

**TABLE 5**  
**MUNICIPALITIES OPERATING UNDER THE COUNCIL-MANAGER**  
**FORM OF GOVERNMENT**  
**(AS OF 1 JANUARY 1992)**

<b>NAME OF MUNICIPALITY</b>	<b>TYPE OF MUNICIPALITY</b>	<b>COUNTY</b>	<b>1990 CENSUS POPULATION</b>
Franklin	Township	Somerset	42,780
Teaneck	Township	Bergen	37,825
Montclair	Township	Essex	37,729
Willingboro	Township	Burlington	36,291
Evesham	Township	Burlington	35,309
Belleville	Township	Essex	34,213
Fair Lawn	Borough	Bergen	30,548
Mount Laurel	Township	Burlington	30,270
Livingston	Township	Essex	26,609
Lawrence	Township	Mercer	25,787
West Milford	Township	Passaic	25,430
Ocean	Township	Monmouth	25,058
Ridgewood	Village	Bergen	24,152
Deptford	Township	Gloucester	24,137
Galloway	Township	Atlantic	23,330
East Windsor	Township	Mercer	22,353
Scotch Plains	Township	Union	21,160
Lower	Township	Cape May	20,820
Medford	Township	Burlington	20,526
Roxbury	Township	Morris	20,429
Randolph	Township	Morris	19,974
Maple Shade	Township	Burlington	19,211
Aberdeen	Township	Monmouth	17,038
Moorestown	Township	Burlington	16,116
Sparta	Township	Sussex	15,157
Verona	Township	Essex	13,597
Pequannock	Township	Morris	12,844
Ringwood	Borough	Passaic	12,623
Weehawken	Township	Hudson	12,385
Cedar Grove	Township	Essex	12,053
Brigantine	City	Atlantic	11,354
Keansburg	Borough	Monmouth	11,069
Mount Holly	Township	Burlington	10,639
Byram	Township	Sussex	8,048
Newton	Town	Sussex	7,521
Washington	Borough	Warren	6,474
Eastampton	Township	Burlington	4,962
Mountain Lakes	Borough	Morris	3,847

Source: State Commission on County & Municipal Government.



## Small Municipality Form

The third form of government available under the Optional Municipal Charter Law of 1950 is the Small Municipality form, which is available only to municipalities with population of less than 12,000. Municipalities which adopt this form while under the 12,000 limit are not precluded from retaining it if they grow beyond that size.

The Small Municipality form is a modernized version of the borough form and the township form. It is very close to the Mayor-Council form or "strong mayor" form in that it places all executive powers in the mayor. The mayor in the Small Municipality Form of government appears to be *stronger* than the mayor in the Mayor-Council Form of government, in that the mayor has all the executive powers of the municipality and also acts as the leader of the legislative branch of municipal government.

The Small Municipality Form of government allows New Jersey's smaller communities to mix and match most of the various options for the election of their council authorized in the other Faulkner Act forms. Elections may be either partisan or nonpartisan and either staggered or concurrent. There is a choice in the number of council members and the mayor may be elected by the voters or selected by his/her colleagues. Nonpartisan elections may include provision for run off elections if no candidate receives a majority of the vote, but this is not required. All elections are at-large; wards are not an option.

The OMCL Small Municipality Form of government contains four primary options and one secondary option which authorize 36 different combinations of choices available (see Table 3). A municipality operating under the OMCL Small Municipality Form of government may choose the following options:

- 1) Size of council (three, five or seven)
- 2) Direct election by the people or selection from the governing body for the mayor
- 3) Partisan or non-partisan elections
  - a) Run off (suboption of non-partisan elections)
- 4) Staggered or concurrent terms

The council consists of the mayor and two, four or six other council members. Council terms are three years on either a concurrent or a staggered basis. The option of having only three council members is often seen as a weakness in this form of government. Council members will often have problems conducting business and may at time be in violation of the Open Public Meeting Act. Five or more members also encourage more voter and council member participation in government. ***The Commission recommends the removal of the three council person option from the Small Municipality Form of government.*** As of January 1992, all 17 municipalities operating under the Small Municipality Form of government have five or seven member councils.

The council exercises the legislative power of the municipality and has no

specified administrative duties or appointment powers. The council is prohibited from speaking to department heads. One member of the council is chosen as president of the council to preside in the absence of the mayor. The municipal budget is prepared by the mayor with the assistance of the treasurer and submitted to the council for review and revision.

