



CHARTER COMMISSION

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Mount Clemens, MI 48043

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MACOMB COUNTY CHARTER COMMISSION SPECIAL MEETING

MONDAY, JULY 27, 2009 AT 7:00 P.M.

One South Main Street, 9th Floor, Mount Clemens, MI 48043

PROPOSED AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Adoption of Agenda
5. Approval of Minutes from Full Commission Meeting of June 17, 2009
6. Treasurer's Report on the Commission Budget
7. Resolution Setting Election Dates for the Charter, Board of Road Commissioners
Question, new County Executive, and new Board of County Commissioners
8. Resolution Adopting Ballot Language for the Home Rule Charter
9. Resolution Adopting Ballot Language for the Board of Road Commissioners Question
10. Request for approval of proposal for preparation of a Charter Commentary
11. Public Participation
12. Roll Call
13. Adjournment

MACOMB COUNTY CHARTER COMMISSION

Jacob Femminino, Jr. District 17 Chair	Marilyn Lane District 20 Vice-Chair	James F. Kelly District 3 Secretary	David A. Willis District 2 Treasurer
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Matthew J. Wroblewski – District 1	Michael G. Gielniak – District 9
Louis J. Burdi, - District 4	Rick Flynn – District 10
Robert W. Slavko – District 5	Dominic LaRosa – District 11
John Olekszyk – District 6	Vince Viviano – District 12
Elisabeth Sierawski – District 7	Gary S. Anthony – District 13
Donna S. Cangemi – District 8	James Haggerty – District 14

Harry Awdey – District 15	Judy Hartwell – District 22
Tom Rombach – District 16	James Maceroni – District 23
Carrie Lynn Fuca – District 18	Cynthia Konal – District 24
Robert Smith, Jr. – District 19	Charles Medley – District 25
Nick Ciaramitaro – District 21	Monika Kreft Leasure – District 26

**UNOFFICIAL MINUTES OF THE
MACOMB COUNTY CHARTER COMMISSION
REGULAR MEETING**

June 17, 2009 at 7 p.m.

held at Macomb County Administration Building
One South Main Street, 9th Floor, Mount Clemens, MI 48043

The Macomb County Charter Commission met at 7:00 p.m. on Monday, June 17, 2009 on the 9th floor of the County Administration Building, in the Commissioners' Board Room, Mount Clemens. Chair Femminineo called the meeting to order at 7:13 p.m. Recessed called to 7:45 p.m. by Chair Femminineo. A roll call was taken for attendance as follows:

NAME	DISTRICT	PRESENT	NOT PRESENT
Matthew J. Wroblewski	1	X	
David A. Willis	2	X	
James F. Kelly	3	X	
Louis J. Burdi	4	X	
Robert W. Slavko	5	X	
John Olekszyk	6	X	
Elisabeth Sierawski	7	X	
Donna S. Cangemi	8	X	
Michael G. Gielniak	9	X	
Rick Flynn	10	X	
Dominic J. La Rosa	11	X	
Vince Viviano	12	X	
Gary S. Anthony	13	X	
James Haggerty	14	X	
Harry Awdey	15	X	
Tom Rombach	16	X	
Jacob Michael Femminineo Jr.	17	X	
Carrie Lynn Fuca	18	X	
Bob Smith Jr.	19	X	
Marilyn Lane	20	X	
Nick Ciaramitaro	21	X	
Judy Hartwell	22	X	
James Maceroni	23	X	
Cynthia Konal	24	X	
Charles Medley	25	X	
Monika Kreft Leasure	26		X

Monika Kreft Leasure is absent and excused.

Also present: Ralph "Skip" Maccarone, Executive Director
 Don DeNault, Attorney at Law
 John Nitz, Attorney at Law
 David Massaron, Attorney at Law
 Mike McGee Attorney at Law
 George Ward, Attorney at Law

CONSENT AGENDA

a) Budget Report

MOTION

A motion was made by Charter Commissioner Lane to approve the Budget Report, supported by Charter Commissioner Hartwell. **THE MOTION CARRIED.**

AGENDA

MOTION

A motion was made by Charter Commissioner Awdey to adopt the agenda as amended to include items 11.1 and 11.2, supported by Charter Commissioner Slavko. **THE MOTION CARRIED.**

