

# CHAPTER I

## NEW JERSEY MUNICIPAL HISTORY AND THE TRADITIONAL FORMS OF GOVERNMENT

The purpose of this report is to review the Walsh Act, the 1923 Manager Act, the Faulkner Act and the post World War II special charters and recommend both policy changes and modernization of these laws. It also describes the new laws governing the five traditional forms of government (city, borough, township, town and village).

### NEW JERSEY MUNICIPALITIES

New Jersey municipalities are significant, formidable entities. They are the main provider of most of the basic services received directly by New Jerseyans. Municipalities also bear an intimate relationship to the average citizen since their physical proximity is so close. Municipal government is one of the few institutions in which citizens can make personal impact by presenting grievances or ideas. The concept of municipal government as a corporation dates back to the Roman Empire. It developed in order to insure orderly local government under an entity that would have a continuing existence, independent of changes in population or political association. Today, as a municipal corporation, the municipality has the power to sue and be sued, to acquire and dispose of property, to make contracts, to tax, and to enact ordinances. New Jersey is divided into 567 municipalities.

New Jersey municipalities were first formed in colonial times. Townships did not become equal to other municipalities until the Home Rule Act of 1917. As a result of the 1917 law with subsequent amendments and modifications, New Jersey's municipalities, regardless of type or classification, may avail themselves of a common body of powers conferred for local purposes.

New Jersey municipalities have many attributes which are different from those of other states. First, New Jersey is entirely composed of incorporated municipalities. Most other states have unincorporated areas. Second, New Jersey's municipalities all enjoy the same basic powers, rights and duties. Many other states give different types of power or different authority to different types of municipal government.

### EARLY HISTORY OF NEW JERSEY MUNICIPAL GOVERNMENT

In the colonial period, New Jersey municipal units were modeled after English practice and tradition. Modifications subsequently introduced reflected

changing attitudes towards the role of local government in modern society.<sup>1</sup>

The Dutch West India Company, formed in Holland in 1621 to develop commerce, constituted the present New York-New Jersey-Hudson River area into the providence of New Netherland in 1623. Dutch governor Peter Stuyvesant surrendered New Netherland to the English in 1664.<sup>2</sup> The Dutch recaptured the former New Netherland area in 1673 and began to set up a government for "Achter Kol", as they named New Jersey. But a Westminster Treaty the following year returned the land to the English. The providence was divided into East and West Jersey in 1676. Puritan influence in the settlement of the eastern section resulted in the introduction of New England town organization. West Jersey development was based upon a system of properties revolving about geographic divisions called tenths.<sup>3</sup> 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.

The new State legislature acted early in an effort to create a general system of government for local units. The Township Act of 1798, which created the original 104 townships of New Jersey, was the first general law to incorporate municipalities in the State of New Jersey. The Township Act was revised somewhat in 1846, but the basic structure of township government, the annual town meeting, was retained intact.

A constitutional amendment, adopted in the constitutional revision of 1875, prohibited the enactment of special or local legislation. In the course of the following decade, a classification system was established with limited applicability. Although the power to create new municipalities was gradually retrieved by the legislature, local communities were authorized by State law to make changes in boundaries through annexation from one municipality to another.

From the 1840s through the 1920s, an average of about five new municipalities were incorporated every year. Fundamentally, the citizens sought to meet the problems of local government in growth areas by creating new governmental units.

The vast increase in number of municipalities - from 125 in 1834 to a peak of 568 in 1957 - was largely a series of declarations of independence.<sup>4</sup> The Great Depression ended the massive continuous increase in new municipalities which

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<sup>1</sup>Stanley Friedelbaum, *Origins of New Jersey Municipal Government*, Rutgers University, 1955, p.1.

<sup>2</sup>John P. Snyder, *The Story of New Jersey's Civil Boundaries 1606-1968*, Trenton, 1969, p.1.

<sup>3</sup>Stanley Friedelbaum, *Origins of New Jersey Municipal Government*, Rutgers University, 1955, p.1.

<sup>4</sup>John P. Snyder, *The Story of New Jersey's Civil Boundaries 1606-1968*, Trenton, 1969, p.23.

had been going on for over a century. Since that time, townships have been accepted as municipalities in every sense of the word. New Jersey now has a stable system of municipal government with no municipal incorporation, almost no municipal annexation and no creation of special districts with property taxing power, except fire districts.