The executive power of the municipality is exercised by the mayor. The mayor appoints an assessor, a tax collector, a municipal clerk, a treasurer and such officers as are provided by ordinance, all with the advice and consent of the council. The mayor also appoints the finance committee and other committees of the council. The mayor does not have veto power, though, he/she presides over council and has a vote.

The mayor may be elected directly by the voters or may be selected by the council from among its own members. The length of time for a directly elected mayor to serve after he/she is first elected is unclear. ***The law should be revised and provide that all elections for mayor are for four years.***

If the mayor is chosen from the council, his/her term of office is one year. Currently, 16 municipalities elect their mayor by the voters and only one municipality, Estell Manor City, selects its mayor from the governing body (see Table 7).

Figure 3 indicates the powers and duties of the mayor and council in the Small Municipality Form of government.

All traditional municipalities have the option of using an optional administrator under general law. All Faulkner Act communities other than the Small Municipality form also require an administrator. The Commission believes municipalities can improve by hiring an administrator. ***The Commission recommends the Small Municipality Form of government provide for the option to hire an administrator by ordinance with advice and consent, who will be hired by the mayor, serve at his pleasure and whose duties would be determined by the mayor.*** This provision may be achieved by merging sections 122 and 124 of the present law using section 43 of the Mayor-Council form as a model for the conditions.

The section on the municipal clerk (N.J.S.A. 40:69A-126) provides that the municipal clerk in the Small Municipality Form of government shall serve at the pleasure of the council. However, chapter 147 of the Public Laws of 1980 amended N.J.S.A. 40A:9-133 to create a mandatory three-year term for all untenured municipal clerks.<sup>5</sup> ***The Commission recommends that N.J.S.A. 40:69A-126 state that the municipal clerk be appointed by council.***

It is possible for a municipality operating under the Small Municipality Form of government, through a referendum, to change any of the optional aspects, without changing the basic form of government. This includes the size of the council, partisan or nonpartisan elections, staggered or concurrent terms, the use of runoff elections and the election or selection of the mayor.

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<sup>5</sup>Ibid.

**FIGURE 3  
MUNICIPAL GOVERNMENT IN NEW JERSEY  
SMALL MUNICIPALITY FORM**

**VOTERS**

**MAYOR**

Chief Executive  
of Municipality and  
Responsible for Administering  
the Municipality

Presides at Council,  
Participates and Votes  
as an Ordinary Member of  
Council

Appoints Tax Assessor,  
Tax Collector, Municipal Clerk,  
Treasurer and other Officers  
as are Provided by Ordinance  
with Advice and Consent of  
Council

Appoints Finance Committee  
of Council

Prepares Budget with  
Assistance of Treasurer

Submits Annual Address  
to Council

**COUNCIL**

Legislative Body  
of the Municipality

Passes Ordinances and  
Resolutions

Passes/Modifies  
Budget

Adopts Administrative  
Code

Investigates Administration

Consents to Appointments of  
Mayor

The Small Municipality form provides for a more flexible modern form of government. The mayor is not separated from the council as in the Mayor-Council form. Yet, the mayor has an administrative responsibility which is not placed in the mayor in the Council-Manager form. Moreover, the mayor is an ordinary member of council, not only able to participate but also to vote.

The mayor submits the budget to the council and reports annually on the status of the municipality.

Source: State Commission on County and Municipal Government.

In summary, the Small Municipality Form of government allocates the legislative power to the council and the executive power to the mayor. The most surprising aspect of this division is the fact that the mayor is also the head of the legislative branch. This fact makes the Small Municipality Form of government an even "*Stronger Mayor*" form than the Mayor-Council Form of government.

As of January 1992, 17 municipalities have adopted the OMCL Small Municipality Form of government (see Table 6 and Map 3).