MINUTES

MOTION

A motion was made by Charter Commissioner LaRosa to approve the minutes from June 15, 2009 as amended, supported by Charter Commissioner Medley. **THE MOTION CARRIED.**

PUBLIC PARTICIPATION

Connie Miller, 26940 Ponchartrain, Harrison Township
Jerry Sieja, 12927 Docksin, Sterling Heights

RECOMMENDATION OF EXECUTIVE DIRECTOR FOR CONTINUED SERVICES OF ADMINISTRATIVE ASSISTANT

MOTION

A motion was made by Charter Commissioner LaRosa that effective Monday, June 22, 2009, the Charter Commission's Administrative Assistant's employment with the Charter Commission shall continue on an as-needed basis determined by the Commission Chair, or their designee, at the same rate of pay of \$20 per hour for actual hours worked. Unless extended by further action of the Charter Commission, this employment shall terminate at the close of business on Friday, August 14, 2009, supported by Charter Commissioner Medley.

FRIENDLY AMENDMENT

Charter Commissioner Awdey offered a friendly amendment to include consulting with Treasurer Willis as to budget issues. Charter Commissioners LaRosa and Medley accepted the friendly amendment.

THE MOTION CARRIED WITH THE FRIENDLY AMENDMENT.

OFFER FOR CONTINUED SERVICES OF EXECUTIVE DIRECTOR

MOTION

A motion was made by Charter Commissioner Flynn that effective Monday, June 22, 2009, the Charter Commission's Executive Director's contract for services to the Charter Commission shall continue at the rate of \$50 per hour, for actual hours worked, capped at \$1,000 per week. Unless extended by further action of the Charter Commission, this contract shall expire at the close of business on Friday, August 14, 2009, supported by Charter Commissioner Anthony.

FRIENDLY AMENDMENT

Charter Commissioner LaRosa offered a friendly amendment to include consulting with Treasurer Willis as to budget issues. Charter Commissioners Anthony Medley accepted the friendly amendment.

THE MOTION CARRIED WITH THE FRIENDLY AMENDMENT.

LEGAL TEAM TEXT RECOMMENDATIONS FOR RECENTLY APPROVED OR PENDING AMENDMENTS

MOTION

A motion was made by Charter Commissioner Cangemi to remove the sentence: *“One additional non voting member shall be elected by retired County employees in the manner provided by the rules and regulations adopted by the Retirement Commission,”* supported by Charter Commissioner Sierawski.

SUBSTITUTE MOTION

A substitute motion was made by Charter Commissioner Cangemi to replace the removed sentence with: *“One additional non-voting member shall be elected by retired County employees,”* supported by Charter Commissioner Awdey.

FRIENDLY AMENDMENT

Charter Commissioner Kelly offered a friendly amendment to add back in the line and add: *“to be”* before *“adopted by the Retirement Commission.”* Charter Commissioners Cangemi and Awdey accepted the friendly amendment.

THE SUBSTITUTE MOTION CARRIED WITH THE FRIENDLY AMENDMENT.

CONTINUED DISCUSSION OF SECTION 9.1 TEXT DELETION REGARDING RETIREMENT SYSTEM

MOTION

A motion was made by Charter Commissioner Gielniak to remove the wording *“provided that an amendment shall not decrease any benefit that has been earned or vested”* at the end of Section 9.1, supported by Charter Commissioner Kelly. **THE MOTION CARRIED.**

MOTION TO CALL THE QUESTION

A motion was made by Charter Commissioner Viviano to call the question, supported by Charter Commissioner Lane. **THE MOTION TO CALL THE QUESTION CARRIED.**

MOTION

A motion was made by Charter Commissioner Rombach and supported by Charter Commissioner LaRosa to add to the end of 11.5.2: *“with its core functions remaining intact.”* **THE MOTION CARRIED.**

MOTION

A motion was made by Charter Commissioner Flynn to amend section 3.15 to add: *“at a public meeting”* between *“shall”* and *“appoint”*, supported by Charter Commissioner Smith. **THE MOTION CARRIED.**

APPROVAL OF MACOMB COUNTY CHARTER FOR DELIVERY TO THE GOVERNOR AS PROVIDED BY LAW

MOTION

A motion was made by Charter Commissioner Chair Femminineo by acclamation to suspend rules for adoption of the following resolution:

RESOLVED, that the Macomb County Charter Commission approves the Home Rule Charter of Macomb County, Michigan, submitted to it by the Charter Commission's Legal Team on June 17, 2009, including the amendments adopted at the regular meeting of the Charter Commission on June 17, 2009.