The new evolution of the twentieth century has been the authorization by the State legislature of optional forms of municipal government. These forms may be adopted by the voters of any municipality to replace the form of governmental organization specified by the general laws applying to each type of municipality. These optional forms included: the Commission Form of Government Act of 1911 (also known as the Walsh Act), the Municipal Manager Form of Government Act of 1923, and the Optional Municipal Charter Law of 1950 (also known as the Faulkner Act). In addition, as a result of the new State constitution of 1947 and the Faulkner Act of 1950, a municipality could obtain a special charter form from the legislature, providing a unique form of governmental organization for that community.

The problem of bringing new municipal services to the suburban fringe is now handled by the 567 existing municipalities. The evolution of New Jersey townships into full equal municipal governments has brought local stability to New Jersey. The annexation and incorporation wars common to local government in most of the country are basically non-existent in New Jersey.

## MUNICIPAL SERVICES

Services rendered by New Jersey municipalities are varied and extensive, depending upon such factors as population, geographic location, and the economic situation of their residents. Police protection is one of the most important municipal services. Although some areas rely either exclusively or partially on the State Police, law enforcement is provided primarily by the municipalities. New Jersey municipalities expend over \$800 million on police protection (FY 1988)<sup>5</sup> and employ over 21,000 employees (FY 1987).<sup>6</sup> Municipal Police have full police powers to enforce the law and apprehend suspects. The governing body of the municipality has the statutory responsibility for police operations, including the hiring, promotion, and disciplining of police officers.

A second important local service is fire protection. The organization of fire protection in New Jersey differs markedly from municipality to municipality. Some localities have paid full-time fire organizations, while others have all volunteer departments. The geographic areas served by fire organizations also vary from community to community. Some organizations serve the entire municipality, some

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<sup>5</sup>*Division of Local Government Services, Statement of Financial Condition of Counties and Municipalities, 1988.*

<sup>6</sup>*1987 Census of Governments, Volume 3, Number 2.*

serve only part of a municipality, and still other departments serve one or more contiguous municipalities. Funds to support fire department and companies come from a variety of sources, such as the municipal budget, fire district taxes, private contributions, fund raising events, or any combination of these. New Jersey municipalities expend over \$314 million on fire protection (FY 1988)<sup>7</sup> and employ over 6,000 employees (FY 1987).<sup>8</sup>

Many communities operate their own sewer systems through municipal departments, municipal utilities or municipal authorities. The expenditure figures for sewers, water, solid waste, and streets are aggregate expenditures for municipal departments, municipal authorities and municipal enterprise activities. New Jersey municipalities expend over \$500 million on sewers and sewage processing (FY 1988)<sup>9</sup> and employ over 1500 employees (FY 1987).<sup>10</sup>

Some municipalities have their own water supply systems, while others obtain water on a contractual basis from a private water company or a neighboring community. New Jersey municipalities expend over \$350 million on water supply (FY 1988)<sup>11</sup> and employ over 2,000 employees (FY 1987).<sup>12</sup>

Expenditure for street maintenance and garbage removal in most of the State's largest municipalities are taken care of in the annual budget. Some municipalities collect and dispose of their garbage with their own personnel, some contract for collection and disposal with a private firm, and some municipalities take no action at all, leaving the citizens to arrange for garbage collection or to cart their garbage to a landfill themselves. New Jersey municipalities expend over \$300 million on garbage and trash disposal (FY 1988)<sup>13</sup> and employ close to 3,000 employees (FY 1987)<sup>14</sup>, while an additional \$300 million (FY 1988)<sup>15</sup> is spent on street maintenance with an employment of 5,000 employees (FY 1987).<sup>16</sup>

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<sup>7</sup>*Division of Local Government Services, Statement of Financial Condition of Counties and Municipalities, 1988.*

<sup>8</sup>*1987 Census of Government, Volume 3, Number 2.*

<sup>9</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>10</sup>*1987 Census of Governments, Volume 3, Number 2.*

<sup>11</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>12</sup>*1987 Census of Governments, Volume 3, Number 2.*

<sup>13</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>14</sup>*1987 Census of Governments, Volume 3, Number 2.*

<sup>15</sup>*Division of Local Government Services, Statements of Financial Condition of Counties and Municipalities, 1988.*

<sup>16</sup>*1987 Census of Governments, Volume 3, Number 2.*

Planning and Zoning, although only existing since the 1920s, is thought by many to be the single most important component of municipal government. It is the means by which municipal government controls or affects the growth and development of a community.

