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A HISTORY OF MUNICIPAL GOVERNMENT IN NEW JERSEY SINCE 1798

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**INTRODUCTION**

The original grant of New Jersey from King Charles II of England to his brother, James, Duke of York, in 1664 gave the duke the authority to create forms of government and make laws. The duke in turn regranted New Jersey to Lord John Berkeley and Sir George Carteret as joint proprietors. The proprietors vested the power to incorporate municipalities in a general assembly. This practice of legislative creation of municipalities continued in both East and West Jersey. However, in neighboring colonies municipal charters were granted by the governor in the name of the king. Following the merger of the proprietary colonies of East and West Jersey to form the royal colony of New Jersey in 1702, the method of municipal incorporation changed from legislative grant to royal charter.

Following the American Revolution, the power to incorporate municipalities passed to the state Legislature. The first general law incorporating municipalities in the State of New Jersey was the Township Act of 1798, which created the original 104 townships of New Jersey.

I. The Township Form (NJSA 40A:63-1 et seq.)

The township form of municipal government in post-Revolutionary New Jersey began with the passage of the Township Act of 1798 (PL 1798, p. 289). This law incorporated the original 104 townships of New Jersey, eighty-eight of which still exist as incorporated municipalities today. The early township form as created by the 1798 act closely resembled the New England town meeting, and was thus a direct democracy. At the annual town meeting the vote was available to all white males, at least 21 years old, who were citizens of New Jersey, and residents of the township for at least six months; and who paid

taxes in the township, or who owned land, or rented a home in the township for a rent of at least five dollars a year. On the annual town meeting day, the voters of the township would assemble between 11:00 a.m. and noon. The first order of business was the election of a presiding officer for the town meeting. Immediately upon his election and taking the chair, the presiding officer would cause Section Seven of the Township Act to be read to the assembled voters:

*No person shall behave in a disorderly manner or interrupt the person speaking at any town-meeting by unnecessary noise or conversation; and if any person shall, after notice from the presiding officer, persist in his disorderly behavior, then it shall be lawful for the said presiding officer to direct such disorderly person to withdraw from the meeting, and moreover, such person shall forfeit one dollar for such offense; and such disorderly person, if he refuse or neglect to withdraw, shall, by direction of the said presiding officer, be carried out of the meeting by some of the constables of the said township and put into a place of confinement, where he shall be detained until such meeting shall be ended: And further, that the fines specified in this section, shall be sued for, and may be recovered with costs, by action of debt, in the name of the clerk of the township, before any justice of the peace of the said county; and that any elector or inhabitant of said township, shall be admitted as a witness in support of such action, notwithstanding his being a member of such corporation, or interested in the appropriation of the said fine in manner aforesaid.*

The Township Act of 1798 granted the town meeting the following powers: manage and improve common lands, establish and maintain pounds, make provisions for the destruction of noxious wild animals and birds, maintain and support the poor, build and maintain roads (in townships authorized to maintain their roads by hire), and to tax in order to carry out township responsibilities.

The town meeting was also authorized to elect the following officials for a term of one year: a township clerk, one or more tax assessors, one or more tax collectors, three or more “judicious freeholders of good character” to hear tax appeals, surveyors of the highways, one or more overseers of the poor, one or more constables, as many overseers of the highways and poundkeepers as deemed necessary or convenient, one “reputable freeholder to serve as a judge of elections.”

In addition, the town meeting was authorized to elect “five judicious freeholders” to serve as the township committee for a one year term. The Township Act of 1798 empowered the township committee to:

*examine, inspect and report to the annual or other town-meetings the accounts and vouchers of the township officers, and to superintend the expenditure of any monies raised by tax for the use of the township, or which arise from the balance of the accounts of any of the township officers.*

Thus, the function of the township committee under the Township Act of 1798 was simply to supervise the expenditure of township funds between town meetings. In this way, the township committee under the original Township Act closely resembled the board of selectmen which supervised the expenditure of municipal funds between town meetings in New England.

The Township Act of 1798 was reflective of, and well suited for, the sparsely populated, rural agricultural society which New Jersey was in the late eighteenth and early nineteenth centuries. The Township Act was revised somewhat in 1846, but the basic structure of township government: the annual town meeting, annual election of officers and the township committee, and the limited authority of the township committee to act as a financial steering committee and watchdog between town meetings, were retained intact.

The mid to late nineteenth century was a period of tremendous growth and change in both New Jersey and the United States: a savage, bloody Civil War, the building of the railroads, the start of the Industrial Revolution in America, and massive immigration from Europe all worked to change the character of life in New Jersey and the United States. While there were still many quiet, rural townships in New Jersey, townships close to the growing, prosperous cities of Newark, Jersey City, Paterson and Elizabeth changed from rural farm areas with a few sleepy hamlets to large, bustling towns in the space of a few years. To keep pace with the population growth and the demand for new services, the Township Act of 1846 was amended extensively during the mid and late nineteenth century. Between 1846 and 1899, the Township Act was amended 168 times. By the 1890s the Township Act was a patchwork quilt of powers and functions which had been grafted on to the 1846 act. And as time went by it became increasingly apparent that the annual town meeting, while unquestionably democratic, was becoming an inconvenient and unworkable way to govern more densely populated townships. In 1899, a sweeping revision of the Township Act was passed.

