Municipalities – How They Change: Boundaries, Classification or Forms of Government

The boundaries or governmental structure of Pennsylvania municipalities can be impacted in a variety of ways, such as resolution of boundary disputes, annexations, mergers, consolidations, change in classification or form of government, or adoption of a home rule charter or optional plan.

Municipal Boundary-Related Changes

Boundary Disputes. Boundary disputes involve instances in which two or more municipalities are in effect attempting to resolve a disagreement concerning the location of the dividing line between municipalities. The resolution of these disputes has been held to be distinct from a "consolidation, merger or boundary change." Boundary disputes are governed by the relevant sections of a municipality's governing code.[1] However, where the original boundary cannot be ascertained, the courts may support the application of the common law doctrine of acquiescence to rely on what the municipalities have acted upon and assumed the boundary to be.[2]

Annexation. Annexation is a type of boundary change whereby one municipality attempts to acquire a portion of another. It is governed by the initiative and referendum procedure provided in Article IX, Section 8, of the Pennsylvania Constitution. This provision was held to have superseded individual municipal code procedures governing annexation.[3]

Consolidation and Merger. The Municipal Consolidation and Merger Act[4] provides the methods by which municipalities may consolidate or merge. "Consolidation" is defined as "[t]he combination of two or more municipalities which results in the termination of the existence of each of the municipalities . . . and the creation of a new municipality."[5] "Merger" is defined as "[t]he combination of two or more municipalities which results in the termination of the existence of all but one . . . with the surviving municipality absorbing and assuming jurisdiction over the municipalities which have been terminated."[6] The governing bodies of the municipalities may agree to merge or consolidate, after which the question is placed on the ballot in all municipalities involved.

---

[1] *See* Borough Code, 8 Pa.C.S. § 502; The First Class Township Code, Act 331 of 1931, § 302 (53 P.S. § 55302); The Second Class Township Code, Act 69 of 1933, § 302 (53 P.S. § 65302); Third Class City Code, 11 Pa.C.S. § 10602 et seq. *See also Laflin Borough v. Yatesville Borough,* 404 A.2d 717 (Pa. Cmwlth. 1979).

[2] *Adams Township v. Richland Township, et al.*, 154 A.3d 250, 264-265 (Pa. 2017).

[3] *See Middle Paxton Township v. Borough of Dauphin,* 308 A.2d 208 (Pa. Cmwlth. 1973), *aff'd,* 458 Pa. 396 (1974).

[4] Municipal Consolidation or Merger Act, 53 Pa.C.S. § 731 et seq.

[5] 53 Pa.C.S. § 732.

[6] *Id.*

An alternate method is available whereby electors may initiate a merger or consolidation action, with or without a home rule charter.[7]

Dissolution of Municipalities. Aside from the procedures provided in the Municipal Consolidation and Merger Act, there is no law that governs the dissolution of a municipality under ordinary circumstances. However, where a municipality no longer contains an adequate tax base to continue to function, qualifying municipalities may be able to disincorporate by petitioning the county court of common pleas through the provisions of the Municipalities Financial Recovery Act.[8]

Classification Changes[9]

Counties. The County Code generally provides that a county may advance in class if the last decennial census reveals that it is so entitled.[10] A county may not recede in class until two successive censuses have revealed a decrease in population that would warrant a new classification.[11] For both scenarios, the Governor is obligated to certify the change to the commissioners of the county. The change is effective the first day of the year following the certification by the Governor. Salaries of county officials and employees will not be changed as a result of the reclassification during the term of the officers. In the next municipal election following the certification and before the effective date, the proper number of elected officials representing the new classification shall be placed on the ballot.

Townships. Townships are divided into two classes. First class townships are defined as those townships having a population density of at least 300 people per square mile that have elected to choose first class township status.[12] All other townships are townships of the second class. Triggered by population density threshold requirements,, the township codes provide for the creation of townships of the first class from townships of the second class and for the reestablishment of townships of the second class from townships of the first.