BE IT FURTHER RESOLVED. That the approved Home Rule Charter be submitted to the Governor of the State of Michigan for approval pursuant to statute.

A roll call vote was taken:
All voted Yes.

THE MOTION CARRIED.

NEW BUSINESS

Charter Commissioner Slavko presented a gift to Charter Commissioner Awdey. Charter Commissioner Awdey thanked Charter Commissioner Awdey and the Commission. Charter Commissioner Burdi questioned the next meeting. Chair Femminineo indicated the Governor would have 30 days to approve or deny the Charter, the Charter will have 10 days to discuss and a meeting will be called at that time. Charter Commissioner Konal requested e-mailing unavailable dates for that meeting. Charter Commissioner Ciaramitaro thanked the group. Charter Commissioner Fuca thanked Chair Femminineo. Charter Commissioner Viviano mentioned the amount of hours spent by Edie and Skip.

PUBLIC PARTICIPATION

Jerry Sieja, 12927 Docksln, Sterling Heights

EXECUTIVE DIRECTOR'S REPORT

The executive director congratulated the Commission on their hard work. Mr. McGee spoke regarding the timing: The Governor's office is closed on Friday so Charter will be delivered on Monday or Tuesday. The Governor has 30 days and the Attorney General can make comments. They will report to the Commission once comments are received.

ROLL CALL

NAME	DISTRICT	PRESENT	NOT PRESENT
Matthew J. Wroblewski	1	X	
David A. Willis	2	X	
James F. Kelly	3	X	
Louis J. Burdi	4	X	
Robert W. Slavko	5	X	
John Olekszyk	6	X	
Elisabeth Sierawski	7	X	
Donna S. Cangemi	8	X	
Michael G. Gielniak	9	X	
Rick Flynn	10	X	
Dominic J. La Rosa	11	X	
Vince Viviano	12	X	
Gary S. Anthony	13	X	
James Haggerty	14	X	
Harry Awdey	15	X	
Tom Rombach	16	X	
Jacob Michael Femminineo Jr.	17	X	
Carrie Lynn Fuca	18	X	
Bob Smith Jr.	19	X	
Marilyn Lane	20	X	
Nick Ciaramitaro	21	X	
Judy Hartwell	22	X	
James Maceroni	23	X	
Cynthia Konal	24	X	
Charles Medley	25	X	
Monika Kreft Leasure	26		X

ADJOURNMENT

MOTION

A motion was made by Charter Commissioner Viviano to adjourn the meeting, supported by Charter Commissioner Haggerty. **THE MOTION CARRIED.**

Chair Femminineo adjourned the meeting at 8:59 p.m., until the call of the Chair.

Jacob Michael Femminineo, Jr., Chair

Todd Schmitz, Chief Deputy Clerk

Business of the Macomb County
Charter Commission

AGENDA ITEM REQUEST

To: The Macomb County Clerk

From: Ralph Maccarone, Executive Director

For the Meeting of: Monday, July 27, 2009

Item Title: Resolution Approving Election Dates

Executive Summary:

Honorable Charter Commissioners:

Attached is a Resolution setting the date for voter consideration of the Macomb County Charter, and if approved, the primary and general election dates for the new office of County Executive and a new Board of County Commissioners. This Resolution has been reviewed by the Charter Commission Legal Team for compliance with the Michigan Constitution and applicable state law.

An appropriate motion would be:

Motion by

Supported by

“I move to adopt the Resolution setting election dates for the Macomb County Charter, and if approved, the new office of County Executive, new Board of County Commissioners; and for the Board of Road Commissioner ballot question; to be published as required, all as proposed; and that the Charter Commission Chair and Secretary be authorized to certify said Resolution by affixing their signature to it.”

**MACOMB COUNTY CHARTER COMMISSION
RESOLUTION**

RESOLVED, that the Macomb County Charter Commission does hereby fix November 3, 2009, as the date for the submission of the proposed Home Rule Charter of Macomb County, Michigan to the electorate for adoption, and to submit to the electorate for consideration a proposal to reorganize the Macomb County Board of Road Commissioners in the manner provided in the Home Rule Charter of Macomb County, Michigan.

