power to make decisions on public matters. The necessity for these representatives to periodically face the voters at elections keeps them responsive to the interests of their constituents.

Another democratic model is that of direct democracy. It goes back to the ancient Greek city-states where citizens gathered in the market place to vote directly on public issues. The foremost example in the United States is the New England town meeting, where residents annually gather to vote on the municipal budget and other issues. Direct democracy has also been practiced since the late middle ages in Swiss cantons ruled by citizen assemblies.

As the size of the jurisdiction increases, direct democracy soon becomes impractical in terms of the number of people to be gathered in one place and the distance they must travel to participate. The referendum is a mechanism to allow an element of direct democracy in a large jurisdiction. Quite simply, referendum is decision of an issue by formulating it into a question which is then submitted to the voters at an election. This provides each voter an opportunity for direct participation in the outcome of the issue.

The first modern use of the referendum was the adoption of a new constitution for revolutionary France by a direct popular vote in 1793. French use of the referendum was only infrequent thereafter. Development of the techniques of initiative and referendum really got under way with their adoption by a number of Swiss cantons between 1831 and 1890. The Swiss have continued to be heavy users of the referendum at both cantonal and national levels.

Although use of referendum for limited purposes occurred in the United States in the nineteenth century, it came to the fore with the Progressive movement of the first two decades of the twentieth century. As a reaction to the abuses of machine politics of the nineteenth century the Progressive movement pushed for a direct primaries, direct election of U.S. senators, voter registration, reforms in municipal government, limitations on corporations and use of the initiative and referendum. Between 1898 and 1918, 22 states, concentrated in the western half of the country, adopted statewide initiative and referendum. Since then four additional states have adopted it. After the end of the Progressive era, referenda activity dropped off, with frequent use being limited to a few western states, notably California, Oregon and Washington. The political ferment of the 1960's and 1970's brought about a rebirth of interest in initiative and referendum. The 'War on Poverty' launched by President Johnson emphasized citizen participation in governmental decision making at all levels. The events of the Watergate period led to widespread public distrust of governmental institutions. The referendum was seen as a tool to return decision making to the hands of the voters from distant and suspect seats of power.

A number of celebrated referenda on controversial issues were closely covered by the media who saw them as a clear expression of the mood of the country. In 1978, California's Proposition 13 was portrayed as the beginning of a nationwide revolt against high taxes. Other referenda received wide attention as people in various states and localities voted on such current issues as abortion, equal rights for women, nuclear disarmament, nuclear power, school busing, gun control and tax limits.



## **Development in Pennsylvania**

Pennsylvania has a strong tradition of representative government. Elections are hotly contested, but the power to make decisions on public matters is vested in the legislature at the state level and elected councils and boards on the local level. Use of the referendum has been slow to develop and is much more limited than in most other states.

The first instance of a referendum was a public vote on the call for a constitutional convention in 1825. All prior conventions had been called by legislative action. An 1835 law first provided for a popular vote to adopt a new state constitution, prior constitutions having been merely declared adopted by the conventions framing them. The Constitution of 1838 was adopted by referendum and for the first time required a popular vote to approve all amendments. Since that time all constitutions and amendments have been adopted by referendum, but Pennsylvania, unlike many other states has never authorized placing amendments on the ballot by citizen initiative, limiting this prerogative to the legislature.

Since 1968 the state constitution has authorized submission of the question of authorizing particular state bond issues to the voters.<sup>1</sup> The law authorizing the referendum must specifically itemize the purposes for the debt. Any bond issue approved by the voters is excluded from the constitutional debt limit for the state government. In recent years voters have approved bonds for parks and open space, farmland preservation, county prison construction, loans for water and sewer systems, nursing home loans and for loans to volunteer fire and ambulance companies.

In addition to constitutional amendments and debt authorizations, the General Assembly may by law provide for any other type of statewide referendum. From time to time, referenda are proposed on controversial issues, such as legalizing casinos or selling state liquor stores, but the legislature has yet to surrender its prerogative of making the final decision on such matters by instituting a referendum. During the period of 1968-82, Pennsylvania had twenty statewide propositions on the ballot, ranking forty-third out of the fifty states in the number of propositions presented to the voters.<sup>2</sup> These propositions have been limited to constitutional amendments and bond issues.

## **Local Referenda**

Over the years statutory authorizations for local referenda have steadily increased. These authorizations are limited to a particular subject area or question. With the sole exception of third class cities, the legislature has never enacted general initiative and referendum provisions for local governments. The first authorizations came in 1874 with laws requiring voter approval of certain municipal debt and incorporation of cities through a referendum process.

In some cases, controversial issues were compromised by allowing local option to be exercised by referendum. The example of local option for use of voting machines in 1929 was followed for liquor licenses in 1933 and in a 1935 law authorizing local referenda to permit Sunday movies. Municipal boundary change issues have always been controversial, so the legislature has delegated decision making in this field to local voters. Borough consolidation referenda were authorized as early as 1893. In 1994, the legislature provided a procedure for any class of local government to merge or consolidate, requiring voter approval in each municipality affected by the proposal. The constitutionally guaranteed initiative and referendum process remains the sole method of annexing part of one municipality to another.

The legislature has granted increasing flexibility to local communities on the organization of their governments. Home rule was authorized for Philadelphia in 1949, optional charters for third class cities in 1957 and home rule charters or optional plans to all counties and municipalities in 1972. All involve voter approval of the recommended new form in a referendum. Voter involvement in

creating specific offices has also been authorized with laws enacted permitting referenda on having county controllers in 1909, additional township supervisors in 1975 and full-time district attorneys in 1975, and eliminating jury commissioners in 1998.

## **General Authority for Initiative and Referendum**

Beyond the numerous statutory provisions on specific subjects, general authority for initiative and referendum exists in only two places in Pennsylvania law. The first of these is restricted to third class cities. One of the goals of the Progressive movement was reform of municipal government. One of the few direct results in Pennsylvania was passage of the Clark Act in 1913, establishing the commission form of government for third class cities. This act includes the power of initiative and referendum, giving the voters the right to propose ordinances or object to ordinances passed by council.

However the power of initiative and referendum in cities is severely limited. Signature requirements are restrictive: petitions must be signed in the city clerk's office within ten days by registered voters equal to twenty percent of the last total vote for mayor. It would require a great deal of organization and a sense of high urgency to get that many people to the clerk's office with the brief time period allotted. The second limitation is the long list of exceptions from the initiative and referendum power. These exclude such areas as tax levies, appropriations, eminent domain, ordinances relating to exercise of the police powers of the city to preserve public peace, health, morals and safety, construction of sewers and keeping the streets in passable condition, or any ordinance required by state law or a state agency. One commentator reflected: "Assuredly, nothing of great importance remains for the people to legislate upon the third class cities."<sup>3</sup>

Because of these limitations very few referenda have occurred in third class cities under these provisions over the years. These sections of the Third Class City Code appear to have been more productive of lawsuits than votes. Courts have leaned toward including issues within the list of restrictions. Judicial attitudes toward initiative and referendum have been generally chilly.

The initiative and referendum process run contrary to our understanding of representative government ...It is clear to us from a study of the development of the initiative and referendum process statutes that the General Assembly has intended to keep a tight rein on these processes by restrictions rather than the expansive approach...One of the prices paid for the creation of a representative democracy in the vesting by the electorate of trust and responsibility in its elected representatives. Discretion is placed within the hands of the municipal legislators and we must accept the lawful exercise of this discretion...Furthermore it is at the ballot box that a voter may express his disapproval of the legislative programs of his elected officials.<sup>4</sup>

Only three questions have been placed on the ballot in third class cities in recent years using the initiative and referendum procedures of the Code. In 1971, Erie voters overturned an ordinance providing for the sale of the city water system to an authority. In 1976, Altoona voters overturned an ordinance granting a cable TV franchise. In 1990, Harrisburg voters used the initiative process to reverse a previously-adopted ordinance by council renaming a street.

The second source of general authority for initiative and referendum is found in the power of counties and municipalities to adopt home rule charters. Initiative and referendum provisions can be included in home rule charters, or added later by amendment. To date, 54 of the 71 home rule charters in Pennsylvania include provisions for initiative and referendum.

While some of the charters contain restrictions on the areas subject to initiative and referendum, these are not as encompassing as those found in the Third Class City Code. Because of the nature of home rule, the voters have a recourse if they find their initiative and referendum powers

are too limited. A home rule charter may be amended by the voters at any time; this method may be used to alter the restrictions. In 1980 the Bethel Park Home Rule Charter was amended to remove restrictions on use of initiative and referendum in areas of appropriations, tax levies and salaries.

In spite of the widespread occurrence of initiative and referendum procedures in home rule municipalities, there has been little use of these provisions. Only six initiated ordinances have been placed on the ballot. Haverford Township voters defeated an ordinance requiring ending municipal opposition to the building of Interstate 476 in 1982; voters in Bethel Park Borough approved an historic landmark ordinance in 1991; voters in Radnor Township approved municipal participation in a rails to trails project in 1995; voters in Reading approved ordinances relating to debt approval and creation of municipal authorities in 1997; and voters in West Chester were presented with an initiative regulating real estate rentals in 1998. Other proposals have been referred to the voters by home rule governing bodies or ordinances passed by the governing body have been placed on the ballot for decision by the voters in referendum. Voters in Peters Township defeated proposals to raise tax limits in 1981 and 1985; salary increases for Lehigh County commissioners were defeated in 1981; voters approved participation in a joint municipal authority providing emergency medical services in Whitehall Borough in 1994 and in Green Tree in 1998; voters in Bethel Park defeated a tax increase in 1997; and voters in Reading defeated a garbage collection fee in 1998.

The absence of activity under initiative and referendum provisions may be attributed in some part to the availability of the process of amending the charter itself. In 45 of the home rule municipalities, 271 amendments to charters have been proposed, ranging from one to 49 per municipality. In the other 26 home rule jurisdictions, no charter amendments have yet appeared on the ballot.

## Advisory Questions

As a response to this lack of general initiative and referendum authority for the vast bulk of Pennsylvania local governments and the very limited subject areas authorized for referendum by statute, the practice of using nonbinding advisory questions spread across the state. This type of question was not mentioned anywhere in the law. It was neither expressly permitted nor expressly prohibited by statute. It have been used chiefly to obtain voter sentiment on a particular issue of local concern. But, Commonwealth Court rulings in 1990, 1991, and 1994 determined county election boards have no legal authority to place nonbinding questions on the ballot. Any further use of nonbinding advisory questions is clearly illegal.

## References

1. Pennsylvania Constitution, Article VIII, Section 7(a)(3).
2. David B. Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States*, Baltimore: John Hopkins University Press, 1984, p. 205.
3. Jacob Tanger and Harold Aldefer, *Pennsylvania Government*, Harrisburg: Pennsylvania Book Services, 1939, p 12.
4. *Williams v. Rowe*, 383 A.2d 881, 3 Pa.Cmwlt. 537, at 544-45, 1971.

## **II. General Referendum Procedures**

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There is no single state law governing procedures for initiating and conducting a referendum. Many of the specific requirements are found in the various laws authorizing particular referenda. The mechanics of actually conducting the election on the question, preparing ballots, giving notice, election day voting procedures, counting votes and certifying results are governed by the Pennsylvania Election Code.

### **Role of Election Code**

The Election Code was enacted as a general code of law governing all elections, general, municipal, special and primary. It provides for the machinery and procedural methods for elections, where and when they are to be held, the selection of election officers, qualifications of voters, nomination of candidates, use of voting machines, preparation for and conduct of elections, returns of elections, election expenses, recounts and contests and all other matters relating to the holding and conducting of elections.<sup>1</sup>

References to referenda in the Election Code are quite limited. In contrast to the detailed material on nomination and election of candidates for public office, there is very little language governing voting on questions. The Code is completely silent on requirements for placing referenda on the ballot. These are found in each of the specific laws authorizing particular questions. There are no provisions governing circulating, signing and filing referendum petitions, although at least five of the specific laws have adopted by reference the Election Code provisions relating to candidate petitions to govern referendum petitions. The Election Code classifies all questions as special elections and subject to provisions for the conduct of November elections.