The Township Act of 1899 completely changed the way townships were governed. The town meeting, a township institution for 101 years, was abolished, and all municipal legislative powers were concentrated in the hands of a greatly strengthened township committee.

Instead of merely being a financial watchdog supervising the expenditure of township funds between town meetings, the township committee was upgraded to a policy-making body, empowered to pass ordinances and make certain appointments. Under the 1899 law, the township committee consisted of three members (the law was later amended to allow for an increase to five members), elected to staggered, three year terms.

The tradition of electing certain township administrative positions, first established in 1798 law, was continued in the 1899 revision. The township clerk, tax assessor, tax collector, overseer of the poor, three tax appeal commissioners, and as many poundkeepers as deemed necessary, were all elected officials. All served a term of three years, except the poundkeepers, who served a one year term. The township committee appointed three professional positions: the township attorney, township engineer and township physician. The township committee also appointed the township treasurer. The committee could appoint one of its members or any other legal voter of the township to serve as treasurer. In addition, the township committee elected one of their members to be chairman to preside over committee meetings.

In keeping with the spirit of the Township Act of 1798, the 1899 revision left the power to raise and appropriate money for municipal purposes in the hands of the voters, through from 1900 on their will on this subject was expressed at the ballot box instead of the town meeting. (The Township Act was later amended to give the power to tax and appropriate money to the township committee.)

The Township Act of 1899 served as the basis of township government from February 25, 1900 to January 1, 1990 when the latest revision of the township form, the Township Act of 1989, took effect. As with the two previous Township Acts, population and economic growth, and societal change over the

nearly ninety years that it was on the statute books made it necessary to amend the Township Act of 1899 many times. By the late 1980s it was obvious that a complete revision of the Township Act was necessary. Chapter 157 of the Laws of 1989, the Township Act of 1989, repealed the 1899 law and its many amendments and established a much more clear and concise statutory basis for the township form. The Township Act of 1989 went into the New Jersey Statutes Annotated as Chapter 63 of Title 40A.

The Township Act of 1989 retained the basic structure of the township form as it had evolved under the 1899 law and its many amendments: a three or five member township committee serving staggered three year terms, partisan elections, at large representation<sup>1</sup>, and the mayor elected by the committee from among its members<sup>2</sup>.

Under the Township Act of 1989, the voters of any township may, through a petition and referendum process, choose to increase the membership of the township committee from three to five members or decrease the membership from five to three. A petition equal to at least fifteen percent of the votes cast at the last election in which General Assembly members were elected will put the question of increasing or decreasing the township committee membership on the ballot at the next general election.

Under the Township Act of 1899, all legislative and executive powers of the township were concentrated in the hands of the township committee. It was common practice under the 1899 law for the members of the township committee to divide up executive responsibility amongst themselves, with each member serving as a department head.

Under the Township Act of 1989, all legislative powers of the township are again concentrated in the hands of the township committee. However, under the 1989 revision, instead of all executive responsibilities being in the hands of the township committee, the committee has only those executive responsibilities not placed, either by general law or the Township Act, in the hands of the mayor.

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<sup>1</sup> One township, Winslow Township, has representation by wards.

<sup>2</sup> In Winslow Township, the one township committeeman elected at large serves as mayor.

From the 1950s on, many townships operating under the Township Act of 1899 created the position of municipal administrator by ordinance. In 1968, the Legislature recognized the need for a formal statutory basis for the position of municipal administrator, and gave the five “traditional” forms of municipal government (city, town, township, borough and village) specific authorization to create the position by ordinance. Up until the 1989 revision of the Township Act, the ordinance administrator was authorized by NJSA 40A:9-136 only to

*administer the business affairs of the municipality, to have such powers and perform such duties other than those required by law to be exercised by the governing body itself or by another officer, board or body.*

However, under the 1989 revision of the Township Act, NJSA 40A:9-136 was amended as follows:

*The governing body of any municipality, by ordinance, may create the office of municipal administrator and delegate to him all or a portion of the executive responsibilities of the municipality.*

This obviously constituted a significant strengthening of the potential executive powers of the ordinance administrator. And since NJSA 40A:9-136 is general law pertaining to all municipalities operating under one of the five “traditional” forms (city, town, township, borough, and village) and not just townships, the potential executive powers of the ordinance administrator were strengthened in all five “traditional” forms.

At the same time that NJSA 40A:9-136 was amended, the Township Act was revised to state:

*The township committee may, by ordinance, delegate all or a portion of the executive responsibilities of the municipality to an administrator, who shall be appointed pursuant to Chapter 9 of Title 40A of the New Jersey Statutes (40A:9-136).*

Taken together, these two statutory provisions make it possible for the township committee to delegate, by ordinance, either a great deal or just a little bit of the township committee’s executive responsibilities to a municipal administrator.

In 1993, NJSA 40A:63-7.1 was added to the township statutes. It provides that the township committee may, by ordinance, create the position of assistant municipal administrator. The assistant

administrator's primary function shall be to assist in the administration of the township under the direction of the township administrator. The position of assistant municipal administrator shall be an unclassified position in any township operating under Civil Service (Title 11A). Should the municipal administrator be absent or disabled, then the assistant municipal administrator shall have all the powers of the municipal administrator and shall perform all the functions and duties of the municipal administrator. The assistant administrator shall be appointed by, and may be removed by, the township committee. The township committee shall set the assistant administrator's salary by ordinance. The township committee may, by ordinance, provide that the assistant administrator need not be a resident of the township.