All municipalities have the authority to appoint planning boards. Of the 567 municipalities, 558, or 98 per cent, have exercised that authority.<sup>17</sup> The nine communities that do not have planning boards are Audubon Park Borough, Pine Valley Borough, Tavistock Borough, East Newark Borough, Guttenberg Town, Shrewsbury Township, Walpack Township, Winfield Township, and Pahaquarry Township.

Even though there are few employees or money spent on planning and zoning it is still considered important in municipalities. It significantly influences all aspects of community life — physical, social, economic, and political. A municipality's environmental commission, shade tree commission, historical sites commission, and industrial commission are other aspects of this intense local interest in the development of the local community and home rule.

The increase in scope and cost of municipal administration is the source of political and budgeting headaches in many New Jersey municipalities. The increase results from the expansion of old functions and the rise of new functions for municipal governments. Law enforcement is an old function, which continues to expand through the adoption of more laws and ordinances to enforce. Old and new steps are involved in dealing with providing recreation facilities and libraries, regulating health and sanitary conditions, tax collection and assessment, handling welfare cases, and carrying on other important activities. Purchasing and personnel departments are newer activities formed in many expanding communities.

## TRADITIONAL FORMS OF MUNICIPAL GOVERNMENT

At the end of the 19th century the Legislature standardized the laws for the five traditional forms of municipal government: city, town, borough, township, and village. These forms are available only to municipalities which have been incorporated pursuant to State law as a particular type of municipality. The State Commission on County and Municipal Government's report *Functional Fragmentation and the Traditional Forms of Municipal Government in New Jersey*, reviewed these traditional forms of government and new laws were passed in 1987, 1988, and 1989, based on Commission recommendations. The Commission found that statutes governing the traditional forms of government were inadequate to serve the present day needs of local officials and citizens. The following is a brief description of the traditional forms of municipal government and the revisions of those laws as occurred in the late 1980s. Table 1 indicates that 397 municipalities still use these laws.

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<sup>17</sup>Harvey Moskowitz, *Planning Boards in New Jersey: Current Realities and Historical Perspectives*, Rutgers University, 1923, p.83

**TABLE 1  
TRADITIONAL FORMS OF GOVERNMENT  
IN NEW JERSEY  
(AS OF 1 JANUARY 1992)**

| FORM OF<br>GOVERNMENT                                      | NUMBER OF<br>MUNICIPALITIES | 1990<br>POPULATION | PERCENTAGE OF<br>TOTAL STATE<br>POPULATION |
|--|-----------------------------|--------------------|--|
| Borough  | 218                         | 1,435,412          | 18.57%                                     |
| City   | 16                          | 223,135            | 2.89%                                      |
| Town   | 9                           | 111,017            | 1.44%                                      |
| Township/Village   | 154                         | 1,513,485          | 19.58%                                     |
| <b>TOTAL</b>   | <b>397</b>                  | <b>3,283,049</b>   | <b>42.47%</b>                              |
| Source: State Commission on County & Municipal Government. |                             |                    |  |

### City Form

The legislature passed a series of laws in the late nineteenth century, which became the basis for the City Form of government. This form is limited to municipalities incorporated as cities.

The 1897 and 1899 laws applied to cities with a population of less than 12,000. Both provided for a mayor and council elected separately. Terms of office were always staggered. Under the 1899 City law, the mayor was elected for a two-year term. Under the 1897 City law, the mayor was elected for a two-year term, with counties of the fourth class electing their mayor for a four-year term. Under both the 1897 and 1899 laws, the council was elected from wards for three-year staggered terms, and one council member was elected at-large for a two-year or four-year term. Elections were on a partisan basis, with primaries in June and the general election in November.

Over the years, the 1897 and 1899 City laws became misleading and obsolete. Public law 1987, Chapter 314 revised the laws pertaining to the City Form of government. That bill was a result of recommendations made to the Legislature and Governor by the State Commission on County and Municipal Government. The bill provided for the operation of city government in seven cities operating under the 1897 law and three cities operating under the 1899 law. Five cities oper-

ating under special charters granted by the Legislature prior to 1875 would also use the revised city law, with the exception that their old special charters still determine the size of the council and the terms of the mayor and council. The revised city law repealed over 600 sections of law.