BE IT FURTHER RESOLVED, that the Macomb County Charter Commission does hereby fix August 3, 2010, as the date for the primary election of candidates for the newly created office of County Executive and for the offices of the County Commissioners under the Home Rule Charter of Macomb County, Michigan.

BE IT FURTHER RESOLVED, that the Macomb County Charter Commission does hereby fix November 2, 2010, as the date for the general election of the first County Executive and the first County Commissioners under the Home Rule Charter of Macomb County, Michigan.

BE IT FURTHER RESOLVED, that the Macomb County Charter Commission requests that the County Clerk, within 3 business days of this meeting, transmit a certified copy of this Resolution together with a copy of the proposed Home Rule Charter of Macomb County, Michigan, to the clerk of each city, village, and township within Macomb County, and that the County Clerk publish the proposed Charter in at least 1 newspaper having general circulation within the County not less than 2 weeks nor more than 4 weeks prior to the election date upon which the Charter will be submitted and give notices of election in conformance with MCL 45.507 and the Michigan Election Law, MCL 168.1 *et seq.*, and to do all things and provide all supplies necessary to submit the proposed Charter to the vote of the electors as required by law.

Business of the Macomb County
Charter Commission

AGENDA ITEM REQUEST

To: The Macomb County Clerk

From: Ralph Maccarone, Executive Director

For the Meeting of: Monday, July 27, 2009

Item Title: Resolution for Macomb County Charter Ballot Question

Executive Summary:

Honorable Charter Commissioners:

Attached is a Resolution containing the ballot question for the Macomb County Charter proposed for your consideration.

This Resolution has been reviewed by the Charter Commission Legal Team for compliance with the Michigan Constitution and applicable state law.

An appropriate motion would be:

Motion by

Supported by

“I move to adopt the Resolution containing the ballot question for the Macomb County Charter as proposed; and that the Charter Commission Chair and Secretary be authorized to certify said Resolution by affixing their signature to it.”

**MACOMB COUNTY CHARTER COMMISSION
RESOLUTION**

RESOLVED, that the following question be placed on the ballot and submitted to the voters of Macomb County at the election to be held on November 3, 2009:

Shall the Home Rule Charter proposed by the Macomb County Charter Commission be adopted?

Business of the Macomb County
Charter Commission

AGENDA ITEM REQUEST

To: The Macomb County Clerk

From: Ralph Maccarone, Executive Director

For the Meeting of: Monday, July 27, 2009

Item Title: Resolution for Road Commission Board of Commissioners Ballot Question

Executive Summary:

Honorable Charter Commissioners:

Attached is a Resolution containing the ballot question for the Road Commission Board of Commissioners to be reorganized, if the Charter is adopted by the voters, for your consideration.

This Resolution has been reviewed by the Charter Commission Legal Team for compliance with the Michigan Constitution and applicable state law.

An appropriate motion would be:

Motion by

Supported by

“I move to adopt the Resolution containing the ballot question for the Road Commission Board of Commissioners to be reorganized, as proposed; and that the Charter Commission Chair and Secretary be authorized to certify said Resolution by affixing their signature to it.”

**MACOMB COUNTY CHARTER COMMISSION
RESOLUTION**

RESOLVED, that the following question be placed on the ballot and submitted to the voters of Macomb County at the election to be held on November 3, 2009:

Shall the Macomb County Board of Road Commissioners be reorganized under and in the manner provided in the Home Rule Charter of Macomb County if the Charter is adopted by the voters?

Business of the Macomb County
Charter Commission

AGENDA ITEM REQUEST

To: The Macomb County Clerk

From: Ralph Maccarone, Executive Director

For the Meeting of: Monday, July 27, 2009

Item Title: Request for Approval of proposal for preparation of a Charter Commentary

Executive Summary:

Honorable Charter Commissioners:

Attached is a proposal being supplied by O'Reilly, Rancilio for your consideration.

In it, you are offered the opportunity to have a professional prepared Charter Commentary edition for public reference, informational and historical purposes.

I have previously sent excerpts of sample charter commentaries for your review.