<b>TABLE 6</b> <b>MUNICIPALITIES OPERATING UNDER THE SMALL MUNICIPALITY</b> <b>FORM OF GOVERNMENT</b> <b>(AS OF 1 JANUARY 1992)</b>			
<b>NAME OF MUNICIPALITY</b>	<b>TYPE OF MUNICIPALITY</b>	<b>COUNTY</b>	<b>1990 CENSUS POPULATION</b>
Stafford	Township	Ocean	13,325
West Paterson	Borough	Passaic	10,982
Clinton	Township	Hunterdon	10,816
East Hanover	Township	Morris	9,926
Fairfield	Township	Essex	7,615
Chester	Township	Morris	5,958
Belmar	Borough	Monmouth	5,877
Berlin	Township	Camden	5,466
Logan	Township	Gloucester	5,147
Greenwich	Township	Gloucester	5,102
Lopatcong	Township	Warren	5,052
Highlands	Borough	Monmouth	4,849
Lambertville	City	Hunterdon	3,927
Pohatcong	Township	Warren	3,591
Allamuchy	Township	Warren	3,484
Island Heights	Borough	Ocean	1,470
Estell Manor	City	Atlantic	1,404
<b>MUNICIPALITIES OPERATING UNDER THE</b> <b>MAYOR-COUNCIL-ADMINISTRATOR</b> <b>FORM OF GOVERNMENT</b> <b>(AS OF 1 JANUARY 1992)</b>			
<b>NAME OF MUNICIPALITY</b>	<b>TYPE OF MUNICIPALITY</b>	<b>COUNTY</b>	<b>1990 CENSUS POPULATION</b>
North Brunswick	Township	Middlesex	31,287
Source: State Commission on County & Municipal Government.			



## Mayor-Council-Administrator Form

The Mayor-Council-Administrator Form of government is another version of the borough form of government. It was added to the Optional Municipal Charter Law in 1981. The act places executive power in the mayor and legislative power in the council. It then goes on to divide the executive power between an elected mayor and an appointed business administrator who serves during the term of the mayor, but is removable by the council. In this sense it is a "Weak Mayor" form of government and generally inconsistent with the Faulkner Act. In essence it is the only form in the Faulkner Act which divides executive powers between two persons. As of January 1992, only North Brunswick is operating under this form of government (see Table 6 and Map 3).

The council consists of an elected mayor and six elected council members, elected at-large, in the partisan general elections in November. There is no runoff elections. The mayor serves for a four-year term. The six council members serve staggered three-year terms, with an election of two members every year. Unlike the three other optional forms of government, the Mayor-Council-Administrator Form of government has no internal options or choices. It simply is a one package deal (see Table 3).

The council exercises the legislative power of the municipality. Council members have no administrative duties and no appointive power granted under this form of government. The council does not have the critical task of preparing the municipal budget with the assistance of the municipal administrator and the treasurer.

The mayor is supposed to exercise the executive power of the municipality. The mayor presides over the council, but has no vote except to break ties. He has veto power over ordinances, which can be overridden only by a two-thirds vote of the council. The mayor appoints a municipal administrator, tax collector, assessor, attorney, municipal clerk, treasurer, and other officers that are provided by ordinance, with the advice and consent of the council. All other municipal personnel for whom no method of selection is specified, are appointed by the mayor.

As in the Mayor-Council Form of government, there is a chief appointed administrative officer (CAAO). The municipal administrator serves at the pleasure of the council and may be removed by a two-thirds vote of the council. He is directed to administer the business affairs of the municipality.

Experience under this form is limited, since only one municipality, the Township of North Brunswick, has adopted it. The original intention of this form was to bring the mayor and council into a closer relationship, but it is quite possible that the administrator could be pulled in two different directions, since the mayor and administrator share executive powers while in contrast the administrator serves at the pleasure of the council. ***Because of this built in conflict, the Commission recommends that this form be removed from the rewritten Optional Municipal Charter Law.***

Should North Brunswick continue to use the Mayor-Council-Administrator Form of government, that form should be saved from repeal for its use. The rewritten Optional Municipal Charter Law (OMCL) should state that in using the Mayor-Council-Administrator form, North Brunswick should be subject to all other general portions of the rewritten Optional Municipal Charter Law (OMCL) Mayor-Council Form of government.

In summary, the Mayor-Council-Administrator Form of government divides the legislative power in the council and the executive power between the mayor and an appointed administrator. This fact makes the Mayor-Council-Administrator Form of government a "Weak Mayor" form of government and thus it is generally inconsistent with the Faulkner Act.