Under the 1987 City law, the mayor is elected by the voters for a four-year term. If a city had 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 1987 City law states that the council shall consist of seven members, with six elected from two wards for staggered three-year terms and one elected at-large for a four-year term. The terms of the council members elected from wards shall be arranged so that terms of two council members, one from each ward, shall expire at the end of each year.

The 1987 City law designates that the only elected officials under the City form shall be the mayor and council. This law also provides for an annual partisan election, with primaries in June and the general election in November. The City form, as of January 1992, is being used by 16 municipalities.

The 1963 City law, used only by East Orange, gives the mayor veto power over ordinances and resolutions, which could only be overridden by a two-thirds vote of the council. The mayor's appointive power is quite extensive, but confirmation is required. This law also authorized the creation of semi-independent boards for the operation of the police, fire, and water departments. In this respect, East Orange is the only municipality in the State which has a form of government like that of most counties in the State, where the basic services provided by the government are provided by autonomous agencies rather than by the mayor and council.

The 1963 law is the only city law to include powers of recall, initiative and referendum for the local voters. The City law of 1963 was amended in 1987 to prevent any other city from using that act. Because of the existence of the autonomous boards, it might be in East Orange's interest to adopt an Optional Municipal Charter Law Form of government.

## **Town Form**

The Town Act of 1888 was the first general town law and it was declared unconstitutional by the courts. The Town Act of 1895 replaced the first Act and allowed any town, township, borough, or village which had a population of over 5,000 to become a town. The law provided for incorporation as a town through a petition and referendum process.

Under the Town Act of 1895, the mayor was chosen directly by the voters for a two or three-year term of office. An incorporated town was divided into at least three wards, with two council members per ward serving staggered two-year terms,

and one council member at-large, who also served a two-year term. The council member at-large would also serve as chairman of the town council. While certain statutory changes made in 1982 attempted to limit the number of council members and wards, all towns using this form of government were permitted to continue unchanged, so that town councils now range from five to eight members, with as many as eight wards in use. Runoff elections were not authorized and all elections are on a partisan basis, with primaries in June and the general election in November.

The Town Act was completely revised in 1988 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. Public law 1988, Chapter 7, which revised the laws pertaining to the Town Form of government, was also a result of recommendations made by the State Commission on County and Municipal Government. The Town Act of 1988 became effective on January 1, 1989.

Under the Town Act of 1988, the mayor is elected by the voters of the municipality at-large and is also known as council member at-large. The mayor's term of office is two years, unless increased to three years by a petition and referendum process.

The council consists of eight members, two elected from each of four wards, and they serve for a two year staggered term of office. One council member from each ward is up for election each year.

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 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.

This law provides for an annual partisan election, with primaries in June and the general election in November. The Town Form of government, as of January 1992, is being used by nine municipalities.

## **Borough Form**

The Borough Act of 1878 was the first general borough law. This Act 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.

Under the Borough Act of 1878, the mayor was elected along with a six-member council. The mayor served a one-year term and the council members served staggered three-year terms.

The Borough Act was revised in 1897, which gave the borough a more extensive list of municipal powers and a more extended list of appointed officials. The

mayor gained the power of veto, which he did not have under the earlier act.

On January 1, 1988, the revised Borough Form of government law went into effect. This law was also the result of recommendations made by the State Commission on County and Municipal Government.

The Borough Act of 1987 retained a mayor elected by the voters of the municipality at-large who would serve for a term of four years. This Act also retained six council members elected at-large who would serve for a term of three years. Their terms would continue to be staggered so that the terms of two council members would expire at the end of each year. Presently, only two boroughs contain wards - Roselle and Roselle Park. The Borough Act of 1987 did not alter the division of powers between the mayor and council as they had evolved up to that point.

This law provides for an annual partisan election, with primaries in June and the general election in November. The Borough Form of government, as of January 1992, is being used by 218 municipalities.

The Borough Form of government is the most popular form of government in the State. It serves the needs of small, compact, developed municipalities very well. Unlike the situation in the other four forms of traditional local government, boroughs seldom feel the need to leave their traditional form of government for the new Optional Municipal Charter Law forms.

## **Township Form**

The Township Act of 1798 incorporated the original 104 townships of New Jersey. This form of government closely resembled the New England town meeting and was considered a direct democracy. The town meeting was authorized to elect five freeholders to serve as the township committee for a one-year term. The function of the township committee under the Township Act of 1798 was to supervise the expenditure of township funds between town meetings.