Three fourths of the specific laws authorizing referenda make reference to their being conducted under the provisions of the Election Code or election laws. In the cases where no explicit or general reference to the Election code is made the referendum still must be conducted under its terms since the Pennsylvania Constitution requires uniform law for the conduct of elections.<sup>2</sup>

In determining statutory requirements for a referendum, both the authorizing law and the Election Code must be read together. Even so, gaps often appear and one is left without clear guidance. Sometimes authorizing laws fail to specify a filing deadline. They may include a deadline, but fail to provide a starting date before which petitions cannot be circulated. Some authorizing laws are very complete, others merely specify the issue is to be submitted to the voters with no further procedural guidance whatsoever.

Electoral procedures authorized by home rule charters are generally much better defined in terms of procedural requirements for initiating questions, deadlines and other matters. The Home Rule Charter and Optional Plans Law also makes all home rule municipalities subject to general state law on matters relating to registration of electors and the conduct of elections.<sup>3</sup> Therefore all referenda conducted under authorization of a home rule charter will be conducted according to the provisions of the Election Code. The charter will define the issue to be presented and outline requirements for placing it on the ballot, but the mechanics of the election will be governed by the Election Code.

## References

1. *Commonwealth v. Brown*, 28 A.2d 259, 149 Pa.Super. 130, 1942.
2. Pennsylvania Constitution, Article VII, Section 6.
3. 53 Pa. C.S. 2951; Home Rule Charter and Optional Plans Law, Section 2951.

## Date of Election

The Election Code contains no restrictions on fixing the date for a special election on any question. Referenda may go on the ballot at primaries, municipal or general elections or special elections to be called on days other than regular election days. On the other hand, authorizing laws often contain restrictions on the dates for particular referenda. For example, liquor license questions may only go on the ballot at the primary preceding a municipal election and questions on additional township supervisors may only go on the ballot at November elections.

When an authorizing law stipulates a particular date or restricts a referendum to a particular kind of election, the question is limited to those dates. Any such question voted on at a date other than the one directed by law is invalid.<sup>1</sup> Where the authorizing law does not stipulate a date or a type of election, the question may be placed on the ballot at any regular election day. Pennsylvania courts have established a doctrine of liberally construing the Election Code to maximize participation by candidates and voters in the electoral process.<sup>2</sup>

When a referendum is placed on the ballot at a primary election, every qualified voter must be given an opportunity to vote on the question without regard to the party requirements for voting for candidates in the primary.<sup>3</sup> The county election board must provide a separate ballot for independent voters or adjust voting machines to permit voting on the question separately.

**Expenses of Election.** When a question appears on the regular ballot the county is liable for all expenses associated with the referendum. If special ballots must be printed for a question to be voted on at a regular election day, the jurisdiction affected by the referendum is responsible for the printing costs of the separate ballot. When a referendum is held on a day other than a regular election day, the jurisdiction must pay for all the costs of conducting the election.<sup>4</sup>

## References

1. *Fetterman v. Blair County Board of Elections*, 175 A.2d 81, 405 Pa. 286, 1961: *Wiest's License*. 30 D.&C. 78, 1937, Q.S. Dauphin Co.
2. *Perles v. Hoffman*, 213 A.2d 781, 419 Pa. 400, 1965: *In re: Nomination Certificate of Luzerne County Democratic Executive Committee*, 436 A.2d 263, 62 Pa.Cmwth. 277, 1981.
3. *Kram v. Kane*, 8 A.2d 398, 336 Pa. 113, 1939.
4. 25 P.S. 2645, Pennsylvania Election Code, Section 305.

## Petition Requirements

The provisions governing nomination petitions in the Election Code constitute the only detailed, authoritative source for requirements governing the form, circulating, signing, filing, review and contesting of petitions. Some laws authorizing referenda specifically state that the circulation and signing of petitions is to be governed by the Election Code provisions for nomination petitions. Other laws are silent on this matter. In such cases, it is always advisable to follow the Election Code requirements because no other guidance is available in state law.

**Circulating Period.** The Election Code requires nomination petitions to be circulated between the thirteenth and tenth Tuesdays before the primary.<sup>1</sup> The Sunday movie referendum law (now obsolete) adopted the election laws as the procedure to be followed in placing the question on the

ballot. This meant petitions had to comply with the requirements for nomination petitions under the Election Code in respect to time, form and manner of circulation and content. Petitions signed before the first day for circulating petitions were invalidated.<sup>2</sup>

The same conclusion was reached for petitions for liquor license referenda under the Liquor Code. Courts have ruled that liquor question petitions can only be circulated for the three-week period prior to the filing date. Signatures dated before the first day for circulating petitions were not counted.<sup>3</sup>

**Form of Petition.** Referendum petitions generally resemble nomination petitions with the introductory material at the top and spaces for signatures at the bottom. The petition must identify the referendum the signers are requesting. Statutory authority for the referendum should be cited, or charter section in the case of a home rule electoral procedure. There is no requirement that the petition contain the full text of the question to be submitted to the voters.<sup>4</sup> However, this is usually done to establish that the signers were cognizant of the issue they were seeking to place on the ballot.

Petitions may constitute more than one sheet if they are bound together and the pages numbered. Courts have been very tolerant of minor irregularities in these matters.<sup>5</sup>

**Signatures.** Each signer must be a registered and enrolled voter of the political district named and so declare. The signer adds occupation and residence, giving street and number, if any.<sup>6</sup> Courts have interpreted the registration requirement to mean currently registered voters. Individuals must be registered at the time of signing; subsequent registration is not a remedy.<sup>7</sup> The usual and customary information adequate for mailing purposes satisfies the requirement for residence address in a township; use of R.D. numbers is acceptable.<sup>8</sup> The requirement of statement of occupation is an additional means of identifying the signer.<sup>9</sup>

**Affidavit.** Each sheet of a petition must include the affidavit of the circulator. This affidavit must include these statements: the circulator is a registered voter of the political district and list address of residence, signers of the petition signed with full knowledge of its contents, signers' residences are correctly state, they all reside in the county, they signed on the date set opposite their names, and to all the best of the circulator's knowledge and belief they are registered voters of the political district.<sup>10</sup> Referendum petitions must be accompanied by affidavits; this is one of the necessary safeguards placed around petitions to assure their genuineness.<sup>11</sup> The affidavit requirement in the Election Code is mandatory, even when the statute authorizing the referendum does not mention such a requirement.<sup>12</sup> In a case where affidavits were sworn prior to the time most signatures were applied to the petition, it was ruled invalid.<sup>13</sup> While the person actually circulating the petition does not have to be the signer of the affidavit, the signer must have personal knowledge of the facts being sworn to. Where this is not the case, the petition is invalidated.<sup>14</sup>

## References

1. 25 P.S. 2868; Pennsylvania Election Code, Section 908.
2. *Waynesboro Sunday Movie Referendum Case*, 117 A.2d 699, 383 Pa. 162, at 164, 1955.
3. *Providence Township Local Option Referendum*, 84 D.&C. 561, at 577, 1952, C.P. Montgomery Co.; *Rockdale Township Local Option Petition*, 76 D.&C. 137, at 143, 1951, C.P. Crawford Co.
4. *Rack v. Wentworth*, 76 D.&C. 44.5, at 448, 1951, C.P. Crawford Co.; *Commonwealth ex rel. McLaughlin v. Franklin County Commissioners*, 70 D.&C. 31, 1949, C. P. Franklin Co.; *Holidaysburg Borough Election*, 69 D.&C. 538, 1949, C.P. Blair Co.
5. 25 P.S. 2869 Pennsylvania Election Code, Selection 909; *Blair Township Liquor Referendum Case*, 114 A.2d 148, 382 Pa. 295, 1955; *Long v. Cochran*, 56 A.2d 105, 358 Pa. 129, 1948, *In re: Petition for Election of Two Additional Supervisors in Birmingham Township*, 549 A.2d 620, 120 Pa.Cmwlth. 586, 1988.
6. 25 P.S. 2868; Pennsylvania Election Code, Section 908.

7. *Aukamp v. Diehm*, 8 A.2d 400, 336 Pa. 118, 1939; *Fannett Township Liquor Referendum*, 3 Lebanon 190, 1952; *Elicker v. York County Commissioners*, 60 D.&C.607, C. P. York Co.
8. *Catherine Township Liquor Referendum Case*, 114 A.2d 145, 382 Pa. 291, 1955.
9. *Providence Township*, supra at 581.
10. 25 P.S. 2869; Pennsylvania Election Code, Section 909.
11. *Harrisburg Sunday Movie Petition Case*, 44 A.2d 46, 352 Pa. 635, 1945; *In re: Borough of Lemoyne Referendum*, 13 Cumb. 97, 1963.
12. *In re Petition of Werner*, 662 A.2d 35, Pa.Cmwlt., 1995.
13. *In re: Referendum Petition of Union Township*, 45 Erie 132, 1961.
14. *In re: Referendum to Amend the Pittsburgh Home Rule Charter*, 694 A.2d 1128, Pa.Cmwlt., 1997; *In re: Local Option Election in Slippery Rock Borough*, 406 A.2d 1168, 46 Pa. Cmwlt. 260, 1979; *Kuhn v. York County Board of Elections*, 79 York 27, 1965; *Falls Township Local Option Petition*, 76 D.&C. 489, 1951, C.P. Bucks Co.

## Petition Filing

**Filing Date.** The Election Code establishes the deadline for filing nomination petitions as the tenth Tuesday before the primary.<sup>1</sup> In cases where the referendum authorizing law specifically adopts the provisions of the Election Code relating to nomination petitions, the tenth Tuesday before the election becomes the deadline for filing referendum petitions, such as is the case of liquor license questions.<sup>2</sup> Where the authorizing law sets a specific filing date for petitions, that deadline prevails over the filing date for nomination petitions set in the Election Code.<sup>3</sup> Where the authorizing legislation contains no filing deadline and there is no specific reference to the Election Code, the filing deadline for referenda petitions may be set by the county board of elections. Adopting a formal regulation by the board appears to be more fair than responding to the need on a case by case basis.

**Examination.** The county board of elections has a reasonable time to examine the petitions. A petition must be rejected if it or the affidavit contain material errors or defects apparent on its face, if it contains material alterations made after signing, or if it does not contain a sufficient number of signatures.<sup>4</sup> Any rejected petition must be returned to the circulator. The deliberations of the election board in accepting or rejecting petitions and determining whether questions will be placed on the ballot are subject to the requirements of the Sunshine Law and must be conducted at a public meeting.<sup>5</sup>

**Challenges.** Any objections to referendum petitions must be filed with the court of common pleas within seven days after the last day for filing the petitions.<sup>6</sup> The seven days for objections to referenda petitions runs from the last day for filing such petitions regardless of when such petitions were actually filed.<sup>7</sup> Pennsylvania courts have held this time limit for challenging referendum petitions is mandatory; petitions cannot be challenged after that date.<sup>8</sup>

## References

1. 25 P.S. 2873(d); Pennsylvania Election Code, Section 913,
2. *Fairview Associates Inc. Appeal*, 433 A.2d 929, 61 Pa.Cmwlt. 404, 1981.
3. *Wagner v. Cumberland County Commissioners*, 85 D.&C. 38, 1953, C.P. Cumberland Co.
4. 25 P.S. 2936; Pennsylvania Election Code, Section 976.
5. *Lower Saucon Township v. Election Board of Northampton County*, 27 D.&C.3d 387, 1983, C. P. Northampton Co.
6. 25 P.S. 2937; Pennsylvania Election Code, Section 977.
7. *In re Petition of Werner*, 662 A.2d 35, Pa.Cmwlt., 1995.

8. *Waynesboro Sunday Movie Referendum Case*, 117 A.2d 699, 383 Pa. 162, at 167, 1955; *Pottsville Referendum Case*, 70 A.2d 651, 363 Pa. 460, at 468, 1950; *Hellertown Borough Referendum Case*, 47 A.2d 273, 354 Pa. 255, 1946.

## Conduct of Election

All referenda are considered special elections and are to be conducted in accordance with the provisions of the Election Code relating to November elections.<sup>1</sup> They are conducted by the same election officers, using the same equipment and facilities, and the same procedures as far as applicable as used for the regular election.