When the municipal administrator in a township operating under the Township Act of 1989 is granted a great deal of executive authority by ordinance, it is now possible for a township committee form with an ordinance administrator to become the functional equivalent of a council-manager plan. The Township Act of 1989 also authorizes the township committee to adopt an administrative code.

As of July 1, 2003, there were 146 townships operating under the Township Act of 1989.

## II. The Borough Form (NJSA 40A:60-1 et. seq.)

Because the borough is the most prevalent form of municipal government in New Jersey (218 as of July 1, 2003), many people would find it hard to believe that the borough form is of comparatively recent origin. But prior to the passage of the first general Borough Act in 1878, only seventeen boroughs had been established in New Jersey; each by an individual special act of the Legislature. However, the prohibition against special or local legislation, which was added to the State Constitution in 1875, eliminated this practice.

The first general borough law, the Borough Act of 1878 (PL 1878, ch. 260) allowed any township or part of any township with a land area of no more than four square miles and a population not

exceeding 5,000, to establish itself as an independent borough through a petition and referendum process.

The Borough Act of 1878 established some of the basic borough governmental features that are still in use today: an elected mayor and a six member council; the mayor presides at council meetings, but has no vote except to break ties; the mayor and three members of the council constitute a quorum, or, in the mayor's absence, four councilmen. Unlike today, however, the mayor had no veto under the 1878 borough law.

The mayor possessed significant judicial powers under the Borough Act of 1878. The mayor had the same jurisdiction in criminal matters as a justice of the peace. For a breach of the peace or a violation of an ordinance, the mayor could either arrest without process or issue an arrest warrant. The mayor sat as a judge and could try cases involving violations of the peace or borough ordinances. The mayor could imprison a person found guilty for up to ten days in the borough lockup, or he could impose a fine of up to \$20, or both, and require the offender to pay court costs.

The mayor served a one year term, the councilmen served staggered three year terms. The mayor and council appointed a borough clerk and one or more borough marshals. The clerk and marshals served at the pleasure of the council.

At the annual borough election, the voters would also designate a sum to be raised for borough purposes, not exceeding \$1,500, for the next year. The amount approved at the borough elections was assessed and collected as the borough tax. The borough tax was assessed and collected by the assessor and collector of the township from which the borough seceded. The 1878 borough law also specified that the mayor and council would receive no compensation.

The borough incorporation process established by the Borough Act of 1878 was self-executing, and involved no individual, special act of the Legislature. That caused no problems until 1894, when the



Legislature amended the local public schools law. Up until 1884, each public school in a township was an independent school district. Chapter 335 of the Laws of 1894 consolidated all the separate school districts in each township into one township-wide school district. All the property of the previously independent school districts was to become the property of the consolidated school district. In addition, the consolidated school district would assume all the debts of the previously independent school districts. However, the Legislature left a loophole in the law which it came to regret: Section 24.

*24. And be it enacted, That each city, borough and incorporated town shall be a school district, separate and distinct from the township school district.*

P.L. 1894, ch.335, was responsible for a wave of borough incorporations between 1894 and 1897, as parents sought to keep control of their local schools and taxpayers sought to avoid being saddled with the debts of other school districts. (The township all but disappeared as a form of municipal government in Bergen County because of P.L. 1894, ch. 335). This gave the Legislature second thoughts about the wisdom of the self-executing incorporation feature of the Borough Act of 1878. The Legislature eliminated this feature in the first sentence of the revised Borough Act of 1897 (P.L. 1897, ch 161).

1. Hereafter no borough shall be incorporated or dissolved, nor shall its territory be increased or diminished, or its lines altered, except by special act of the Legislature.

The Legislature passed a revision of the Borough Act in 1897. The Borough Act of 1897 retained the elected mayor and six member council. The mayor served a two year term; the council served staggered three year terms, with two of the six council members up for election each year.

The Borough Act of 1897 made a number of important changes in borough government. Boroughs were given the power to assess and collect taxes independent of the township from which the borough seceded. A borough tax assessor, tax collector and three tax appeal commissioners were elected by the voters for three year terms. The borough tax collector also acted as borough treasurer. Boroughs were given the power to issue bonds. The 1897 revision gave the borough a more extensive

list of municipal powers, and a more extensive list of appointed officials. Specific authorization was given for a borough attorney, engineer, overseer of the poor, poundkeeper, superintendent of highways, and a borough recorder (municipal court judge). Except for the recorder, the mayor appointed all of the above officials with the advice and consent of the council. The recorder was appointed by the council. And the mayor was given the power to veto all ordinances and any resolution dealing with the expenditure of borough funds, in whole or in part, subject to override by a two-thirds majority of the council. However, this veto power was toothless, as the two-thirds council majority needed to override the mayor's veto was the same simple majority needed to pass a measure: four votes.

The mayor retained his extensive judicial powers under the 1897 revision (They were later removed). And the 1897 revision, like the 1878 borough law, also prohibited the mayor and council from receiving a salary. (This prohibition was also removed later).