The Township Act was revised slightly in 1846, but the basic structure of township government remained intact. Between 1846 and 1899, the Township Act was amended 168 times. In 1899, a sweeping revision of the Township Act was passed.

*The Township Act of 1899 abolished the town meeting and all municipal legislative powers were concentrated in a strengthened township committee. The township committee consisted of three elected members, with staggered three-year terms. The law was later amended to allow for an increase to five members. The Township Act of 1899 served as the basis of township government from February, 1900 to 1990 when the latest revision of the Township form, the Township Act of 1989, took effect.*

The Township Act of 1989 repealed the 1899 law and its many amendments and established a much clearer and concise statutory basis for the township form of

government. These changes were again the result of recommendations made to the Legislature and Governor by the State Commission on County and Municipal Government.

The Township Act of 1989 retained the basic structure of the township form: a three or five member township committee serving staggered three-year terms with at-large representation and the mayor elected by the committee from among its members for a one-year term of office. One township, Winslow Township, has representation by wards and the one township committee member elected at-large serves as mayor. The voters of any township may also choose to increase the membership of the township committee from three to five members or decrease the membership from five to three, through a petition and referendum process.

This law provides for an annual partisan election, with primaries in June and the general election in November. The Township Form of government, as of January 1992, is being used by 153 out of 246 townships.

## Village Form

The Village Act of 1891 established the Village Form of government. A village operating under this act 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 a one-year term. In 1961, the Legislature repealed the sections of the Village Act of 1891 dealing with village incorporation to prevent any self-executing village incorporations.

The Village Act of 1989 revised the basis of the Village Form of government. 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 and general law.

The Village Form of government is only used by the small community of Loch Arbour (population 370). Essentially, the Village Form of government is identical to the Township Form of government, except that the township committee is the board of trustees and the mayor is named the president of the board. Loch Arbour has a five-member board of trustees elected at-large for three-year staggered terms of office in elections which are partisan. Loch Arbour's board of trustees elect one of their members to serve as president for a one-year term of office. *It is recommended that the law be amended again to provide Loch Arbour with a mayor.*

## EARLY MODERN FORMS OF MUNICIPAL GOVERNMENT

At the beginning of the 20th century, the five traditional forms of municipal government were in operation. In all these forms, the council or committee has all or most of the executive power of the municipality. A reform period from about

1890 to 1920, known as the Progressive Era, addressed a great deal of dissatisfaction with a handful of socioeconomic and political problems.

By 1901, there was a great deal of frustration with the organization of municipal government among Progressives. It seemed that a solution was needed to break the ward based control of the party boss and the political machine. The times were right for bold new ideas in the structure of municipal government. The first of the 20th century forms of municipal government brought about by the Progressives was the Commission form, known as the Walsh Act in New Jersey. Many municipalities adopted the Walsh Act, but by 1920 the problems and defects of the Commission form were becoming obvious. From about 1915, many Progressives began to abandon support for the Commission form in favor of the new Council-Manager form. The Municipal Manager Law of 1923 was adopted as part of a movement toward a more efficient, businesslike, non-political, municipal government. Both the Commission Form of government and the Municipal Manager Law of 1923 will be described in detail in the following chapters.

## LATE MODERN FORMS OF MUNICIPAL GOVERNMENT

### Commission on Municipal Government (1948)

In 1948 a Commission on Municipal Government was created and charged by the Legislature with the duty of inquiring into the structure of municipal government in New Jersey. First, the Commission was to examine the laws governing the various forms of municipal government then in use in 1948. Second, the Commission was to determine the terms and conditions upon which each such form may be adopted by the people of any community. Third, the Commission was to investigate and evaluate the actual operation of each of the several forms in use; and fourth, the Commission was to obtain information concerning approved forms and practices of municipal government in other states.

The Commission on Municipal Government recommended enactment of the "Optional Municipal Charter Law" as an alternative to the already existing forms. The law permitted the municipalities of the State to select, on their own initiative and without subsequent legislative approval, any one of several forms of municipal government authorized in the law. The Commission had sought to provide sufficient flexibility in the several forms by offering lettered options so that each municipality could decide for itself how it wished to organize its local government.

The Commission on Municipal Government's report *Local Self-Government: A Proposed Optional Municipal Charter Plan*, published in February, 1950, became the foundation of the Optional Municipal Charter Law, which was enacted that same year.

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