**Ballot Wording.** Except for statewide questions, the county board of elections is responsible for determining the wording of all questions. The question on the ballot is not to exceed 75 words in length. All questions must be followed by the words ‘yes’ and ‘no’ with squares for making cross marks.<sup>2</sup> In cases where specific wording for the question is provided by the authorizing law, that wording must be rigidly adhered to; any variation from the statutory form of the question will render the election invalid.<sup>3</sup> Where no specific wording is supplied by the authorizing law, the wording of the ballot question must effectuate the result the legislature intended. Referenda can be invalidated where the form of the ballot is lacking in conformity with the law and so confusing voters cannot intelligently express their intentions.<sup>4</sup>

**Explanation of Ballot Question.** For referenda which affect only one county or a portion of a county, county board of elections is to prepare an explanation of the ballot question.<sup>5</sup> This statement must be in plain English. It is to indicate the purpose, limitations and effects of the ballot question to the people. The statement is to be included in the notice of the election and three copies are to be posted at each polling place. For statewide questions, the ballot explanation is prepared by the Attorney General and certified to the counties by the Secretary of the Commonwealth.

**Notice.** The text of any question is to be submitted at the elections is to be included in the county board of elections’ official notice of the November election which is to be published between ten and three days before the election.<sup>6</sup> When questions are to appear on the primary election, the county board of elections must publish a notice including the text of the questions between ten and three days before the primary. Many of the referendum authorizing laws require additional notice, often by municipal officers.

Courts have held that adherence to notice requirements is mandatory as a fundamental preliminary to the election. Failure to give statutorily required notice will render the referendum invalid.<sup>7</sup>

**Returns.** Special elections on questions are conducted in accordance with the provisions of the Election Code relating to November elections. The results are computed and canvassed and returns made in the same method as returns for offices at November elections.<sup>8</sup> In cases where questions are presented to two or more counties, the election board of each county certifies the returns to the county having the majority of the registered voters of the political district, which then certifies the entire vote.<sup>9</sup>

**Challenges.** Courts have long held that election contests are limited to five classes of public officers under the Election Code. As referenda are not included, courts have no jurisdiction to hear election contests of referenda.<sup>10</sup> Validity of a referendum may be attacked collaterally, as in the case of liquor license questions challenged by appealing from the Liquor Control Board’s denial of license renewal.<sup>11</sup>

Although referenda are not subject to election contests, they are subject to the recount procedures of the Election Code.<sup>12</sup> Such recount actions can bring before the courts such questions as improper marking of individual ballots or improper printing of cards for voting machines.<sup>13</sup> A court of



equity also has the power to intervene and nullify a referendum election where some positive and material requirement of the law has been disregarded or ignored.<sup>14</sup>

**Campaign Expenditure Reporting.** All political committees organized for the purpose of supporting or opposing ballot questions must register within twenty days of receiving accumulated contributions of more than \$250.<sup>15</sup> If the amount of expenditures exceeds \$250 the treasurer of the committee must file campaign expenditure reports.<sup>16</sup> Pre-election reports must be filed the second Friday before the election and post-election reports not later than thirty days after the election. In addition, any other person independent of a political committee, who makes expenditures expressly advocating the support or defeat of questions in excess of \$100 must file a campaign finance report on the same dates.<sup>17</sup>

## References

1. 25 P.S. 2787; Pennsylvania Election Code, Section 637.
2. 25 P.S. 2963(g); Pennsylvania Election Code, Section 1003(g); 25 P.S. 3010(b); Pennsylvania Election Code, Section 1110.
3. *Kittanning Country Club's Liquor License Case*, 198 Atl 675, 330 Pa. 306, at 318, 1938, *Stern v. Bethlehem Borough*, 80 Atl 984, 231 Pa. 461.
4. *Staubs Appeal*, 57 York 194. 1944.
5. 25 P.S. 2621.1; Pennsylvania Election Code, Section 201.1.
6. 25 P.S. 3041; Pennsylvania Election Code, Section 1201.
7. *Mount Lebanon v. County Board of Elections of Allegheny County*, 368 A.2d 648, 470 Pa. 317, 1977; *Frederick H. Harper Jr., Inc. Appeal*, 29 A.2d 236, 150 Pa.Super. 569, 1941; *Chenet v. County Board of Elections of Westmoreland County*, 56 West. 195, 1974.
8. 25 P.S. 3069; Pennsylvania Election Code, Section 1229.
9. 25 P.S. 3160; Pennsylvania Election Code, Section 1410(g).
10. *Greene Township Malt Beverage License Referendum Contest*, 1 A.2d 670, 331 Pa. 536, 1938.
11. *Kittanning County Club*, supra, at 319.
12. *Rome Township Referendum Recount Case*, 155 A.2d 361, 397 Pa. 331, 1959, *Fishing creek Township Election Case*, 19 A.2d 754, 144 Pa. Super. 270, 1941.
13. *Reading Election Recount Case*, 188 A.2d 254, 410 Pa. 62, 1963; *Lower Tyrone Township Election*, 20 D.&C. 2d 138, 1959, C.P. Fayette Co.
14. *Gunnett v. Trout*, 112 A.2d 333, 380 Pa. 504, at 510, 1955; *Reese v. County Board of Elections of Lancaster County*, 308 A.2d 154, 10 Pa.Cmwlt. 448, at 454, 1973.
15. 25 P.S. 3244; Pennsylvania Election Code, Section 1624.
16. 25 P.S. 3246(a); Pennsylvania Election Code, Section 1626(a).
17. 25 P.S. 3246(g); Pennsylvania Election Code, Section 1626(g).

### **III. Laws Authorizing Referenda**

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Authorization for particular referenda are scattered through almost two dozen different state laws. The authority for a referendum is usually found in the law dealing with the subject matter of the question, however, there are a few free-standing authorizations. The laws are grouped by general subject here. A few authorizations have been omitted. Although they are still on the books, they were enacted for a one-time situation or have been made obsolete by a subsequent court decision, as in the case of a referenda on Sunday movies.

#### **Area Government**

The Pennsylvania Constitution enables the General Assembly to provide by law for establishing and dissolving governments covering the areas of two or more municipalities.<sup>1</sup> A proposal to establish an area government must be presented to the voters of the municipalities involved. The proposal may be initiated either by petitions signed by voters equal to at least two percent of the number of votes cast for governor in the last gubernatorial general election in each municipality affected, or by an ordinance enacted by the governing body of each of the municipalities affected.

The petitions or ordinances must be filed with the county board of elections at least ninety days before the election. This question may be on the ballot only at the general election or the primary held before a general election, both in even-numbered years. The election board must give the municipal governing bodies at least thirty days notice of the date of the election.

The referendum is to be conducted under the provisions of the Election Code. The county election board is to place the proposal on the ballot in a manner fairly representing the content of the ordinances or initiative petitions. In addition to the regular notice required by the Election Code, the mayor of each city or borough or chair of the board of county commissioners, president of the board of township commissioners or chair of the board of township supervisors must give at least thirty days notice of the election by proclamation. The proclamation must be published once in a newspaper of general circulation during the thirty-day period before the election. A copy of the proclamation must be posted at each polling place on the day of the election. Approval of the question requires a majority vote of those voting on the question in each municipality involved.

After almost twenty years in disuse, the first proposal to create an Environmental Improvement Compact came in November, 1990. Voters in Cambria and Somerset counties defeated a proposal to create a bi-county compact to administer certain environmental functions.

#### **Reference**

1. Pennsylvania Constitution Article IX, Section 6; 53 Pa.C.S. 2501; Environmental Improvement Compact Act.

#### **Boundary Change**

**Annexations.** Annexation of portions of counties, cities, boroughs, towns and townships can be accomplished through an initiative and referendum procedure. This procedure is found in the Pennsylvania Constitution.<sup>1</sup> The new local government article of the Constitution, approved by the voters in 1968, guarantees the right of the voters of any county or municipality to consolidate, merge

or change the boundaries of their unit without the approval of any governing body. Because the General Assembly has enacted a uniform law for municipal consolidation or merger, but not for annexation, this initiative and referendum procedure remains the only method available for boundary change actions involving transfer of a portion of one municipality to another.<sup>2</sup>

Constitutional boundary change actions are initiated by filing a petition for the change desired. The petitions must be signed by registered voters comprising five percent of the total number of votes cast for the office of governor in the last gubernatorial general election within the municipality. A separate petition must be filed for each municipality affected by the proposal. The petitions must be filed with the county board of elections at least ninety days prior to the next primary or general election.

The county board of elections is to place the proposal on the ballot in a manner fairly representing the content of the petitions. The question is to be placed on the ballot in each municipality affected by the proposal. To be approved, any question must receive a majority of the votes cast in each municipality, tallied separately, of those voting on the proposal. Submission of initiative proposals on similar questions more often than once in five years is prohibited.

There is no restriction on the type of boundary change action that can be proposed to the voters with this procedure. For instance, it can be used to transfer land from county to county, or parts of cities may be annexed to townships as well as vice versa. There is no requirement that the land to be transferred to another unit be contiguous to the unit's existing boundary. However, the nature of proposals is always limited by the political practicalities of obtaining voter approval.

**Consolidation or Merger.** In 1994, the General Assembly enacted the Municipal Consolidation or Merger Act to provide procedures for the merger or consolidation of counties and municipalities. There are no restrictions on the number or type of municipalities that can be combined, but the resulting unified entity must be contiguous.<sup>3</sup>

The Act provides four basic steps in the merger and consolidation process. First, the question can be placed on the ballot either by joint agreement of the governing bodies or by voter initiative. Second, the proposal must be submitted to the voters of each municipality. Third, where a voter-initiated question has been approved in a referendum, the governing bodies must adopt a consolidation or merger agreement. Finally, the consolidated or merged municipality begins to function after any necessary new officers are elected.

A merger or consolidation can be initiated by adoption of a joint agreement by the governing bodies by ordinance. The joint agreement must be filed with the county board of elections at least thirteen weeks before the next primary, general or municipal election. The Act contains a detailed list of the items needed to be included in the joint agreement.

Another option is for the merger or consolidation proposal to be placed on the ballot by voter initiative petitions. A separate petition must be submitted for each municipality involved in the proposal. The petition must be signed by registered voters comprising at least five percent of the total number of votes cast for the office of governor at the last gubernatorial general election in the municipality. The petition can be circulated only between the twentieth and thirteenth Tuesdays before the election and must be filed with the county board of elections by the thirteenth Tuesday. The Act details the required contents of the petition.

A merger or consolidation question must be placed on the ballot by the county board of elections at the next primary, municipal or general election occurring at least thirteen weeks after the filing of either the joint agreement or the voter petitions with the election board. The question must be approved by separate majority votes in each municipality affected.

If a merger or consolidation is defeated by the voters, the same question may not be voted on again for a period of five years. However, the five-year moratorium does not apply if a subsequent question is different or dissimilar in any way.

## References

1. Pennsylvania Constitution, Article IX, Sections 8 and 14.
2. *Middle Paxton Township v. Borough of Dauphin*, 326 A.2d 342, 458 Pa. 396, 1974.
3. 53 Pa.C.S. 733; Municipal Consolidation or Merger Act.

## Community Courts

The Constitution authorizes the establishment of a community court within any judicial district in Pennsylvania through an initiative and referendum process.<sup>1</sup> If established by the voters, the community court would replace the existing system of district justices for the purpose of hearing minor offenses and presiding at arraignments. The question may be placed on the ballot only at a primary election.

The question must be initiated by a petition signed by a number of registered voters equal to at least five percent of the total votes cast for all candidates for the office occupied by a single official for which the highest number of votes was cast in the judicial district at the last preceding general or municipal election.

The petition is governed by the provisions of the Election Code relative to candidate petitions.<sup>2</sup> No petition can be circulated and signed prior to the thirteenth Tuesday before the primary nor later than the tenth Tuesday before the primary. The petition must be filed with the Secretary of the Commonwealth on or before the tenth Tuesday prior to the primary.

A question on establishing or discontinuing a community court is decided by a majority vote of those voting on the question. The same question cannot be placed on the ballot in a judicial district more than once in five years.

## References

1. Pennsylvania Constitution, Article V, Section 6.
2. 42 Pa.C.S. 1102(a); Judicial Code, Section 1102.

## Debt Authorization

Two laws contain authorizations for referenda on incurring debt by local government units. The general law applies to all counties, school districts and municipalities, except Philadelphia. There is a separate law governing Philadelphia debt approval.