The Borough Act of 1897, with many amendments added over the years, functioned as the basis for the borough form of government until January 1, 1988, when the latest revision of the borough law, the Borough Act of 1987 (PL 1987, ch. 379) became effective. The Borough Act of 1987 retained the elected mayor and six member council, and did not alter the division of powers between the mayor and council as they had evolved up to that point. The purpose of the Borough Act of 1987 was to clear away statutory provisions which were outdated, redundant, or in conflict with more recent general law, and to rewrite the borough law in a clear and simplified form.

A major change made by the Borough Act of 1987 concerned the delegation of executive responsibility to an appointed administrator. The borough council was given all of the executive responsibilities of the municipality not placed, by general law or the Borough Act, in the office of the mayor. The council was also given the power to delegate, by ordinance, all or a portion of the executive responsibilities of the municipality to an administrator appointed pursuant to NJSA 40A:9-136. This allowed the boroughs of New Jersey to take advantage of the strengthened ordinance administrator

created by NJSA 40A:9-136, if they wished to do so. Boroughs were also specifically authorized to adopt an administrative code, by ordinance, at their option.

### III. The City Form (NJSA 40A:61-1 et seq.)

Late in the nineteenth century, the Legislature passed a series of general city charter laws, which were available to cities of various population sizes or locations (such as cities bordering on the Atlantic Ocean). It is difficult to discuss the city form in New Jersey because, as Stanley H. Friedelbaum put it, "the diverse character of city legislation...seems to defy systematic treatment. Prevailing statutes relating to city officers and functions vary widely in their applicability according to legal classification and related considerations." By 1987, however, there were only eleven cities operating under one of three of the old general city charter laws: P.L. 1963, ch. 149 (used only by East Orange); P.L. 1899, ch. 52 (three cities); and P.L. 1897, ch. 30 (seven cities). The city charter law used by East Orange (P.L. 1963, ch. 149) was amended to prevent any other city from using it, and has become, in effect, a special charter. We will concern ourselves with P.L. 1899, ch. 52 and P.L. 1897, ch. 30 as they were the only general city charter laws that New Jersey cities were using as of the passage of the City Act of 1987.

Both the 1897 and 1899 city charter laws applied only to cities with a population of less than 12,000. They were basically very similar laws. Both provided for a directly elected mayor, who served a two year term, and who was the chief executive officer of the city and head of the police department. Both had a council elected from wards from staggered three year terms, and one councilman at large elected for a two year term. Both laws provided for the following officials to be elected for a three year term: city clerk, tax collector, overseer of the poor, and one assessor from each ward. Both laws provided for at least three tax appeal commissioners. In both the 1897 and 1899 laws, the mayor had a veto over both ordinances and resolutions, subject to a council override by a two-thirds majority of all the members. And both laws provided for a police court, with the judge appointed by the council for a two year term.

There were a number of differences between the 1897 and 1899 city charter laws. In the 1897 law, the board of education was elected; in the 1899 law, the board was appointed by the council. In the 1897 law, the council was elected from two wards; in the 1899 law, the council was elected from two or more wards. In the 1897 law, there were three tax appeal commissioners; in the 1899 law, there were at least three tax appeal commissioners. However, if a city operating under the 1899 law had more than 2 wards, then one commissioner was elected from each ward. In the 1897 law, the city treasurer was elected; under the 1899 law, the treasurer was appointed by council.

Over the years much that was in the 1897 and 1899 city charter laws became obsolete, redundant, and even in conflict with more recent general law. A revision of the city form was passed in 1987, the City Act of 1987 (P.L. 1987, ch. 314). The City Act of 1987 was designed to provide city officials with clear, concise guidelines as to the operation of city government. The City Act of 1987 was not intended to change the current division of power between the mayor and council in cities operating under the city form. Five cities operating under special charters granted by the Legislature prior to 1875 use the City Act of 1987, Beverly, Egg Harbor City, Salem, Gloucester City and Woodbury. Their old special charters still determine the size of the council and the terms of the mayor and council. Ten other cities, previously under the 1897 or 1899 Acts, also use the City Act of 1987. These cities are Absecon, Corbin City, Linden, Linwood, North Wildwood, Northfield, Pleasantville, Port Republic, Somers Point and Summit.

Under the City Act of 1987, the mayor is directly elected and serves a four year term. However, if a city previously elected its mayor for a two or three year term, then it shall continue to elect its mayor for that term, until the term is extended to four years by referendum.

The City Act of 1987 provides that the council shall consist of seven members; six elected from two wards for staggered three year terms and one elected at large for a four year term. There will be three councilmen in each ward, and one councilman from each ward shall be up for election every year.

Any city which had a different method of council election, different council size or number of wards, or a different term of office will continue to use the previous charter provisions until the voters choose to adopt the council provisions of the City Act of 1987 by referendum.

The City Act of 1987 specifies that the only elected officials under the city form shall be the mayor and council. The Act also provides for an annual election for city officers at the general election.

Under the City Act of 1987, the mayor is the chief executive officer of the city, and has all those powers designated by general law. The mayor may participate in council deliberations and he may cast the deciding vote to break a tie on any ordinance or resolution. The mayor may veto all or any part of any ordinance, subject to an override by two-thirds of all the members of council. The mayor is the head of the police department and has the power to appoint, suspend or remove all employees of the police department.