I encourage you to consider this proposal as an important part of the Charter Commission function to prepare a County Constitution for consideration by the voters. A properly drafted commentary can be of great current and future historical value to those called upon to interpret this Charter for whatever reason they may have to do so. In my opinion, Mr. DeNault's attendance at virtually all of the Commission proceedings clearly make him the premier choice of authorship for this undertaking.

An appropriate motion would be:

Motion by

Supported by

"I move to authorize O'Reilly, Rancilio, PLC prepare a Charter Commentary as proposed, and that the Charter Commission budget be amended to reflect same."

[The proposal referred to was not available when this memo was prepared for publication.]

O'REILLY RANCILIO P.C.

ATTORNEYS AT LAW

**PROPOSAL TO PREPARE AN OFFICIAL
COMMENTARY VERSION OF THE
MACOMB COUNTY CHARTER**

Submitted by:

**O'Reilly Rancilio P.C.
John A. Nitz, Esq.
Donald P. DeNault, Jr., Esq.
Sterling Town Center
12900 Hall Road, Suite 350
Sterling Heights, MI 48313-1151
(586) 726-1000**

July 27, 2009

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SUMMARY

Our law firm, O'Reilly Rancilio P.C., is extremely grateful for the opportunity to have provided extensive legal services to the Macomb County Charter Commission during this historic time in Macomb County. We hope that we earned the faith and trust that was bestowed upon us by the Charter Commission a mere 7 months ago. During that time, we have all worked together, learned from each other, and ultimately created together a new constitution for the County we all call "home."

On July 27, 2009, the Charter Commission will be establishing the election dates when the voters of Macomb County will decide whether to adopt the proposed Charter and whether to reorganize the Road Commission. Although our Legal Team has spent many hours drafting Charter language that is concise and understandable, no document of such size and scope can ever be completely free from legal challenge or questions of interpretation.

Therefore, we are proposing to prepare a "Commentary Edition" of the Home Rule Charter that will serve at least 3 important functions. First, it would preserve some of the origin behind each of the Charter's provisions for historical purposes, without requiring future historians to listen to lengthy recorded meetings. Second, it would provide future officials and courts, if necessary, some insight into the "legislative history" behind the Charter's provisions. Third, and perhaps most importantly, a full version of the Charter with commentary will assist the voters with understanding the Charter's provisions prior to casting their vote on November 3, 2009.

We hope you agree with the value of such a project, and we look forward to working on your behalf toward the common goal of creating a long-lasting document that will be valuable for many years to come.

PROPOSAL

The Firm proposes to draft and compile a “Commentary Edition” of the Home Rule Charter of Macomb County, Michigan.

On the next page, we have provided an excerpt from the Macomb County Charter along with commentary that we have prepared as a sample of the work product we intend to produce for the Charter Commission.

We recognize the importance of fiscal responsibility during this process, and we trust that we have proven that our foremost goal is always quality over quantity. We capped our fees for general counsel services on behalf of the Charter Commission at \$160,000.00, and we honored that commitment. As a result, our dedication to quality service resulted in many additional hours of service that have been provided to the Charter Commission on a *pro bono* basis.

In recognition of the value that we have provided to date, and understanding that the current economic times would not justify any expenditures that would cause the Charter Commission to consume or exceed its legal services budget, we therefore propose to prepare an official “Commentary Edition” of the Charter for a flat fee of \$9,500.00, inclusive of all costs and expenses.

In the 1980’s, Wayne County spent more than \$750,000.00 of its \$2 million budget to prepare a charter, and it has spent countless additional sums on litigation over the meaning of various provisions in the document. However, in 2009, the Macomb County Charter Commission is well under its allotted budget of \$195,000.00 for legal services, and the entire project has only utilized approximately 51% of the entire budget to date. As a result, we believe the value of a commentary version of the new Charter more than exceeds our proposed cost for its preparation. We look forward to the opportunity to continue to assist the Charter Commission with its historic endeavor.