**General.** For all units except Philadelphia, the Local Government Unit Debt Act provides a procedure for obtaining approval of the voters for issuing local government debt.<sup>1</sup> Any such debt approval by the voters is excluded in computing the jurisdiction's remaining nonelectoral borrowing capacity. The debt approval question must specify the particular purpose or project for which the funds will be used.

The governing body must adopt a resolution signifying its intent. A copy of the resolution and the form of the question must be certified to the county board of elections at least 45 days before the election. The question may be placed on any municipal, general, primary or special election called for other purposes. If the next election is more than ninety, or less than thirty days from the date of the resolution, the governing body may fix a date for a special election, in which case it must pay all election expenses.

Notice of the referendum must be published in one or two newspapers published or circulating within the jurisdiction and in the county legal journal, if any. In daily newspapers notice is published three times at intervals of not less than three days; in weekly newspapers and the legal journal it is published twice, once a week for two successive weeks. The first publication must be between fourteen and 21 days before the election, but after the effective date of the resolution.

The question must be framed in a form substantially in compliance with the wording specified in the Act. The conduct of the election is to be governed by the terms of the Pennsylvania Election Code. A return of the election is to be certified to the local government unit. If the question is defeated, no other election may be held for the same purpose until 155 days have elapsed.

Similar procedures are to be followed when the local governing body wishes to get voter approval of debt already incurred, transferring it from the nonelectoral to electoral category. If debt has been incurred for a particular purpose and the governing body wishes to use the funds for a purpose other than that approved by the voters for electoral debt, it must pass a resolution calling for an election to approve the new purpose.<sup>2</sup> The election is subject to the same procedures and conditions as an election on incurring electoral debt. The question is to be in the form specified in the Act.

**Philadelphia Debt.** When debt is to be incurred with the approval of the electorate, council is to authorize the debt by enacting an ordinance, subject to approval by the voters at a referendum. The ordinance is to fix the date of the referendum.<sup>3</sup>

Notice of the referendum is to be given by advertising once a week for three weeks in each of three daily newspapers having at least 30,000 circulation in the city and in the legal journal.<sup>4</sup> The referendum is to be held at a municipal or general election, unless such election occurs more than ninety days after the date of the ordinance providing for the election.<sup>5</sup> When a special election is called, the city must pay all costs of the election.

The question is to be printed on the ballot in brief form, followed by the words ‘yes’ and ‘no’ with appropriate voting squares. The election is to be conducted by the regular election officers under laws governing general or municipal elections. If a majority of those voting on the question have approved, the ordinance becomes effective upon certification of the vote by the court. If not, the ordinance is ineffective.

Debt which the voters have approved is excluded in computing the amount of debt the city has incurred without approval of the voters. Debt previously incurred directly by council without approval of the voters may be transferred to electoral debt, assumed or refunded by a subsequent action to obtain the approval of the voters following the procedure above.<sup>6</sup>

When council wishes to change the use of funds already borrowed with the approval of the voters, the proposal must be approved in a further referendum.<sup>7</sup> The referendum follows the procedures outlined above, except the ordinance authorizing the change in purpose must be approved by two thirds of the members of council. Further, the notice of the election must contain statement of the amount and purpose of the original authorization, the new purpose proposed, and the reason for the change. The question is to be substantially in the form specified in the Act.<sup>8</sup>

## References

1. 53 Pa.C.S. 8041; Local Government Unit Debt Act, Section 8041.
2. 53 Pa.C.S. 8049; Local Government Unit Debt Act, Section 8049.
3. 53 P.S. 12584; 1919 P.L. 581, Section 4.
4. 53 P.S. 12585; 1919 P.L. 581, Section 5.
5. 53 P.S. 12586; 1919 P.L. 581, Section 6.
6. 53 P.S. 12583; 1919 P.L. 581, Section 3.
7. 53 P.S. 15763; 1923 P.L. 50, Section 3.
8. 53 P.S. 15765; 1923 P.L. 50, Section 5.

## Fire Protection

Various laws authorize referenda relative to the fire service. They include authorizing replacing paid with volunteer companies and vice versa, a special millage for fire protection purposes, a special tax used for construction of a fire house or municipal building, approval for construction of a fire house and a special tax for ambulance and rescue squads.

**Replacing Paid with Volunteer Company.** No county or municipality employing paid firefighters, including but not limited to paid fire drivers, may disband its paid fire force in favor of having the services performed by volunteers unless approved by the voters in a referendum.<sup>1</sup> This referendum requirement applies only to actions taken to disband an entire paid fire force. It does not apply where one station is closed and its paid firefighters transferred to another station.<sup>2</sup>

The question may be initiated by an ordinance of the governing body, or by a petition signed by at least twenty percent of the registered voters of the municipality. The ordinance or petition must be filed not later than the thirteenth Tuesday prior to the next general, municipal or primary election. All petitions must be signed, filed and adjudicated subject to the Election Code provisions relating to nomination petitions, so far as applicable. Petitions may be circulated no earlier than the twentieth Tuesday before the election, nor later than the thirteenth Tuesday prior to the election.

The question may be placed on the ballot at a general, municipal or primary election. The wording of the question is contained in the act. The election is to be conducted under the provisions of the Election Code. Third class cities have the option of conducting the referendum under the provisions of this act or of Article X of the Third Class City Code.

**Replacing Volunteer with Paid Company.** No municipality may replace a volunteer fire company serving the municipality with a paid fire company unless a majority of the voters have approved the change in a referendum.<sup>3</sup> A referendum is also necessary before abolishing a volunteer fire department, where the municipality has a mixed paid and volunteer system.<sup>4</sup>

The municipality wishing to replace its volunteer fire company with a paid fire company must file a petition with the county board of elections. There is no specification as to what this petition is to include; most probably a resolution of the governing body would suffice. The question is placed on the ballot at the next municipal primary occurring at least sixty days after the filing of the petition. The question is to be in the form specified in the act. The municipality may not replace its volunteer service with paid fire service unless it obtains approval of a majority of the voters voting on the question.

**Special Fire Tax.** In boroughs and townships, the municipal governing body may levy a special real estate tax for fire protection purposes of up to three mills by its own action. If the municipal officials wish to levy a tax higher than three mills, a question on levying the additional tax must be submitted to the voters in a referendum.<sup>5</sup> The question is to be submitted to the voters in accordance with the election laws and is to be framed by the county board of elections. The Borough and First Class Township Codes contain no deadline for the submission of the question to the election board, and the question may be placed on the ballot at any election. For second class townships, the question may only be placed on the ballot at a municipal or general election and must be submitted to the election board at least sixty days prior to the election.<sup>6</sup>

**Borough Building Tax.** In addition to the special fire tax authorization, the Borough Code contains a provision for a special real estate tax of up to two mills which may be used for construction of a fire house, fire training center or municipal building.<sup>7</sup> The borough must give notice of the election by publishing an advertisement once a week for four successive weeks before the election. If no newspaper is published in the borough, notice may be given by posting at least twenty printed handbills in public places. The notice is to contain a statement of the purpose of the special tax. The election is to be held at the first general or municipal election occurring at least thirty days after the

publication of the first notice. The question is to be framed and submitted to the voters in accordance with the election laws.

**Township Fire House.** In first class townships, boards of commissioners must obtain the approval of the voters in a referendum before construction of a fire house. The question is to appear on the ballot at a municipal election. The question is to be framed and submitted to the voters in accordance with the election laws.<sup>8</sup>

**Ambulance and Rescue Squads Tax.** In boroughs and townships the council or board has authority to levy a special tax of up to one-half mill to support ambulance and rescue squads. Boroughs and first class township officials may levy this tax at a rate of up to two mills for this purpose, if the additional millage above one-half mill is approved by the voters in a referendum.<sup>9</sup> For second class townships there is no limit to the additional millage that may be approved by the voters.<sup>10</sup> The question is to be submitted to the voters in accordance with the election laws and is to be framed by the county board of election. For boroughs and first class townships there is no deadline for submission of the question to the election board and it may be placed on the ballot at any election. For second class townships, the question may only be placed on the ballot at a municipal or general election and must be submitted to the election board at least sixty days prior to the election.<sup>11</sup>

## References

1. 53 P.S. 751; 1974 PL. 802.
2. *Maher v. County of Allegheny*, 675 A.2d 378, Pa.Cmwlt., 1996, appeal denied 687 A.2d 380, 546 Pa. 697.
2. 53 P.S. 3832; 1955 P.L. 173, Section 2
3. *Volunteer Firemen's Relief Association of New Castle v. DiLullo*, 198 A.2d 846, 414 Pa. 138, 1964.
4. 53 P.S. 46302(6); Borough Code, Section 1302(6); 53 P.S. 56709(2) First Class Township Code, Section 1709; 53 P.S. 68205(a)(4); Second Class Township Code, Section 3205(a)(4).
5. 53 P.S. 68206; Second Class Township Code, Section 3206.
6. 53 P.S. 46302(7); Borough Code, Section 1302(7); 53 P.S. 49243; 1927 P.L. 673.
7. 53 P.S. 56517; First Class Township Code, Section 1502(XVII).
8. 53 P.S. 46302(e); Borough Code, Section 1302(e); 53 P.S. 56709; First Class Township Code; Section 1709(c).
9. 53 P.S. 68205(a)(8); Second Class Township Code, Section 3205(a)(8).
10. 53 P.S. 68206; Second Class Township Code, Section 3206.

## Forest Lands

Several laws authorize local referenda relating to forest lands. They cover reallocation of federal forest in lieu of tax payments and buying and selling municipal forest land.

**National Forest Reserve Payments.** Payments in lieu of taxes by the federal government for national forest lands are divided up three fourth for schools and one fourth for township roads under state law. The law authorizes a referendum in any township affected to change the formula to half for schools and half for township roads.<sup>1</sup> When a petition signed by at least twenty percent of the registered voters of the township is presented to the board of supervisors, the board is to adopt a resolution petitioning the county board of elections to place the question on the ballot.

The township resolution must be filed with the county board of elections at least sixty days prior to the next primary, general or municipal election. The referendum is conducted under the provisions of the election laws. A majority of the voters approving the question will result in the alteration of the distribution formula. The same question cannot be presented to the voters again for at least five years.

**Selling Municipal Forests.** Any sale or lease of municipal forest land in a city or township must be approved by the voters in a referendum.<sup>2</sup> The sale or lease must be authorized by an ordinance of the governing body. It does not become effective unless approved by the voters in a referendum to be held at the next primary, municipal or general election. In second class townships, the question may only appear on the ballot at a municipal or general election.

## References

1. 72 P.S. 3543; 1925 P.L. 324, Section 3.
2. 53 P.S. 3356; 1909 P.L. 124; 53 P.S. 38837; Third Class City Code, Section 3837; 53 P.S. 58047; First Class Township Code, Section 3047; 53 P.S. 67207(f); Second Class Township Code, Section 2207(f).

## Health Departments

State law authorizes referenda on the creation or dissolution of county health departments and creation of and withdrawal from joint-county health departments.<sup>1</sup>

All petitions are to be in the form required for nomination petitions in the Election Code, except petitions cannot be circulated more than six months before the filing date which is ninety days before the next general or municipal election. Adjudication and challenges to the petitions are to be governed by the terms of the Election Code. The question is to be presented to the voters substantially in the form specified in the law.

Where the question calls for creation of a joint-county health department, a separate petition must be filed and a separate referendum conducted in each county affected. Petitions for creation of health departments must be signed by registered voters equal to at least one percent of the highest total vote cast for any county office at the last municipal election.

Petitions for dissolution of a county health department or withdrawal from a joint-county health department can be circulated no earlier than five years from the date of the establishment of the department nor five years from the date of another referendum on the same question. Petitions for dissolution or withdrawal must be signed by registered voters equal to at least ten percent of the highest total vote cast for any county office at the last municipal election.

## Reference

1. 16 P.S. 12005, 12005.1; Local Health Administration Law, Section 5 and 5.1.

## Home Rule Charters and Optional Plans

Adoption, amendment and repeal of alternate forms of government for municipalities and counties must be accomplished by referendum. Several laws establish procedures in this field. There is a general law governing all municipalities and counties, except Philadelphia and Allegheny County which have their own special laws. In addition third class cities may repeal optional charters adopted under a prior law.