The council serves as the legislative body under the City Act of 1987. The council appoints subordinate officials of the city, except as provided elsewhere by law. The mayor can cast the deciding vote to break a tie when the council is divided over an appointment of filling a vacancy.

The City Act of 1987 allows the city to delegate, by ordinance, all or a portion of the executive responsibilities of the city to an administrator, who shall be appointed pursuant to NJSA 40A:9-136. In addition, the city may, by ordinance, adopt an administrative code.

#### IV. The Town Form (NJSA 40A:62-1 et seq.)

The first general town law, the Town Act of 1888, was declared unconstitutional by the courts. A replacement statute, with minor modifications, was passed in 1895.

The Town Act of 1895 allowed any town, village, borough or township which has a population of over 5,000 to become a town. The Act provided for incorporation as a town through a petition and referendum process.

Under the Town Act of 1895, a newly incorporated town was divided into at least three wards, with two councilmen per ward serving staggered two year terms, and one councilman at large, who also served a two year term. The councilman at large served as chairman of the town council.

The Town Act of 1895 provided for a number of elected officials: the town clerk, tax collector, tax assessor, board of education and three constables in each ward. The town clerk, tax collector, and tax assessor served two year terms; the board of education served staggered three year terms, and all other elected officials terms were set by ordinance.

A number of other officials were appointed: the town treasurer, attorney, recorder, commissioners of appeal, overseer of the poor, police chief, surveyors, poundkeepers, and three commissioners of assessment. The town attorney served a one year term, the town treasurer, recorder, and overseer of the poor served a two year term; and the commissioners of appeal served a three year term. The terms for the other appointed officials were set by ordinance.

Over the years, the Town Act was amended a number of times, and parts of it became obsolete, redundant, and in conflict with more recent general law. In 1988, the Town Act was completely revised, and the new law was applicable to all towns incorporated under the Town Act of 1895, and to towns incorporated by a special charter granted by the Legislature prior to 1875.

Under the Town Act of 1988 (P.L. 1988, ch. 7), which became effective January 1, 1989, the mayor is also the councilman at large. He serves a term of two years, unless increased to three years by a petition and referendum process. A petition signed by at least fifteen percent of the voters of the town

who voted in the last election at which General Assembly members were elected will put the question of increasing the term of the mayor to three years on the ballot.

The council under the Town Act of 1988 consists of eight members, two elected from each of four wards, and they serve staggered terms of two years. One councilman from each ward is up for election each year. However, any town which had a different method of council election, different council size or number of wards, or a different term of office will continue to be governed by those different provisions until such time as the voters choose to adopt any of the council structure provisions of the Town Act of 1988 in a referendum. The referendum is placed on the ballot by an ordinance of the town council. The annual election of town officers take place at the general election.

In 1991, two new provisions were added to the statutes governing towns, First, a petition and referendum process was created whereby the votes can require that the mayor and town council be elected for four year terms of office. Upon the submission to the town clerk of a petition, signed by at least 15 percent of the town's voters who cast ballots in the last election at which General Assembly members were elected, the question shall be submitted to the voters at the next general election. The question shall be submitted to the voters only once every four years, in substantially the following form: *"Shall the term of the mayor and council members in .....(name of town) be increased to four years?"* If the voters opt to increase the terms of office, the second new provision sets forth the election procedure in towns divided into wards. At the next annual elections in such towns, the voters shall elect those members of council whose terms expire at the end of that year to two year terms and the mayor and the remaining council members to four year terms, with the respective terms of each to be designated on the ballot. At all subsequent elections the mayor and town council members shall be elected to four year terms.

In 2001, the statutes were further amended to provide that towns with populations between 12,000 and 16,000 would automatically have four year terms for mayors and council members elected after June 26, 2001.

The mayor in a town chairs the town council. In the mayor's absence, the council may elect another of its members to serve as chairman. The mayor heads the municipal government, and has all the powers placed in the mayor by general law. The mayor may both vote on legislation before council and veto ordinances. The council may override the mayor's veto by a vote of two-thirds of all the members of the council. At least four affirmative votes are necessary to pass an ordinance.

The council may appoint, by ordinance, such subordinate officers as it may deem necessary, except that the municipal clerk, tax assessor, and tax collector are appointed by the mayor and council. The council has all the executive responsibilities of the town not placed in the office of the mayor. The council may, by ordinance, delegate all or a portion of the executive responsibilities of the town to an administrator, who shall be appointed pursuant to NJSA 40A:9-136. The council may also adopt an administrative code by ordinance.

Seven towns currently operate under the town form of government: Belvidere, Clinton Town, Dover Town, Guttenberg, Harrison Town, Kearny and Secaucus.

#### V. The Village Form (NJSA 40A:63-8)

The village form of municipal government was established by the Village Act of 1891. The village form has never been popular in New Jersey, and today there is only one municipal operating as a village: Loch Arbour.

Under the Village Act of 1891, any township or part of a township could become a village if it had at least 300 inhabitants, or, if the territory of the proposed village exceeded one square mile, then it had to have 300 inhabitants for every additional square mile or fraction of a mile of area. Villages were established through a self-executing petition and referendum process. No special act of the Legislature was required.