Cities. There are four classes of cities in Pennsylvania: first class cities with populations of 1 million and over (Philadelphia),[13] second class cities with populations of 250,000 and under 1 million (Pittsburgh), second class A cities with populations of 80,000 and under 250,000, and

---

[7] *See* 53 Pa.C.S. §§ 735, 735.1.

[8] Act 47 of 1987 (53 P.S. §11701.101 et seq.). *See also* Deskbook article entitled "Municipal Fiscal Distress and Recovery."

[9] Article III, Section 20, of the Pennsylvania Constitution provides that the legislature shall have the power to classify counties, cities, boroughs, school districts and townships according to population. Using this method of classification, the legislature has created nine classes of counties, two classes of townships, four classes of cities, and five classes of school districts.

[10] *See* The County Code, Act 130 of 1955, § 211(16 P.S. § 211); The Second Class County Code, Act 230 of 1953 (16 P.S. § 3211).

[11] *Id.*

[12] *See* The First Class Township Code, § 201.

[13] The consolidated city-county of Philadelphia is also the only first class county and is subject to Section 210 of the County Code, which provides that first class counties must have a population of 1,500,000 inhabitants or more.

which elect by ordinance to be classified as such (i.e., Scranton), and third class cities with populations less than 250,000,[14] i.e., all of the remaining 53 cities in the Commonwealth.[15] If two consecutive decennial censuses demonstrate that a city of the first, second or second A class has a population below the minimum required for its current classification, or a city of the second, second A or third class has a population increase beyond its current classification, the Governor shall certify the fact.[16]

Additional Changes to Local Forms of Government

Incorporation of Boroughs. Generally, boroughs are not "classed" based on population.[17] A borough may be incorporated from any contiguous area from one or more existing townships[18] by petition to the court of common pleas, both by a majority of the landowners residing in the area of the proposed borough and by owners of a majority of the land within the area of the proposed borough, provided that the proposed borough area has a population of at least 500.[19] Upon receipt of the petition, the court shall appoint a borough advisory committee that shall determine the economic and logistic desirability of the proposed borough and what effect incorporation would have on the "parent" municipality.[20] After receiving the findings from the committee, the court conducts a hearing and determines if sufficient evidence exists to conclude incorporation is desirable.[21] Upon such a determination, the court certifies the question to the county board of elections for a vote by the residents of the area to be incorporated. Upon certification of results that favor incorporation by a majority of the affected voters, the court shall grant the petitioners' request for incorporation. The decree serves as the borough charter. The Pennsylvania Supreme Court has deter–mined that this procedure does not constitute a "consolidation or merger" that would be preempted by Article IX, Section 8, of the Pennsylvania Constitution.[22]

Creation of Boroughs from Cities. At least 10 percent of the residents of a city that has been operating for at least five years may petition the court of common pleas to order the question of

---

[14] Third class cities include those with populations less than 250,000 and more than 80,000 that have not chosen, by ordinance, to become second class A cities. *See* City Classification Law, Act 188 of 1895, § 1 (53 P.S. § 101).

[15] *See* City Classification Law, § 1.

[16] *See Id.* § 2.

[17] The Borough Code does use population as a distinguishing factor for a variety of administrative purposes. *See, e.g.,* 8 Pa.C.S. § 801(b) (duration of residency as qualification for office), 8 Pa.C.S. § 1001 (compensation of council members determined by population), 8 Pa.C.S. § 10A04 (compensation of mayor determined by population) and 8 Pa.C.S. § 1104 (no elected official may serve as an employee of a borough with a population of 3,000 or more).

[18] "Township." A township of the first or second class or any home rule township (as amended by Act 28 of 2020).

[19] *See* 8 Pa.C.S. §§ 201-202.

[20] *See* 8 Pa.C.S. § 202.1.

[21] *See* 8 Pa.C.S. § 202.2.