**General Law.** The Home Rule Charter and Optional Plans Law of 1972 applies to all municipalities and counties except Philadelphia and Allegheny County. It establishes the procedure for adoption of home rule charters of optional plans of government and their amendment and repeal. Each change requires approval by the voters in a referendum. All elections under the Home Rule Law are conducted in accordance with the Pennsylvania Election Code.<sup>1</sup> In addition to the regular notice of election required by the Election Code, any election under the Home Rule Law must be advertised by the municipal secretary in a newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of thirty days prior to the election.<sup>2</sup> Notice requirements are



held to be mandatory, as a fundamental preliminary prerequisite; lack of notice can lead to invalidation of the election.<sup>3</sup>

The process of adopting a home rule charter or optional plan is begun with a referendum on having a government study commission. The question may be placed on the ballot by an ordinance of the governing body or by petition of the voters.<sup>4</sup> The petition must be signed by voters comprising at least five percent of the number of votes cast for the office of governor at the last gubernatorial general election within the municipality. No petition can be circulated or signed prior to the twentieth Tuesday before the election, nor later than the thirteenth Tuesday. Referendum petitions are to be signed, filed and adjudicated under the Election Code provisions for nomination petitions. The ordinance or petition must be filed with the county board of elections at least thirteen weeks before the election. The question may be placed on the ballot at any primary, general or municipal election. The members of the government study commission are to be elected at the same election where the question is submitted to the voters. The question is to be worded in the form of one of the three questions provided in the law.

If the government study commission recommends a new form of government for the municipality, this recommendation must be presented to the voters. The report of the commission is filed with the municipal secretary who must within five days certify a copy of the report to the county board of elections. The question is to be placed on the ballot at the primary, municipal or general election specified by the commission, occurring at least sixty days following the filing of the report with the election board. The question is to be presented to the voters under the provisions of the Election Code. The question is to be framed by the commission in the form provided in the law.<sup>5</sup> The law permits the commission to frame an interpretative statement to accompany the question on the ballot.

Amendments to home rule charters or optional plans of government may be initiated by voter petition or by ordinance of the governing body.<sup>6</sup> Proposals for amendment of optional plans are limited to the additional options provided in Section 2924 of the law. The five-year limitation on changing the form of government once adopted can work to limit the nature of amendments proposed to home rule charters during the five-year period.<sup>7</sup> Petitions proposing amendments to home rule charters or optional plans must be signed by registered voters comprising at least ten percent of the total number of votes cast for the office of governor in the last gubernatorial general election. No petitions may be circulated prior to the twentieth Tuesday before the election, nor later than the thirteenth Tuesday. The ordinance or petition must be filed by the thirteenth Tuesday before the election. Amendments may be placed on the ballot at any primary, municipal or general election. All petitions are to be signed, filed and adjudicated under the Election Code provisions for nomination petitions. The question is to be framed by the election board and presented to the voters under the provisions of the Election Code.

Home rule charters and optional plans of government may be repealed only through the election of a government study commission by the procedure described above. If the government study commission recommends repeal, it is to provide in its report for a new form of government to be established to replace the charter or optional plan. The question for repeal is to be in the form specified in the law.<sup>8</sup>

**Philadelphia Home Rule.** A new home rule charter in Philadelphia is prepared by a charter commission appointed by city council pursuant to an ordinance passed by a vote of two thirds of the members or a petition signed by 20,000 registered voters.<sup>9</sup> The proposal of the charter commission is filed with city council.

Amendments to Philadelphia's existing home rule charter may be proposed by a two-thirds vote of city council or by a petition presented to council signed by at least 20,000 registered voters.<sup>10</sup> When amendments are presented by petition, council has the power to determine whether or not they are to be submitted to the voters.

New charters or amendments are to be submitted to the voters at a primary, municipal or general election occurring at least 45 day after final action by council. A new charter may be submitted as a whole or in sections; alternate provisions may be presented to the voters, but any change in the method of electing city officers must be submitted as a separate question. All amendments are to be submitted as separate questions. The ballot question is to be framed in brief form of not more than 75 words.

Proposed charters or amendments are to be printed in pamphlet form for general distribution to the public at least 28 days before the election. Notice of the election is to be published not more than once nor less than less three times in three newspapers of general circulation within the city during the three weeks immediately prior to the election. Notice of the election is also to be made by proclamation of the mayor posted at each polling place and published in at least two newspapers of general circulation in the city once a week for three consecutive weeks during the thirty days prior to the election. No proposal of a similar nature can be submitted more often than once in five years. All elections are to be conducted under the provisions of the Election Code.

**Allegheny County Home Rule.** In Allegheny County, a home rule charter is prepared by an appointed charter drafting committee and submitted to the county board of election at least 60 days prior to a primary, municipal or general election.<sup>11</sup> This special charter adoption procedure is to expire following voter approval of a county charter and its implementation.

**Third Class City Optional Charters.** Between 1957 and 1972 third class cities could adopt optional charters. Any of the thirteen cities operating with charters adopted under the 1957 law may vote to abandon its charter and revert to operation under the Third Class City Code.<sup>12</sup> A question on reversion can be initiated by a petition signed by at least fifteen percent of the registered voters of the city. The question is to be placed on the ballot at the next general election occurring at least sixty days after the petition is filed with the county board of election. The question is to be in the form provided in the law. The question is to be submitted and the election conducted under the provisions of the Election Code. Thirty days notice of the election must be given by proclamation of the mayor. A copy of the proclamation is to be posted in each polling place and published in at least two newspaper of general circulation in the city once a week for three consecutive weeks during the period of thirty days before the election.

## References

1. 53 Pa.C.S. 2951; Home Rule Charter and Optional Plans Law, Section 2951.
2. 53 Pa.C.S. 2952; Home Rule Charter and Optional Plans Law, Section 2952.
3. *Mount Lebanon v. County Board of Elections of Allegheny County*, 368 A.2d 648, 470 Pa. 317, 1977; *Reese v. County Board of Elections of Lancaster County*, 308 A.2d 154, 10 Pa.Cmwlth. 448, at 453, 1973.
4. 53 Pa.C.S. 2911; Home Rule Charter and Optional Plans Law, Section 2911.
5. 53 Pa.C.S. 2926, 2925; Home Rule Charter and Optional Plans Law, Sections 2926 and 2925.
6. 53 Pa.C.S. 2942; Home Rule Charter and Optional Plans Law, Section 2942.
7. 53 Pa.C.S. 2929, 2930; Home Rule Charter and Optional Plans Law, Sections 2929 and 2930; *Borough of Warren v. County Board of Elections of Warren County*, 425 A.2d 1113, 59 Pa.Cmwlth. 137, 1981; *McCaskey v. Allegheny County Department of Elections*, 590 A.2d 77, 139 Pa.Cmwlth. 229, 1991; *Wolfgang v. Allegheny County*, 629 A.2d 316, Pa.Cmwlth., 1993.
8. 53 Pa.C.S. 2967, 3171, 29251; Home Rule Charter and Optional Plans Law, Sections 2967, 3171 and 2925.
9. 53 P.S. 13102; First Class City Home Rule Act, Section 2.
10. 53 P.S. 13106; First Class City Home Rule Act, Section 6.
11. 16 P.S. 6108-C; Second Class County Code, Section 3108-C.
12. 53 P.S. 41231; Optional Third Class Charter Law, Section 231.

## **Horse Racing**

Voters may prohibit horse race meetings in second class townships located within 50 air miles of an existing race track.<sup>1</sup> The issue may be placed on the ballot by a resolution of the board of supervisors or must be placed on the ballot when the board of supervisors has received a petition of registered voters comprising at least 25 percent of the highest number of votes cast for a public office in the township at the last preceding municipal election. The resolution is submitted to the county board of elections. Following a positive vote in the referendum, the board of supervisors is authorized to adopt an ordinance prohibiting horse race meets.

The first referendum on this issue was held in November, 1991. Voters in Cranberry Township, Butler County approved a referendum prohibiting horse racing within the township.

### **Reference**

1. 53 P.S. 66549; Second Class Township Code, Section 1549.

## **Hospitals**

Voters must approve construction of a county tuberculosis hospital. When petitioned by the voters, the county commissioners must place the question of establishing a tuberculosis hospital on the ballot. In second and second class A counties, the petition must be signed by at least one hundred residents and the question may be submitted at any general or municipal election.<sup>1</sup> In third through eighth class counties, the petition must be signed by citizens equal to the number of votes cast at the last municipal election and the question can be submitted only at a municipal election.<sup>2</sup> The referendum is to be conducted under the provisions of the Election Code.

### **References**

1. 16 P.S. 5315; Second Class County Code, Section 2315.
2. 16 P.S. 2381; County Code, Section 2381.

## **Intergovernmental Cooperation**

Through an initiative and referendum process, the voters of any municipality, except Philadelphia, any county or school district can mandate the governing body to adopt an ordinance to enter into intergovernmental cooperation, or to delegate any function, power or responsibility to another governmental unit.<sup>1</sup>

The initiative petition must be signed by registered voters comprising at least five percent of the number of votes cast for the office of governor in the last gubernatorial general election within the jurisdiction. The petition must be filed with the county board of elections at least ninety days prior to the next primary or general election. A similar question cannot be submitted more than once in five years.

### **Reference**

1. 53 Pa.C.S. 2304, 2306.

## **Libraries**

The Library Code authorizes referenda in a number of areas relating to library service, including a local library tax, participating in the county library system, participating in the district library cooperative program and bond issues for libraries.

**Library Tax.** The governing body of any county or municipality may make appropriations out of general revenues or out of moneys raised by the levy of a special tax for the establishment and maintenance of a local library. Elected officials may levy the tax directly or may submit a question on levying the tax to the voters.<sup>1</sup> If petitioned by at least three percent of the number of persons voting at the last preceding general or municipal election, the governing body must submit the question of a library tax to the voters. The question must be submitted at least sixty days prior to the next primary, municipal or general election.

Where questions are submitted to the voters of an entire county, municipalities already maintaining local libraries not part of the county library district are not to be included in the voting process unless municipal officials signify their intent by ordinance or resolution to become part of the county library district.

**Withdrawing from County Library District.** If a local unit maintains a separate library and a county library is also in existence, a referendum may be held on whether the local unit will cease to be part of the county library district and no longer subject to paying county library taxes.<sup>2</sup> The question must be initiated by a petition signed by three percent of the number of persons voting in the last general or municipal election. The petition must be filed with the county board of elections at least sixty days prior to the next general or municipal election. The same question shall not be submitted to the voters more often than once in five years.

**District Library Cooperative Program.** Participation in the district library center cooperative program is required as a qualification for receiving library grants from the State Library. If the local library board does not act to participate in the program, the question of participation may be placed before the voters.<sup>3</sup> A petition to put the question on the ballot must be signed by three percent of the number of persons voting in the last general or municipal election within the library's direct service area. The petition is presented to the municipal officers who must forward it to the county board of elections. The question is placed on the ballot in the municipalities comprising the direct service area. If a majority of the persons voting on the question approve, the library board must participate in the district library cooperative program.

**Library Bond Issue.** Five percent of the registered voters of a county, municipality or school district may petition the governing body to place the question of borrowing funds to purchase or build a library building on the ballot.<sup>4</sup> If petitioned, the governing body must place the question on the ballot at the next ensuing election.

## References

1. 24 P.S. 4402; Library Code, Section 402.
2. 24 P.S. 4405; Library Code, Section 405.
3. 24 P.S. 4304; Library Code, Section 304.
4. 24 P.S. 4422; Library Code, Section 422.

## Liquor Licenses

State law provides for local option on issuance of various liquor licenses and operation of state liquor stores within each municipality. Referenda may be held on any of nine separate questions granting liquor licenses, retail beer licenses, licenses for beer distributors, licenses for privately-owned golf courses, licenses for veterans' clubs, special occasion permits or the operation of state liquor stores.<sup>1</sup> These questions may only appear on the ballot at the primary election before a municipal election. The same question cannot be presented more often than once in four years, except for veterans' club licenses and special occasion permits where the limit is two years.