A village operating under the Village Act of 1891 was governed by a five member board of trustees. The trustees were elected to staggered, three year terms. The board of trustees elected one of their members to serve as president and one to be treasurer for terms of one year. The trustees received no compensation, except for the member serving as treasurer. The trustees appointed the following officials: the village clerk, village counsel, street superintendent, policemen and such other officers as the board deemed necessary. These appointed officials served at the pleasure of the board.

Tax assessment and collection under the Village Act of 1891 was performed by the tax assessor and collector of the township from which the village seceded. The township tax assessor and collector each received a fee of five cents from the township for every name assessed in the village. The village trustees could tax up to seven and a half mills per dollar, unless the voters authorized a higher sum.

In 1961, following the incorporation of the Village of Loch Arbour, the Legislature repealed the sections of the Village Act of 1891 dealing with village incorporation to prevent any more self-executing village incorporations. Since no other municipalities in New Jersey were then operating under the Village act of 1891, it became in effect a special charter for Loch Arbour.

In 1989, the Legislature changed the basis of municipal government in Loch Arbour. As of January 1, 1990:

*Every village, governed by the laws pertaining to the village form of government, shall operate and transact all of its business according to the laws pertaining to the township form of government as prescribed in this act (NJSA 40A:63-1 et. seq.) and general law, except as provided for in this section (NJSA 40A:63-8).*

What this means is that Loch Arbour, and presumably any other villages the Legislature may wish to create in the future, is now operating under the Township Act of 1989. For Loch Arbour's benefit, NJSA 40A:63-8 states:

*In this act and, where appropriate, in general law, whenever the term "township," "township committee" or "mayor" is used, read "village," "board of trustees" or "president of the board," respectively, for the village form of government.*

NJSA 40A:63-8 also spells out the size, basis of representation, and term of office of Loch Arbour's board of trustees:

*The village board of trustees shall consist of five members who shall be elected at large and serve for a term of three years. Their terms shall be arranged, by lot if necessary, so that no more than two trustees shall be elected in any one year.*

By the end of the 19<sup>th</sup> century, the five "traditional" forms of municipal government (city, borough, township, town and village) were all spelled out on New Jersey's statute books and in operation. The Great Industrialization of America, which took place from the end of the Civil War to the end of World War I, unleashed a host of socioeconomic and political ills. The reform period known today as the Progressive Era, which took place from about 1890 to about 1920, was a direct response to these problems.

Despite some attempts during the 1890s to reform and strengthen the mayor-council plan for cities here in New Jersey and elsewhere in the United States, by 1901 there was a great deal of disillusionment with the mayor-council plan among Progressives. They despaired of ever being able to break the ward based control of the party boss and the political machine for any extended period of time. However, necessity is the mother of invention, and the times were ripe for bold new experiments in the structure of municipal government. The first opportunity came as a result of a natural disaster: the hurricane which devastated Galveston, Texas on September 8, 1900.

Dissatisfaction with Galveston's old ward based mayor-council charter had been growing for years prior to the hurricane. The death and devastation caused by the hurricane served as a catalyst for the creation of a new type of city government: the commission plan. The old mayor and council were replaced by a smaller, five member city commission in which all executive and legislative powers were concentrated. Each commissioner was the director of a city department. And when they met as a body, the five commissioners functioned as Galveston's legislature.

The new form of government was a great success at reviving Galveston. Word spread of the Galveston commission plan. The city received hundreds of inquiries concerning the plan and the good work it was doing. Dozens of visitors came to see the new form of government in action, and reportedly went away very impressed. Articles praising the Galveston commission plan appeared in magazines with nationwide circulation. Among Progressives seeking municipal reform the commission plan became the idea whose time had come. By 1910, the commission plan was operating in 92 cities throughout the United States.

#### VI. The Commission Plan (NJSA 40:70-1 et seq.)

By 1911, the enthusiasm for the commission plan reached New Jersey. That year the state Legislature passed the Walsh Act, which made the commission plan available as an optional form of government for all of New Jersey's municipalities. A municipality could adopt the commission form through a petition and referendum process. The commission plan as created by the Walsh Act set up a three member commission in municipalities with a population of less than 12,000, and a five member commission in places with a larger population. The commissioners are elected at large in nonpartisan elections, and serve four year, concurrent terms. The Walsh Act was the first New Jersey municipal charter law to allow initiative, referendum and recall.

Once the commissioners take office they divide up the municipal departments, each becoming the director of a department. The Walsh Act created five municipal departments in communities with a five member commission:

1. Department of Public Affairs
2. Department of Public Safety
3. Department of Public Works
4. Department of Parks and Public Property
5. Department of Revenue and Finance

In communities with a three member commission, the first and second departments, and the third and fourth departments are combined. In all Walsh Act commissions the mayor presides over the board of commissioners when they sit as a legislative body, and the mayor has an undefined “supervisory” authority over all departments. It is unfortunate that the mayor’s “supervisory” authority over municipal departments was left so vague, as the New Jersey courts have, over the years, reduced it to meaningless through judicial decisions. Each commissioner is considered supreme in his own department.

New Jersey became one of the states where the commission plan became especially popular. The fact that the Walsh Act made it available as an optional form of government to all of New Jersey’s municipalities through a petition and referendum process, without the need of a special, individual act of the Legislature for each community which wished to adopt it, helped make that possible. By the early 1950s, the commission plan was in effect in over sixty New Jersey municipalities, including almost all of the state’s largest cities.