[22] *See In re Incorporation of Borough of New Morgan,* 562 A.2d 402 (Pa. Cmwlth. 1989), *aff'd,* 527 Pa. 226 (1991), *cert. denied,* 502 U.S. 860 (1991).

whether the city charter should be changed to a borough charter.[23] If a majority of voters elect to change the charter, the court will order that the proceedings be recorded in the office of the county recorder of deeds, where such recording will constitute the new borough charter. If the question fails, a similar question shall not be presented to the voters for five years following the election.

"Creation" of Third Class Cities. The corporate authorities of a town, township or borough may, or upon petition of 200 or more qualified electors of the municipality, shall adopt an incorporating resolution to have the question of whether or not the municipality shall become a third class city placed before the voters of the municipal corporation.[24] If a majority of the electors vote in favor of the change, the corporate authorities shall, within 60 days of the election, inform the Secretary of the Commonwealth with information about the new city, and the Governor shall issue a charter. Two or more municipalities may, using the procedures within the Municipal Merger or Consolidation Act, elect to incorporate as a third class city. The municipality or combination of municipalities must have a population of at least 10,000.[25]

Home Rule and Optional Charter Changes. In addition to changes discussed above, a municipality may change its form of government or adopt a home rule charter. In 1957, the legislature provided for optional charters for third class cities with the Optional Third Class City Charter Law.[26] Authorization to adopt charters under this law was eliminated in 1972; however, 11 cities continue to operate according to this statute.[27] The addition of Article IX, Local Government, to the 1968 Pennsylvania Constitution explicitly gave all municipalities, excluding the consolidated city-county of Philadelphia,[28] the right to frame and adopt home rule charters and optional plans.[29] In 1972, the General Assembly enacted the Home Rule Charter and Optional Plans Law,[30] which established general procedures for most municipalities adopting an alternative form of government.[31] Pursuant to this law, a government study commission is elected to examine the current form of government and make recommendations regarding an alternative form. If the

---

[23] *See* 8 Pa.C.S. § 231.

[24] *See* The Third Class City Code, 11 Pa.C.S. 10203.1.

[25] *See Id*, § 10201.

[26] Optional Third Class City Charter Law, Act 399 of 1957 (53 P.S. § 41101 et seq.).

[27] Lock Haven, Meadville, Oil City and Titusville under a council-manager form of government, and Bethlehem, Erie, Harrisburg, Lancaster, New Castle, Williamsport and York under a mayor-council form of government. *City Government in Pennsylvania Handbook*, 4th ed., Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, Harrisburg, January 2017, p. 11. http://dced.pa.gov/download/City%20Government%20in%20Pennsylvania/?wpdmdl=70282 (April 10, 2017).

[28] The City of Philadelphia operates under a home rule charter pursuant to the provisions of the First Class City Home Rule Act, Act 155 of 1949 (53 P.S. § 13101 et seq.), as amended.

[29] *See* Pa. Const. art. IX, §§ 2, 3.

[30] 53 Pa.C.S. § 2901 et seq.

[31] For a listing of home rule charter and optional plan communities *see Home Rule in Pennsylvania*, 11th ed., Governor's Center for Local Government Services, Pennsylvania Department of Community and Economic Development, Harrisburg, March 2020, pp. 102-104.https://dced.pa.gov/download/home-rule-pa-pdf/?wpdmdl=57752&refresh=5f3d7beda0cc21597864941 (accessed October 14, 2020).

commission recommends home rule, it drafts a charter and presents it to the voters. Upon a majority vote in the referendum, the charter is adopted. For optional plans, the same commission procedure is followed, except that the commission chooses one of the optional plans provided for in the act. Optional plan municipalities continue to be governed by their respective municipal codes except where it is superseded by the optional plan itself. The law also provides streamlined methods by which local governments in the process of a merger or consolidation may adopt the charter of one of the municipalities or frame a new optional plan or home rule charter.[32]

---

[32] *See* 53 Pa.C.S. § 731 et seq.