The act states all proceedings are to be in the manner and subject to the provisions of the election laws relating to the signing, filing and adjudicating of nomination petitions. Petitions must be signed by registered voters comprising at least 25 percent of the highest vote cast for any office in the municipality at the preceding general election. Separate petitions must be filed with the county board of elections for each question to be voted on. Petitions may be circulated and signed only between the thirteenth and tenth Tuesdays before the primary. All petitions must be filed by the tenth Tuesday before the primary. Petitions must follow the form for nomination petitions prescribed in the Election Code as far as applicable. The question must be placed on the ballot in the form specified in the act. Seven separate questions are provided. Where voters vote against issuance of a particular kind of license, no such license may be renewed after that date. Where voters vote against operation of state liquor stores, the Liquor Control Board must terminate operation of any stores within two years or the expiration of the current lease, whichever period is shorter.

**Bottle Clubs.** A 1995 amendment to the Crimes Code authorizes a local option referendum on prohibiting bottle clubs to operate in a municipality.<sup>2</sup> The issue may be placed on the ballot only at a primary election and may not appear more often than once every four years. The question may be initiated by resolution of the governing body or by registered voters comprising at least 25 percent of the highest vote cast for any office in the municipality at the preceding general election. The question is to be submitted under the provisions of the Election Code.

## References

1. 47 P.S. 4-472; Liquor Code, Section 472.
2. 18 Pa.C.S. 7328; Crimes Code, Section 7328.

## Local Offices

Several laws authorize referenda on matters related to local office. These include expanding or reducing boards of township supervisors, creating the office of controller in smaller counties, reducing the office of district attorney to part-time and reorganization of former county offices in Philadelphia.

**Township Supervisors.** Second class townships have three-members board of supervisors, but membership may be expanded to five following a favorable referendum.<sup>1</sup> The same procedure is followed for reducing the size of a five-member board to three members. The question may be initiated by resolution of the board of supervisors or by a petition signed by at least five percent of the registered voters of the township. The petition or resolution must be filed with the county board of elections by the thirteenth Tuesday before the next municipal or general election. The question may be placed on the ballot only at a November election. The question is to be presented to the voters under the provisions of the Election Code. The form of the question is established in the Second Class Township Code. This question cannot be presented to the voters more than once in any three-year period for expanding the board nor more than once in any five-year period for reducing the board.

**County Controller.** Second through fifth class counties have controllers. The office of controller in sixth through eighth class counties may be established and that of the elected auditors abolished by a referendum.<sup>2</sup> The question can be initiated by a petition signed by at least one hundred registered voters. The petition must be filed with the county commissioners at least sixty days before the date of the election. The question may go on the ballot at any primary, municipal or general election. The question is to be submitted according to the provisions of the Election Code.

**District Attorney.** A determination to make the office of district attorney full-time may be made by ordinance of the county commissioners. Once made, the office cannot be returned to part-time status unless approved by the voters in a referendum.<sup>3</sup> The question of reverting to a part-time district attorney can be initiated by the county commissioners or by a petition signed by registered voters comprising five percent of the total vote for the office of governor in the last gubernatorial general election. The question may be placed on the ballot at any election preceding the year the district attorney is to be elected.

**Jury Commissioners.** The office of jury commissioner may be abolished in certain third class counties after a favorable referendum.<sup>4</sup> This option is limited to counties with a population between 237,000 and 240,000 or between 337,000 and 341,000. The question may be placed on the ballot by resolution of the governing body or petition of registered voters equal to 5% of the highest vote cast in the last general election. The question can appear at any election except in the year the office of jury commissioner is on the ballot.

**Philadelphia Offices.** Following the consolidation of the county and city of Philadelphia, the legislature has authorized city council to legislate with respect to the former county offices. Any ordinance adopted by council to alter these offices is not effective until approved by the voters.<sup>5</sup> The election is to be conducted in the same manner as charter amendment elections under the First Class City Home Rule Act.

## References

1. 53 P.S. 65402; Second Class Township Code, Section 402.
2. 16 P.S. 605; County Code, Section 605.
3. 16 P.S. 1401; County Code, Section 1401(g); 16 P.S. 4401; Second Class County Code, Section 1401(d).
4. 16 P.S. 401(d); County Code, Section 401(d).
5. 53 P.S. 13132; 1963 PL. 795; *Sweeney v. Tate*, 216 A.2d 77, 420 Pa. 45, 1966.

## Municipal Classification Change

Various sections of the municipal codes provide for the movement of a municipality from one classification to another. The only instance where a portion of a municipality may be created into a new municipality is through the process of incorporation of a borough.

**Borough Incorporation.** A new borough may be incorporated from any contiguous area within a township with a population of at least 500. The courts have ruled that incorporation of a borough from part of a township is not a boundary change within the meaning of the state constitution and the incorporation provisions do not conflict with the constitutional mandate for a uniform boundary change procedure.<sup>1</sup> Upon receipt of a petition signed by a majority of the freeholders and by freeholders owning a majority of the land within the limits of a proposed borough, the court of common pleas appoints a borough advisory committee to study the proposed incorporation. Within sixty days, the committee is to study the proposal and return its recommendations to the court. After receiving the findings-of-fact and the advice of the committee, the court holds a hearing on the proposed incorporation. If the court finds the conditions in the act have been complied with and that the desirability of the proposed incorporation is supported by a preponderance of evidence, it certifies the question of incorporation to the county board of elections for a referendum vote of the residents of the area proposed for incorporation.<sup>2</sup> After receipt of the certified election results, the court is to enter a final decree either incorporating the borough or denying the petition.

**City Incorporation.** A third class city may be created from any borough, town or township with a population of at least 10,000 at the last federal census with approval of the voters at a

referendum.<sup>3</sup> The question may be submitted by the municipal governing body, and must be submitted to the county board of elections upon the petition of two hundred or more registered voters. The municipal governing body must publish notice of the question in not more than two newspapers once a week for four successive weeks before the election. The question may be put on the ballot at a municipal or general election under the procedures of the Election Code. If the vote is unfavorable, no similar question can be submitted to the voters until the third general or municipal election subsequent to the first. Although the Code permits two or more municipalities to jointly incorporate as a city, this procedure appears to be barred by the constitutional requirement for a uniform boundary change law.

**Creation of a Borough from a Third Class City.** An election may be held to change the status of a third class city to that of a borough, provided the municipality has operated under the city form of government for at least five years.<sup>4</sup> The question is initiated by a petition signed by at least ten percent of the registered voters of the city. The petition must be filed with the court of common pleas at least ninety days prior to the next general, municipal or primary election. The county board of elections is to frame the question. Notice of the election must be given in at least one newspaper of general circulation within the county once a week for four consecutive weeks. If the question is defeated, it cannot be resubmitted for a period of five years.

**Creation of a First Class Township from a Second Class Township.** A first class township may be created from a second class township after certification that the township has a population density of at least three hundred persons per square mile. The question must be initiated by a petition signed by at least five percent of the registered voters of the township filed in the court of common pleas.<sup>5</sup> The question is placed on the ballot by the county board of elections at the first general or municipal election occurring at least ninety days after the certification of population. The petition may be filed within that ninety-day period.<sup>6</sup> The petition does not have to meet the Election Code requirements for nomination petitions since it is filed with the court, not the election board; in one case a simple form of petition was accepted.<sup>7</sup> If the vote is favorable, the township becomes first class on the first Monday of January of the year following the election. If the vote is unfavorable the question may not be resubmitted for two years. After that time the question can be resubmitted by the supervisors by unanimous action, and must be resubmitted if petitioned by ten percent of the registered voters of the township.

**Creation of a Second Class Township from a Borough.** A second class township may be created from a borough through referendum.<sup>8</sup> The action is initiated by a petition to annul the borough charter signed by at least ten percent of the registered voters of the borough filed with the court of common pleas. The petition must be filed at least ninety days prior to the next primary municipal or general election. The court certifies the question to the board of elections. The election board frames the question to appear on the ballot. Notice must be given in at least one newspaper of general circulation in the borough once a week for four consecutive weeks. Approval of the question will result in formation of a new second class township from the territory of the borough. This section of the Borough Code also authorizes reversion of the territory of the borough to the township from which it was created. However, this provision was held invalid by one court as being superseded by the constitutional requirement for a uniform boundary change law.<sup>9</sup>

**Creation of Second Class Township from First Class Township.** The question of reestablishing a second class township must be presented to the voters of any first class township after certification it no longer has a population density of at least 300 persons per square mile at the first general or municipal election held at least ninety days after the certification.<sup>10</sup> The county board of elections is to frame the question in accordance with the election laws. If the result is negative, no further proceedings may commence for a period for four years. After that time the board of commissioners may resubmit the question by unanimous action, or shall submit the question again upon petition of ten percent of the registered voters of the township.

In addition, regardless of the population requirement, the board of commissioners may on its own initiative, or within fifteen days after receipt of a petition signed by at least five percent of the registered voters of the township, must pass a resolution submitting the question of reestablishing a second class township to the voters.<sup>11</sup> The question is to be framed by the county board of elections and placed on the next primary, municipal or general election occurring at least ninety days after the passage of the resolution. If the vote is negative, no further proceedings may be commenced for a period of two years.

## References

1. *Bear Creek Township v. Borough of Penn Lake Park*, 340 A.2d 642, 20 Pa.Cmwlth. 77, at 79, 1975; *In re Incorporation of Borough of New Morgan*, 562 A.2d 402, 127 Pa.Cmwlth. 519, 1989, affirmed 590 A.2d 274, 527 Pa. 226.
2. 53 P.S. 45202; Borough Code, Section 202(d).
3. 53 P.S. 35202; Third Class City Code Section 202.
4. 53 P.S. 45231; Borough Code, Section 231.
5. 53 P.S. 55207; First Class Township Code, Section 207.
6. *In re Bethlehem Township*, 31 D.&C.2d 98, 1962, C.P. Northampton Co.
7. *Whitemarsh Township Referendum*, 7 D.&C.2d 271, 1956, C.P. Montgomery Co.
8. 53 P.S. 45301; Borough Code, Section 301.
9. *In re St. Lawrence Borough Charter*, 45 D.&C.2d 595, 1972, C.P. Berks Co.
10. 53 P.S. 55209a; First Class Township Code, Section 209a.
11. 53 P.S. 65202; Second Class Township Code, Section 202.

## Municipal Name Change

In boroughs and townships the name of the municipality may be changed by referendum.<sup>1</sup> The action is initiated by a petition of at least ten percent of the registered voters to the court of common pleas. In second class townships the question may also be initiated by resolution of the board of supervisors. The court then orders an election to be held at the next primary, municipal or general election occurring at least ninety days after the filing of the petition for boroughs and first class townships, and at the next general or municipal election occurring at least sixty days after the filing for second class townships. The question is to be framed by the county board of elections. In boroughs and first class townships, notice must be given in at least one newspaper of general circulation once a week for four consecutive weeks.

## Reference

1. 53 P.S. 45301; Borough Code, Section 301; 53 P.S. 55251; First Class Township Code, Section 2.201; 53 P.S. 65207; Second Class Township Code, Section 207.

## Ordinances in Third Class Cities

Voters in third class cities have a limited initiative and referendum power over ordinances. The voters may propose ordinances to city council. Ordinances are proposed by petition. The petition must be signed in the city clerk's office during a period of fifteen days by registered voters equal to at least twenty percent of all votes cast for the office of mayor at the preceding mayoral municipal election. Council may either pass the proposed ordinance or submit it to the electorate at the next primary, municipal or general election occurring at least ninety days later.<sup>1</sup> The question is to state the nature of the proposed ordinance followed by the words 'yes' and 'no.' If a majority of voters approve, the ordinance becomes effective. If defeated, the same subject matter cannot be voted on again for three years.



An initiated ordinance approved by the voters cannot be repealed or amended within two years, except through another referendum. Council can submit a question for repeal or amendment of any initiated ordinance enacted by the voters at any succeeding municipal, primary or general election.<sup>2</sup> The action of council must be submitted to the board of elections at least ninety days before the election.

Ordinances passed by council can be protested by the voters. A petition must be signed in the city clerk's office within ten days of final passage by registered voters equal to at least twenty percent of those voting for mayor at the preceding mayoral municipal election. If sufficient signatures are obtained, the ordinance is suspended from going into effect and council must reconsider the ordinance. If the ordinance is not repealed, council must place the question before the voters at the next primary, municipal or general election occurring at least sixty days later.<sup>3</sup> The question is to state the nature of the referred ordinance followed by the words 'yes' and 'no.' If a majority approve, the ordinance becomes effective from the date the results are certified. If defeated, the ordinance is lost and of no effect.