## **ELECTION OR SELECTION OF THE MAYOR**

Table 7 indicates 337 municipalities or 59 per cent elect their mayor by the voters and 230 municipalities select their mayor from the governing body. Under the Optional Municipal Charter Law's Small Municipality Form of government and the Council-Manager Form of government, the municipalities have a choice whether to elect their mayor by the voters or to select their mayor from the governing body. Post-1950 Special Charters may include the election or selection of the mayor. Since 1950, 72 per cent or 94 of 130 municipalities that have changed their form of government have favored an elected mayor. Of those municipalities that use Pre-1950 forms of government, 243 of 437 or 56 per cent favor an elected mayor.

## **OTHER PROVISIONS OF THE FAULKNER ACT**

One hundred and twenty municipalities have adopted one of the forms of government authorized by the Faulkner Act since 1950. Another ten municipalities have utilized a Special Legislative Charter. During this time only three municipalities have adopted and remained with one of the older forms of government.

*The State Commission on County and Municipal Government recommends that the rewritten Optional Municipal Charter Law be the only way a municipality may change its form of government.*

**Section 12 (Reports and Recommendations Which Commission May Make)** should be rewritten to authorize municipalities to adopt one of the three Optional Forms authorized in this act, to adopt a Special Legislative Charter, to remain unchanged, or to amend an existing Faulkner charter. Since the Faulkner Act would be the only way a municipality could change its form of government, N.J.S.A. 40:43-9.1, regarding other forms of government, would be repealed.

Another part of section 12 that is unclear is whether the Charter Study Commission has the power to recommend amendments to a Faulkner Charter that

**TABLE 7  
ELECTION OR SELECTION OF THE MAYOR  
UNDER NEW JERSEY'S FORMS OF MUNICIPAL GOVERNMENT  
(AS OF 1 JANUARY 1992)**

<b>FORMS OF GOVERNMENT IN WHICH THE MAYOR IS ELECTED BY THE VOTERS</b>		<b>FORMS OF GOVERNMENT IN WHICH THE MAYOR IS SELECTED BY THE GOVERNING BODY</b>	
Number of —Municipalities—	Form of —Municipal Government—	Number of —Municipalities—	Form of —Municipal Government—
218	Borough	153	Township
16	City	32	Commission
9	Town	8	1923 Municipal Manager
64	Mayor-Council (OMCL)	1	Village
16	Small Municipality (OMCL)*	1	Small Municipality (OMCL)*
6	Council-Manager (OMCL)*	32	Council-Manager (OMCL)*
1	Mayor-Council-Administrator (OMCL)	3	Special Charter*
7	Special Charter*		
<b>TOTAL</b>	<b>337</b>	<b>TOTAL</b>	<b>230</b>

Notes: \*Municipalities under the forms of government marked with an asterisk have the option to elect the mayor by the voters or select the mayor from the governing body.  
(OMCL) = Optional Municipal Charter Law (Faulkner Act). P.L. 1950, c. 210.

Source: State Commission on County & Municipal Government.

is currently under use in a municipality.<sup>6</sup> Section 12 should be rewritten to clarify that a referendum be held by the qualified voters of a municipality to amend one or more of the options available under the present form of government authorized in the Faulkner Act.

**Section 14 (Form of Submission of Question of Adoption of Optional Plans of Government)** makes no mention of the option for staggered or concurrent terms of office for the municipal council. The model question also makes no provision for the option of a voter elected or council selected mayor in the Council-Manager and Small Municipality Form of government.<sup>7</sup> Section 14 should be revised to authorize municipalities using the Mayor-Council Form of government to have the following choices:

- 1) At-large, wards only or wards and at-large elections
  - a) If appropriate, number of wards
- 2) A council of five, seven, or nine members
- 3) Partisan or non-partisan elections
  - a) Run off or not in non-partisan elections
- 4) Staggered or concurrent terms

The Council-Manager Form of government would contain the following choices:

- 1) At-large, wards only or wards and at-large elections
  - a) If appropriate, number of wards
- 2) A council of five, seven, or nine members
- 3) Direct election or selection by his/her colleagues for the mayor
- 4) Partisan or non-partisan elections
  - a) Run off or not in non-partisan elections
- 5) Staggered or concurrent terms

The Small Municipality Form of government would contain the following choices:

- 1) A council of five or seven members
- 2) Direct election or selection by his/her colleagues for the mayor
- 3) Partisan or non-partisan elections
  - a) Run off or not in non-partisan elections
- 4) Staggered or concurrent terms

**Section 17 (Other Proceedings Pending; No New Regulation or Petition Within Four Years)** is ambiguous with regard to changing a form of government. Both sections 17 and 21 appear to leave an option open to the residents of a municipality to petition for a Charter Study Commission immediately after the failure of a direct petition and vice-versa. The law, however, did not anticipate the use of one method after the failure of another immediately afterwards.