SAMPLE MACOMB COUNTY CHARTER COMMENTARY

Section 10.12 Removal from Office

In addition to other removal processes provided by law, a Public Servant or contracted employee of the County not subject to a collective bargaining agreement or civil service may be removed from office or employment by the following process:

(a) The Ethics Board has the authority to recommend removal for criminal or corrupt conduct arising out of or occurring in the course of the conduct of the Public Servant. If the Ethics Board finds by a preponderance of the evidence that a Public Servant or contracted employee of the County has committed criminal or corrupt conduct arising out of or related to the conduct of the person's office or position, the Ethics Board shall refer the matter to the Commission, or other appropriate official or agency, for removal from office or employment. A Majority of the Ethics Board shall be necessary to adopt a recommendation for removal.

(b) Every recommendation for removal that is received from the Ethics Board shall be deliberated and decided by the Commission. The Commissioners shall truly and impartially try and determine the recommendation for removal according to the evidence. A resolution for removal from office or employment shall be approved by a roll call vote of 2/3 of the Commissioners serving.

(c) The Commission shall provide by ordinance for the process that will govern consideration of recommendations for removal made by the Ethics Board in accordance with this section. The standard for removal shall be, at a minimum, a preponderance of the evidence. Such process shall be modeled, to the extent practical, after the impeachment process set forth by law for removal of civil officers. The ordinance may allow for the adoption of rules and regulations to be followed by the Commission when conducting a hearing on a recommendation for removal.

History:

The Ethics Committee considered several options for removal of public officials and employees from office. The concept was generally deemed important because the ethics provisions of the Charter, although significant, would not necessarily provide a remedy for the most egregious misconduct. More importantly, an ordinance adopted by the County Commission might not be sufficient to authorize removal of elected officials holding office under the Michigan Constitution, but a home rule charter provision adopted by the electorate pursuant to constitutional authority to reform county government would have significantly more weight if ever challenged in court.

The Ethics Committee agreed that the governor should have the same removal power over the County Executive as she has over 7 other officials who are specifically identified in Michigan election law. See Section 3.12. However, in the event that the governor might choose not to exercise such authority, the Ethics Committee also agreed on a need for home rule authority to remove a public official who engages in egregious misconduct.

The concept of a recommendation by the Ethics Board and removal by the County Commission was suggested, developed further, and eventually evolved into the provisions set forth here. The language is loosely modeled after the impeachment provisions found in Article XI, Section 7 of the Michigan Constitution of 1968 and Act 62 of 1872.

The Ethics Committee decided to limit this section to "criminal or corrupt conduct arising out of or occurring in the course of the conduct of the Public Servant." It does not apply to the ethical violations that might occur under Article II of the Charter or the corresponding ethics ordinance, unless such violations also rise to the level of criminal or corrupt conduct. If the Ethics Board determines by a preponderance of the evidence that such conduct has occurred, it is authorized to recommend removal of the public official from office. The County Commission must consider the recommendation and may remove the public official upon a 2/3 vote of all Commissioners serving. The Commission is required to adopt an ordinance that will set forth the procedures governing the removal hearing process.

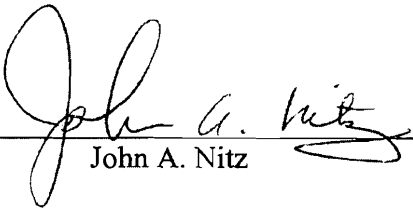
For employees covered by collective bargaining agreements, removal is a disciplinary matter not subject to the process set forth in this section.

CLOSING REMARKS

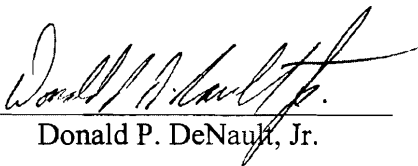
The Home Rule Charter of Macomb County, Michigan, is an historic accomplishment that will likely assume a place in history as the model for other counties in Michigan to follow. In addition, many of its provisions are uniquely suited to Macomb County. Future public officials, courts, charter scriveners, and historians will benefit greatly from an official record that concisely and factually describes the process by which the provisions of the Charter evolved into their final form.

Having served the Charter Commission throughout the entire process, O'Reilly Rancilio is uniquely qualified to prepare the official history and commentary of the Charter. We believe such a document will be a valuable tool for years to come. If you agree, we hope you will allow us the privilege to continue and conclude our service to the Charter Commission in this new role.

On behalf of our Firm, we look forward to the opportunity to assist the Macomb County Charter Commission by formalizing the history and evolution of Macomb County's new and historic Home Rule Charter.



John A. Nitz



Donald P. DeNault, Jr.