The Code lists six subject areas excluded from the initiative and referendum powers of the voters. These include ordinances required by state law or courts, tax levies, appropriations, eminent domain, exercise of the police powers, incurring debt, and construction and maintenance of public works. Courts have interpreted the law in a manner restrictive of the exercise of the initiative and referendum powers. Such issues as fluoridation of water,<sup>4</sup> municipal salary ordinances,<sup>5</sup> and public housing policy<sup>6</sup> have been excluded from initiative and referendum power.

All elections are to be conducted under the provisions of the Election Code. Before any election, the ordinance must be published following the publication requirements of the Election Code.

### **References**

1. 53 P.S. 36035; Third Class City Code, Section 1035.
2. 53 P.S. 36040; Third Class City Code, Section 1040.
3. 53 P.S. 36059; Third Class City Code, Section 1059.
4. *Williams v. Rowe*, 283 A.2d 881, 3 Pa.Cmwlth. 537, 1971; *Roth v. Saeger*, 36 Lehigh L.J. 515, 1976.
5. *Catalano v. Swanger*, 60 D.&C.2d 320, 1973, C. P. Lebanon Co.
6. *Bogert v. Kistler*, 38 D.&C.2d 133, 1965, C.P. Lehigh Co.

### **Retirement System**

Any county, municipality or municipal authority may voluntarily join the Pennsylvania Municipal Retirement System. The appropriate governing body may elect to join by ordinance or resolution. The governing body may submit the issue to the voters. If petitioned by five percent of the registered voters of the jurisdiction, it must submit the question of joining the system to the voters.<sup>1</sup> The question may be placed on the ballot at any general or municipal election. The question is to be submitted under the provisions of the Election Code. If the voters approve the question, the governing body must adopt the ordinance or resolution to join the system. If they disapprove, no further action can be taken in the jurisdiction for a period of two years.

### **Reference**

1. 53 P.S. 881.107; Pennsylvania Municipal Retirement Law, Section 107.

## Schools

Referenda are authorized specifically for schools include approval of school building costs above the standard and home rule for Philadelphia schools. For referenda on school taxes see the section on Taxes. Other general laws also relating to school district referenda are electoral approval of debt and intergovernmental cooperation.

**School Construction.** Whenever maximum construction costs of a proposed new school building or a substantial addition to an existing building exceed the standards specified in the law, the project must be submitted to the voters of the school district for their approval in a referendum within the six-month period prior to submission to the Department of Education for approval.<sup>1</sup> The referendum is to be held in the same manner and following the procedures set forth in the Local Government Unit Debt Act for electoral approval of debt. Public hearings and referenda under this section are the exclusive procedure for gaining public input on school building construction. Advisory questions on school building construction are unlawful.<sup>2</sup>

**Home Rule School District.** Philadelphia is authorized to adopt and amend charter provisions governing the administration of a separate and independent home rule school district. A charter commission may be appointed by a two-thirds vote of council.<sup>3</sup> If a petition is presented to council signed by 20,000 registered voters, council must appoint a commission to frame the charter provisions. Amendments may be initiated by two-thirds vote of council or a petition signed by 20,000 registered voters. The charter proposals or amendments are to be submitted to the voters at an election occurring at least 45 days after filing with city council. The election may be held at any primary, general or municipal election.

The proposal is to be printed in a pamphlet ready for public distribution at least 28 days before the election. At least thirty days notice of the election must be given by proclamation of the mayor. Notice is to be published in at least two newspapers of general circulation once a week for three consecutive weeks during the thirty-day period before the election. The election is to be conducted under the terms of the Pennsylvania Election Code.

### References

1. 24 P.S. 7-701.1; Public School Code, Section 701.1.
2. *Hempfield School District v. Election Board of Lancaster County*, 574 A.2d 1190, 133 Pa.Cmwlth. 95, 1990, appeal denied 581 A.2d 581 A.2d 574, 525 Pa. 650.
3. 53 P.S. 13211; First Class City Public Education Home Rule Act.

## Small Games of Chance

The Local Option Small Games of Chance Act authorizes the licensing of various clubs, nonprofit and charitable organizations to conduct small games of chance. Licenses can be issued only for municipalities which have approved their issuance in a referendum. The question may only be placed on the ballot at the primary preceding a municipal election.<sup>1</sup> When an election has been held, a second election cannot be held until the fourth year thereafter.

The question can be placed on the ballot in two ways. It can be initiated by a resolution of the municipal governing body. Or, it can be initiated by a petition signed by registered voters equal to at least 25 percent of the highest total vote cast for any office within the municipality at the preceding general election. The Act does not contain explicit circulating and filing dates. It does state that proceedings are to be in accordance with the provisions of the Pennsylvania Election Code. Provisions of the Election Code governing candidate petitions restrict circulation to between the thirteenth and tenth Tuesdays before the election and require filing of petitions by the tenth Tuesday before the election. The resolution or petition must be filed with the county election board. The Act contains the wording of the question.

Withdrawal of approval for issuing small games of chance licenses may be accomplished through the same referendum. In a municipality where a prior referendum approved issuance, a second question could be placed on the ballot after the four-year waiting period to effect withdrawal of the approval.

### Reference

1. 10 P.S. 324; Local Option Small Games of Chance Act, Section 14.

### Taxes

**Open Space Tax.** A special purpose real estate millage or an earned income tax levied in addition to the general purpose limit authorized under the Local Tax Enabling Act may be levied by municipalities after approval of the voters in a referendum.<sup>1</sup> The revenues from the tax must be used to pay debt incurred for open space or purchase of development rights or for new purchases. The referendum is initiated by an ordinance of the governing body and must be filed with the county board of elections by the thirteenth Tuesday before the next primary, general or municipal election.

**School Earned Income Tax Increase.** School districts (except Philadelphia) may increase their earned income tax to 1.0%, 1.25% or 1.5% after approval by the voters in a referendum.<sup>2</sup> The increased revenue must be offset by first, elimination of per capita, occupation and occupational privilege taxes, and second, reduction of real estate taxes by implementing a homestead exclusion, and third, reduction of real estate taxes by cutting the millage. The question may only be put on the ballot at the municipal election. It can be placed on the ballot by resolution of the school board. Elimination of the authorization for the increased earned income tax can be placed on the ballot by the school board after a period of at least three full fiscal years of use.

Effective January 1, 2001, voters may initiate the appoint of a local tax study commission by a petition signed by registered voters comprising at least 2% of the total vote for Governor at the last gubernatorial election. If the school district fails to place the commission's recommendation on the ballot, voters may do so by filing a petition signed by registered voters composing at least 5% of the total vote for Governor at the last gubernatorial election at least 90 days prior to the next municipal election.

In school districts where the increased earned income tax is in effect, any increase in school real estate taxes must be approved by the voters in a referendum.<sup>3</sup> This rule applies when the real estate tax increase will cause the total tax revenue to increase more than the percentage increase in the statewide average weekly wage of the prior year.

**Borough Utility Tax.** Boroughs may enact an additional eight-mill tax for the purposes of supplying fire hydrants, street lighting and hose for fire companies following approval by the voters in a referendum on the issue.<sup>4</sup> Borough council must authorize the referendum by resolution and designate the date for the election. The authorizing statute states the constables are to provide notice of the election, but since constables' duties are now restricted to keeping order at the polls, this notice is given by the election board in accordance with the provisions of the Election Code for November elections. Neither the 1875 law nor the Borough Code contain a deadline for the submission of council's resolution to the election board.

**Other Special Purpose Real Estate Taxes.** For referenda on special fire taxes, borough building taxes and ambulance/rescue squad taxes, see the section on Fire Protection. For referenda on special library taxes, see the section on Libraries.

## References

1. 32 P.S. 5007.1; 1967 P.L. 992, Section 7.1.
2. 53 Pa.C.S. 8703.
3. 53 Pa.C.S. 8704.
4. 53 P.S. 46302; Borough Code, Section 1302(5); 53 P.S. 49232; 1875 P.L. 55.

## Voting Systems

The Election Code authorizes referenda on the use of voting machines or electronic voting systems for entire counties or by municipality within the county. Separate authorizations exist for use of voting machines,<sup>1</sup> discontinuing use of voting machines,<sup>2</sup> use of electronic voting systems,<sup>3</sup> and discontinuing use of electronic voting systems.<sup>4</sup>

Questions may be initiated by the election board on its own motion, by resolution of the municipal governing body, or by a petition signed by registered voters comprising at least ten percent of the total number of voters voting at the preceding general or municipal election. The petition or resolution must be filed at least sixty days prior to the election.

Questions relating to voting machines may be placed on the ballot only at municipal or general elections. Questions relating to electronic voting may be placed on the ballot at any primary, municipal or general election. The wording of each question is specified in the act. The election is to be conducted under the provisions of the Election Code.

If a question on using voting machines or an electronic voting system is defeated, the same question cannot be resubmitted to the voters within a period of 103 weeks. Questions on discontinuing voting machines or electronic voting systems may not be presented to the voters earlier than 103 weeks after their use was initially approved. The outcome of any referendum on voting machines or electronic voting is determined by a majority of those voting on the question.<sup>5</sup>

## References

1. 25 P.S. 3002; Pennsylvania Election Code, Section 1102.
2. 25 P.S. 3004(g); Pennsylvania Election Code, Section 1104.
3. 25 P.S. 3031.2; Pennsylvania Election Code, Section 1102-A.
4. 25 P.S. 3031.4(e); Pennsylvania Election Code, Section 1103-A.
5. *Munce v. O'Hara*, 16 A.2d 532, 340 Pa. 209, 1940.

## Ward Realignment

Changing ward boundaries in first and third class cities requires approval by the voters of the ward or wards affected. Philadelphia wards may be created, divided, realigned or consolidated by the court of common pleas upon petition of at least one hundred registered voters of the ward or wards affected, or of the city council.<sup>1</sup> The court appoints a commission to prepare a realignment plan on which four of the five commissioners must agree. A question calling for approval of the realignment plan is placed before the voters at the next primary election. If the plan affects less than half the city's wards, it is put on the ballot only in the wards affected; if it affects more than half, it is submitted to the voters of the entire city. Any plan must be approved by the voters before it takes effect.

Wards in third class cities may be created, divided or realigned by petition to the court of common pleas by city council or one hundred registered voters (creation or division) or 25 registered voters (realignment). The court appoints a commission of five voters not residing in the affected wards to draw proposed new lines. After the commission reports, the court places the question on the

ballot at the next general or municipal election occurring not less than ninety days thereafter.<sup>2</sup> The question appears on the ballot only in the wards affected. The mayor must give fifteen days notice of the election by advertising in one or more newspapers of general circulation. If a majority votes in favor, the courts realigns the wards by decree. If defeated, the question cannot be raised again for two years. All elections are to be conducted under the provisions of the Election Code.

### **References**

1. 25 P.S. 2742; Pennsylvania Election Code, Section 532.
2. 53 P.S. 35404; Third Class City Code, Section 404.

### **Waterworks**

Sale of a borough waterworks may be made the subject of a referendum. Borough council may sell its waterworks or water distribution system by ordinance. The ordinance does not take effect for ten days. During that period a petition signed by ten percent of the registered voters of the borough may be filed staying the sale and forcing a referendum on the issue.<sup>1</sup>

After the petition is filed with council, the borough secretary has five days to file the ordinance and protest with the county board of elections. The election board places the question on the ballot at the next primary, general or municipal election occurring at least sixty days subsequent to the secretary's certification. The election is to be conducted under the terms of the Election Code. The question is to state the nature of the ordinance and provide that a yes vote is to sustain the ordinance and a no vote is to reject it. If approved the ordinance takes effect immediately; if defeated, it is null and void.

### **Reference**

1. 53 P.S. 47409; Borough Code, Section 2409; *In re Petition of Werner*, 662 A.2d 35, Pa.Cmwlth., 1995.