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<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

Section 17 should be revised to make clear that no action may be taken to change the form of government of a community after a charter study commission referendum or direct petition referendum has been held in that community. This may be accomplished by merging sections 17 and 21 to remove any ambiguity with regard to time requirements between referenda.

**Section 18 (Adoption of Optional Plan Without Charter Commission)** should be revised to include authorization to municipal governing bodies to place a charter change on the ballot without a petition or a Charter Study Commission.

**Section 25 (Petition and Referendum on Revision to Prior Plan)** should be revised to allow any municipality to abandon its present form of government and to revert to the *standard* form of government (city, borough, township, town, village) authorized for that type of municipal government.

**Section 180 (Presiding Officer)** provides that the president of the municipal council presides at council meetings. This is true in the Mayor-Council Form of government. However, in the other forms the mayor presides over council, and the council president presides only in the mayor's absence.<sup>8</sup> This provision should be clarified.

**Section 207 (Existing Offices Abolished on Effective Date of Optional Plan; Exceptions)** is vaguely spelled out in that it calls for adoption of ordinances setting up the structure of municipal government with an interim resolution. It does not make clear the provision for an administrative code. The Optional County Charter Law, enacted in 1972, included a State Commission on County and Municipal Government recommendation for an administrative code. Section 207 should be amended to specifically state and outline the provision for an administrative code.

Also included in section 207 is the provision of the new governing body's extensive authority to structure its new government as it sees fit. The Faulkner Act is designed to provide maximum amount of local discretion as consistent with general law (see Section 30). In this respect, there should be few exceptions to this local discretion as possible. Section 207 should be amended to allow maximum authority to a municipality in structuring its new government, taking into account provisions of general law.

Initiative, referendum and recall, essentially N.J.S.A. 40:69A-168 to 178 and N.J.S.A. 40:69A-184 to 196, is ambiguous and difficult to understand by the average citizen. *The Commission recommends that initiative, referendum and recall be repealed in the Optional Municipal Charter Law and replaced with an entirely separate new law entitled "The Local Initiative Act", that would rewrite those provisions of the Faulkner Act in clear and simple language.*

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<sup>8</sup>Ibid.

In addition to the fact that almost all charter changes in the last 42 years has been through the Faulkner Act, the act's provisions have been used most extensively by the larger municipalities of the State. Of the municipalities in the State with over 30,000 inhabitants, 45 of 61 have adopted the Faulkner Act, the 1923 Municipal Manager Act or a modern special legislative charter. The large amount of activity occurring in larger communities of this size encourages the municipality to adopt the form of government which best meets its needs. The experience of the last 42 years indicates overwhelming movement to the Faulkner Act on part of these larger municipalities.

***The Commission recommends that every municipality with over 30,000 inhabitants move to the Faulkner Act.*** This recommendation does not change existing statutory language, but rather it encourages the larger municipalities to adopt one of the forms in the Optional Municipal Charter Law which best meets its needs.

## SUMMARY

The Optional Municipal Charter Law (OMCL) has been adopted by 120 municipalities containing 47.29 per cent of the State's population in the 42 years since its enactment. As of January 1992, 64 municipalities have adopted the Mayor-Council form, 38 municipalities have adopted the Council-Manager form, 17 municipalities have adopted the Small Municipality form, and one municipality has adopted the Mayor-Council-Administrator form.

The three original forms of government authorized by the law contain several primary and secondary options each. This provides 135 different combinations of choices available to municipalities.

The Commission recommends the re-enactment of the Optional Municipal Charter Law (OMCL) in Title 40A of the statutes. The law has been amended over 20 times in its 42 years of existence. It remains fundamentally sound. The numerous amendments recommended herein are to make a good law even better. They will significantly clarify the existing situation where 15 letter plans have been replaced by five, four, or three primary and one or two secondary options for each of the three forms of government authorized in the act. The amendments will eliminate inconsistencies with general law which have built up in recent years, clarify vague sections of the law, change provisions based on experience, and provide that the Optional Municipal Charter Law (OMCL) is the only way for municipalities to change their form of government.

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