The commission plan is found today mostly in smaller communities. The defects of the commission plan became very readily apparent as the years wore on. In many ways the commission plan in New Jersey turned out to be nothing more than a more elaborate version of the township committee form. The commission form lacks a single, strong executive. The mayor’s “supervisory” authority is, aside from whatever personal forcefulness he or she brings to the job, nil. At its worst, the commission form gives a municipality not one government, but potentially three or five different governments, as each commissioner reigns supreme in his own department. If the commissioners lack a common vision of where the municipality should be going, the possibility for governmental chaos is very strong. With the passage of the optional Municipal Charter Law (the Faulkner Act) in 1950, New Jersey’s largest municipalities began to abandon the commission plan. The Faulkner Act plan chosen by New Jersey’s largest cities when abandoning the commission form has been the strong mayor-council form (and often with wards).

VII. The Municipal Manager Form of Government Law of 1923  
(NJSA 40:79-1 et. seq.)

By 1920, the problems and defects of the commission form were becoming obvious. From about 1915, many Progressive began to abandon support for the commission plan in favor of the new council-manager plan. The council-manager plan, first adopted in Sumter, South Carolina, in 1912, addressed many of the defects of the commission plan and the 19<sup>th</sup> century forms of government. The council-manager plan separated policy-making (the work of the council) from the execution of policy (the works of the manager). The council-manager plan attempted to take ward based partisanship out of municipal government and substitute professional management and a city-wide perspective through nonpartisan elections, at large representation, the short ballot, elimination of elected administrative positions, concentration of executive responsibility in the hands of a professional manager accountable to the council, and concentration of policy-making power in one body - - a relatively small municipal council.

New Jersey's Municipal Manager Law of 1923 was a part of the movement in the early 20<sup>th</sup> century toward a more "rational," "efficient," "business like," "nonpolitical," municipal government with a more professional administration. Through a petition and referendum process, the 1923 Municipal Manager Law creates a council of three, five, seven, or nine members, elected at large in nonpartisan elections. The council appoints the manager, municipal clerk, attorney, tax assessor, auditor, and treasurer. The manager serves as the municipal chief executive.

Until 1982, the one great stumbling block in the 1923 Municipal Manager Law which prevented its adoption by many New Jersey municipalities was the provision which gave the manager tenure in office after three years. After this time, the council could only remove the manager for "cause." This provision was no doubt intended to ensure that the manager was not subject to political pressure. Unfortunately, this provision was also contrary to the spirit of the council-manager plan which, while concentrating power in the hands of the manager, intended that he always be subject to the will of council by making his term of office "at the pleasure of council." The tenure provision created the possibility of a tenured "free agent,"

accountable to no one, serving as municipal chief executive as long as he did not violate the narrow bounds of "cause." The tenure provision for the manager was repealed in 1982.

VIII. The Home Rule Act of 1917 (P.L. 1917, ch. 152)

In 1916, the state appointed a special commission to revise and codify the statutes pertaining to the cities and other municipalities. The Commission's report became the basis of the Home Rule Act of 1917, which encompasses chapters 42 to 69 of Title 40 of the New Jersey Statutes Annotated. So complete and effective was this compilation and codification of the basic powers available to all of New Jersey's municipalities that today - - 73 years after its passage - - the Home Rule Act is still on the statute books in substantially the same form as it was passed in 1917.

Three important areas of municipal law covered by the Act and still in substantially similar form today are:

1. The basic definitions and interpretive statements concerning municipal government in New Jersey.
2. The fundamental legislative powers available to all New Jersey municipalities.
3. The basic procedures for the adoption of municipal ordinances.

An important principle embodied in the Home Rule Act is that there is no legal difference in the basic powers available to all 566 New Jersey municipalities, regardless of population, geographic size, or type or form of government. Also, by the simple addition of one word - - township - - to the definition of the word "municipalities," the state placed townships, which in some states are considered lower forms of local government, on the same level as cities, boroughs, towns, and villages, and made almost every inch of New Jersey part of an incorporated municipality.

IX. The Optional Municipal Charter Law: The Faulkner Act  
(NJSA 40:69A-1 et seq.)

Dissatisfaction with the old “traditional” forms of municipal government (mainly the township committee and borough council forms) and the commission plan led to the creation in 1948 of the Commission on Municipal Government by the state Legislature. The Commission was instructed to inquire “into the structure of local government in this State,” and to suggest “in what respects the laws of New Jersey might be changed to provide the fullest opportunity for local self-government consistent with the interests of the State as a whole.” The Commission’s second report, Local Self-Government: A Proposed Optional Municipal Charter Plan, published in February, 1950 became the basis of the Optional Municipal Charter Law, which was enacted shortly thereafter. The Optional Municipal Charter Law is called the Faulkner Act in honor of the late Mr. Bayard H. Faulkner, former mayor of Montclair and chairman of the Commission on Municipal Government.