## **IV. Electoral Procedures Authorized in Home Rule Charters**

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One of the significant changes brought about by the new local government article of the Pennsylvania Constitution adopted by the voters in 1968 was extending the authorization to adopt their own home rule charters to all counties and municipalities. Since the provision was implemented in 1972, 70 home rule charters have been adopted by the voters of counties and municipalities, in addition to Philadelphia's charter adopted under prior authorization in 1951.

One of the concerns common to most local charter drafters has been increased emphasis on citizen participation in and access to the affairs of the local government. This finds expression in many ways, one of the most striking being charter provisions guaranteeing citizens a role in the ordinance-making power of the jurisdiction through initiative and referendum provisions. Another provision included in some of the home rule charters is recall of elected officials by the voters.

### **Initiative and Referendum**

Many of Pennsylvania's home rule charters authorize direct legislative action by the voters through provisions for initiative and referendum. Of the total of 71 home rule charters, 54 provide for initiative and referendum. Generally, the voters can propose ordinances or require reconsideration of ordinances adopted by a governing body through a petition process. Should the governing body fail to enact a proposed ordinance or repeal a protested adopted ordinance, the issue is then framed into a ballot question and presented to the voters at a referendum. The outcome of voting will determine enactment of the initiated ordinance, either sustaining or nullifying the referred ordinance.

Requirements for the number of signatures and filing dates vary from charter to charter, as do time limits for governing body action after presentation of the petition. Often there are limitations on the initiative and referendum powers. Areas commonly excluded include budget matters, the capital program, emergency ordinances, ordinances levying a special assessment, appropriations, salaries of officers and employees, borrowing and zoning. The number and extent of exclusions varies from charter to charter.

The courts have determined that planning and zoning activities are excluded from the initiative and referendum process in home rule jurisdictions. The Home Rule Law subjects home rule municipalities to the powers and procedures established by the legislature in the Pennsylvania Municipalities Planning Code.<sup>1</sup> The Commonwealth Court invalidated an attempt to use the referendum provisions of the Horsham Township Home Rule Charter to repeal an amendment to the township zoning ordinance, holding the Planning Code requires ordinances to be adopted by the municipal governing body and makes no provision for review of a zoning ordinance referendum.<sup>2</sup> In a similar case, the Commonwealth Court ruled the initiative provision of the Ferguson Township Home Rule Charter could not be used to amend the township zoning ordinance since the Planning Code vests the power to enact, amend and repeal zoning ordinances in the municipal governing body.<sup>3</sup>

### **References**

1. 53 Pa.C.S. 2962(a)(10), Home Rule Charter and Optional Plans Law, Section 2962(a)(10).
2. *Horsham Township Council v Mintz*, 395 A.2d 677, 39 Pa.Cmwlth 408, 1978.
3. *Minshall v. Board of Supervisors of Ferguson Township*, 413 A.2d 1165, 50 Pa.Cmwlth. 541, 1980.

## Recall

Recall is a method of removing an elected official from office through an electoral process common in other states. The process involves citizen petitions to initiate the question, then placing the question of removal on the ballot for decision by the voters. Recall is usually prohibited during certain portions of an official's terms, usually at the beginning and end of the term. Home rule charters in 38 Pennsylvania jurisdictions provide for recall of elected officials.

In one of the most publicized and controversial cases of its time, the Pennsylvania Supreme Court voided the Philadelphia Home Rule Charter's recall provisions during a heated campaign to recall Mayor Frank L. Rizzo in 1976. The opinion of the court held recall was unconstitutional by violating Article VI, Section 7 of the Pennsylvania Constitution.<sup>1</sup> Because the Constitution says elected officials shall hold office on good behavior, they can only be removed for cause after having been found to be in violation of some law or other rule. The court was highly divided on the issue with the four justices in the majority issuing three separate opinions and the three dissenting justice each issuing their own opinions. A second home rule recall case reached the Pennsylvania Supreme Court in 1995, this time without the complex procedural issues involved in the Rizzo case. A group of citizens in the Municipality of Kingston, using provisions in the home rule charter, attempted to recall Mayor Gary Reese. This time, in a unanimous decision, the court declared the recall provisions in the Kingston Home Rule Charter unconstitutional.<sup>2</sup> The court determined the recall provisions conflicted with the Pennsylvania Constitution's provision for removal of civil officers and exceeded the powers conferred by the Home Rule Charter and Optional Plans Law.

### References

1. *Citizens Committee to Recall Rizzo v. Board of Elections of the City and County of Philadelphia*, 367 A.2d 232, 470 Pa. 1, at 25, 1976; Jefferson B. Fordham, "Judicial Nullification of a Democratic Political Process – The Rizzo Recall Case," *University of Pennsylvania Law Review*, Vol. 126, 1977, p.1.
2. *In re Petition to Recall Reese*, 665 A.2d 1162, Pa., 1995.

## Occurrence of Home Rule Electoral Procedures

Of the state's 71 home rule charters, 38 or 54% include recall provisions and 54 or 76% include initiative and referendum provisions. Below is a list of those charters with initiative and referendum recall or both. In addition those listed, three charters have limited procedures. Two have limited initiative. In Bryn Athyn and Warren voters can place issues on the agenda of the governing body, but have no recourse to the ballot. Delaware County has limited referendum. The council can place issues on the ballot for referendum, but there is no provision for citizens to initiate referenda through a petition process.

<b>Municipality</b>	<b>Initiative</b>	<b>Referendum</b>	<b>Recall</b>
Allegheny County	X		
Allentown City	X	X	
Bethel Park Municipality	X	X	
Bradford Woods Borough			X
Cambridge Springs Borough			X
Carbondale City	X	X	
Chalfont Borough	X	X	X
Cheltenham Township	X	X	X
Chester Township	X	X	X
Clairton City	X	X	X
Coatesville City	X	X	Z
Elk Township	X	X	X
Erie County	X	X	X
Farrell City	X	X	X
Ferguson Township	X	X	X
Franklin City	X	X	X
Greensburg City	X	X	
Green Tree Borough			X
Hampton Township	X	X	
Hanover Township	X	X	X
Haverford Township			X
Hermitage Municipality	X	X	
Horsham Township	X	X	X
Johnstown City	X	X	
Kingston Municipality	X	X	X
Kingston Township	X	X	x



<b>Municipality</b>	<b>Initiative</b>	<b>Referendum</b>	<b>Recall</b>
Lackawanna County	X	X	X
Latrobe Borough	X	X	
Lebanon City	X	X	
Lehigh County	X	X	
McCandless Town	X	X	
McKeesport City	X	X	
Middletown Township	X	X	
Monroeville Municipality	X	X	X
Mount Lebanon	X	X	
Murrysville Municipality	X	X	
Norristown Borough	X	X	X
Northampton County	X	X	X
O'Hara Township	X	X	X
Penn Hills Municipality	X	X	X
Peters Township	X	X	
Philadelphia City			X
Pine Township	X	X	
Plymouth Township	X	X	X
Portage Borough	X	X	X
Radnor Township	X	X	X
Reading City	X	X	X
Richland Township			X
St. Marys City	X	X	X
Scranton City	X	X	
Tredyffrin Township	X	X	
Tyrone Borough	X	X	X
Upper Darby Township			X

<b>Municipality</b>	<b>Initiative</b>	<b>Referendum</b>	<b>Recall</b>
Upper Providence Township	X	X	X
Upper St. Clair Township	X	X	X
West Chester Borough	X	X	X
West Deer Township	X	X	
Whitehall Borough	X	X	
Whitehall Township	X	X	X
Whitemarsh Township	X	X	
Wilkes-Barre Township	X	X	X

## V. Advisory Questions

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Highly publicized referenda in other states in recent years led to citizen demands to allow certain locally controversial measures to be determined by the voters. This pressure ran afoul of Pennsylvania's system of heavily emphasized representative government. Pennsylvania courts have traditionally reinforced the role of elected officials to make decisions in public matters and minimized the role of the voters even where direct action is authorized by statute.<sup>1</sup>

Confronted by the general lack of statutory authorization for local referenda, the use of nonbinding advisory questions had developed as an electoral practice in Pennsylvania to determine popular sentiment on particular local matters. Advisory questions were not authorized by law. Provisions authorizing binding referenda on numerous issues appear in many different state statutes. On the other hand, the practice of placing advisory questions on the ballot was completely extralegal in character. No law authorized their use. The practice had gone relatively unchallenged for many years. The issue was not squarely addressed by a statewide appellate court until 1990.

The status of advisory questions is now clear. Three recent appellate court decisions have ended the practice of placing nonbinding advisory questions on the ballot in Pennsylvania.

The issue of the legality of an advisory question was addressed directly by an appellate court for the first time in 1990. The Lancaster County Election Board had placed on the ballot an advisory question on the building of a new high school in the Hempfield School District. The county court rejected the school districts' request for an injunction and the district appealed.

Commonwealth Court reversed and granted the injunction.<sup>2</sup> The court ruled that the Election Code does not give county election boards the discretion to place nonbinding referenda questions on the ballot. The court found that the Public School Code determines how the school board is to obtain public review of issues involving school construction. The action of the election board in placing the advisory question on the ballot violated this section of the School Code. The court stated the election board had no legal authority for its decision to place the nonbinding question on the ballot. The county asked the Pennsylvania Supreme Court to review the case, but this request was denied.

The issue of advisory questions was again brought before the Commonwealth Court in 1991. The Schuylkill County Board of Elections had placed an advisory question on the ballot concerning a plan to build a soil remediation facility in Blythe Township. The township and the operator of the proposed facility asked the county court to remove the issue from the ballot. The county court followed the precedent established in the *Hempfield* decision and ordered the issue off the ballot. Schuylkill County subsequently appealed to Commonwealth Court. The court affirmed the decision of the county court citing its earlier ruling in *Hempfield*.<sup>3</sup> The court clearly stated the county lacks authority to place a nonbinding referendum on the ballot absent specific statutory authority for such a referendum. The court noted representative government and the legislative process demand such a result.

The issue of advisory questions was brought before Commonwealth Court for a third time in an unreported 1994 case. A group of taxpayers in the York Suburban School District sought ballot access for a nonbinding referendum on a three-year school tax freeze. The decision of the board of elections to reject the request was upheld by the court of common pleas. On appeal, the Commonwealth Court ruled that neither the Election Code nor any other statute provides any authority for placing nonbinding referendum questions before the voters.<sup>4</sup> The Court stated that any access to the ballot had to be approved by the legislature. Requests to review the case were denied both by the Pennsylvania and U.S. Supreme Courts.

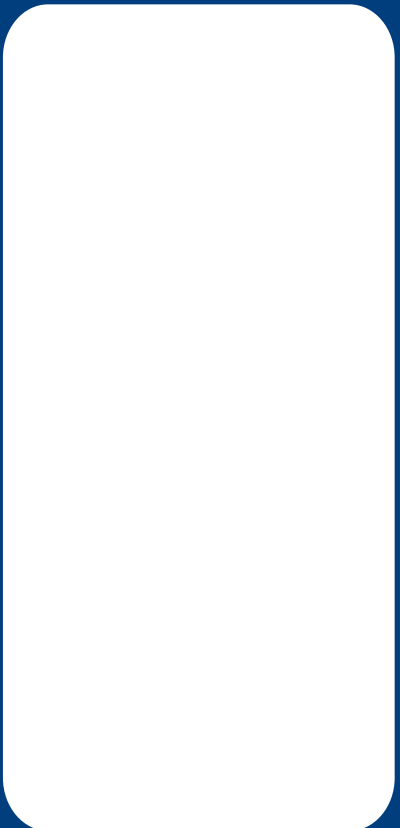
These decisions squarely address the issue of advisory questions. The court has determined such questions are illegal in Pennsylvania. A county board of elections is without power to place nonbinding advisory questions on the ballot.

### **References**

1. *Williams v. Rowe*, 283 A.2d 881, 3 Pa.Cmwlth. 537, at 544, 1971.
2. *Hempfield School District v. Election Board of Lancaster County*, 574 A.2d 1190, 133 Pa.Cmwlth. 85, 1990.
3. *Board of Elections of Schuylkill County v. Blythe Township*, 600 A.2d 331, 143 Pa.Cmwlth. 539, 1991.
4. *Bulette et al. v. Trout et al.*, Commonwealth Court, No. 833, C.D. 1994, April 26, 1994.

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