The Faulkner Act as passed in 1950, provided three optional plans of government: mayor-council, council-manager, and a small municipality plan. Within each plan there were sub-plans, denoted by a letter (A-F in the mayor-council plan, A-E in the council-manager plan, and A-D in the small municipality plan). Each letter plan had its own individual arrangement of options, such as partisan or nonpartisan elections, concurrent or staggered terms, all at large or a combination of ward and at large representation. In 1981, the Legislature amended the Faulkner Act in a number of significant ways:

1. The old letter plan options were repealed, except for those municipalities which were already operating under one.
2. The number of possible combinations of options within each of the three plans was increased.
3. The council-manager plan was amended to include the option of a voter elected mayor.
4. A mechanism for amending a Faulkner charter without having to place the entire charter on the ballot was added.

5. A fourth optional plan, based on the borough form with a built-in administrator was added - - the mayor-council-administrator plan.

### The Mayor-Council Plan

The mayor-council plan is a classic “strong mayor” charter. The mayor is the municipal chief executive, the council the municipal legislature. It is a “presidential” system of government, roughly modeled after the federal and state governments. The mayor-council plan makes a virtue of the idea of divided and shared power, each branch acting as a check and balance on the other.

A significant modification of the Faulkner Act’s mayor-council plan as opposed to the usual “strong mayor” charter was the addition of a chief appointed administrative officer (CAAO): the business administrator. The addition of the CAAO allows the possibility of the mayor, the “political” chief executive, being assisted by a professional public administrator as business administrator.

To date, 65 New Jersey municipalities have adopted the Faulkner Act’s mayor-council plan.

### The Council-Manager Plan

This is a council-manager plan very similar to that previously discussed in the section on the 1923 Municipal Law. However, the one significant difference between the Faulkner Act’s council-manager plan and the 1923 law is that the Faulkner Act’s council-manager plan never included a tenure provision for the manager.

Under the Faulkner Act’s council-manager plan, all policy making power is concentrated in the council. The mayor is a member of council, and simply presides over its meetings with no separate policy making power like the mayor in the mayor-council plan. The manager, appointed by council and fully accountable to it, is the municipal chief executive and administrative official. If the council is displeased with the manager, it can remove him.



The Faulkner Act's council-manager plan has is currently used by 40 municipalities.

### The Small Municipality Plan

The small municipality plan is available only to communities with a population of less than 12,000. The small municipality plan is a hybrid of the two most widely used "traditional" forms: the borough form and the township form. It allows New Jersey's smaller communities to mix and match what they consider to be the best features of these two older forms.

The council in the small municipality plan exercises the legislative power of the municipality. The mayor in the small municipality plan is a member of the council, and functions as both legislator and executive. The mayor presides over the council and has a vote, but no veto. The mayor exercises the executive power of the municipality. While the small municipality plan makes no provision for a municipal administrator, such a position could be created by ordinance, in accordance with NJSA 40A:9-136.

The small municipality plan is currently being used by 20 New Jersey municipalities.

### The Mayor-Council-Administrator Plan

The mayor-council-administrator plan is a "Faulknerized" version of the borough form of government which was added to the Faulkner Act in 1981. Unlike the three other optional plans, the mayor-council-administrator plan has no suboptions. It is simply a one size fits all, take it or leave it proposition.

The mayor-council-administrator plan provides that a municipality adopting it shall be governed by an elected mayor and council, and an appointed administrator. The council consists of the mayor and six councilmen, elected at large, in the partisan general elections in November. The mayor serves a four

year term. The six councilmen serve staggered three year terms; each year two council seats are up for election.

In the mayor-council-administrator plan, the council exercises the legislative power of the municipality; the mayor exercises the executive power. The mayor presides over the council, but has no vote except to break ties. The mayor has a rather toothless veto over ordinances. The two-thirds majority it takes for council to override the mayor's veto power is the same simple majority it takes to pass an ordinance: four votes. As in the mayor-council plan, there is a chief appointed administrative officer (CAAO): the municipal administrator.

Two New Jersey municipalities, North Brunswick and West Milford, have adopted the mayor-council-administrator plan.

#### X. The Ordinance Administrator (NJSA 40A9-136)

As the issues of municipal government have become more complex, and more demands are made on municipalities and on the time of local elected officials, many municipalities operating under one of the five "traditional" forms (city, town, township, borough and village), the commission plan, or the small municipality plan, have felt the need to create an administrator by ordinance. The first ordinance administrator position we have record of was created by the Borough of Tenafly in April 1953. Since then, many municipalities have created administrators by ordinance.

By 1968, the Legislature felt the need to pass enabling legislation authorizing the position of ordinance administrator. The original enabling statute, P.L. 1968, ch. 367, was vague about the powers and duties of the administrator:

*The governing body of any municipality, may by ordinance create the office of municipal administrator, to administer the business affairs of the municipality, to have such powers and perform such duties other than those required by law to be exercised by the governing body itself or by another officer, board or body, and receive such compensation, as the ordinance creating such office shall provide and as may from time to time otherwise be directed by the governing body by ordinance.*

Chapter 157 of the Laws of 1989 greatly strengthened the ordinance administrator's executive powers:

*The governing body of any municipality, by ordinance, may create the office of municipal administrator and delegate to him all or a portion of the executive responsibilities of the municipality. He shall receive such compensation as the ordinance creating such office shall provide and as from time to time may otherwise be directed by the governing body by ordinance.*

The flexibility of this new statute allows governing bodies to shape the position of municipal administrator with as much or as little executive power as they see fit.