CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

June 4, 2004
OPINION 04-0127

Ms. Barbara Jacob-Tucker
Parish of St. Charles
P. O. Box 302
Hahnville, LA 70057

Dear Ms. Jacob-Tucker:

We are in receipt of your correspondence to this office requesting our review of a revised rule of the St. Charles Parish Council. Rule 31 of the council rules currently provides:

> A vote may be reconsidered at any time during the same meeting, or at the next regular or special meeting. A motion for reconsideration having been rejected shall not be reconsidered. A motion that has been rejected may be renewed at a future meeting.

The proposed revision to Rule 31 (which has yet to be adopted by the parish council) states:

> A vote on an Ordinance or a Resolution may be reconsidered at any time during the same meeting. A vote on a matter, other than an Ordinance or Resolution, may be reconsidered at any time during the same meeting, or at the next regular or special meeting.

The revised rule would limit a reconsideration of a vote on an ordinance or resolution to the same meeting. The proposed revision prompts your first question:

> Should a Council Member, in light of new facts or evidence regarding an Ordinance or Resolution, have the option to change their minds in a regular scheduled or special meeting, following the meeting in which the decision was made?

The answer to your question is governed by the council rules in effect at the time the ordinance is introduced. The language of current Rule 31 would permit reconsideration in the scenario presented; the revised Rule 31 would not permit reconsideration.

The parish council as a home rule charter entity is empowered to adopt its own rules of action, where not in conflict with mandatory charter provisions.[1] "Rules adopted under ample grants of power are said to be as binding upon the council as charter or statutory provisions." See Attorney General Opinion 81-350, page 2.

McQuillin's treatise on the law of municipal corporations (updated in February of 2004) addresses the issue of reconsideration and states in §13.48 in pertinent part:

> Unless restrained by charter or applicable statute, the legislative body of a municipal corporation, like all deliberative bodies, possesses the undoubted right to vote and reconsider its vote upon measures before it, at its own pleasure, and to do and undo, consider and reconsider, as often as it may think proper, until by final vote or act, accepted as such by the body, a conclusion is reached.....If the law does not forbid, the legislative body may adopt its own rules or parliamentary practice as to the right and method of reconsideration.....The reconsideration must be in accordance with the provisions of the charter and the rules of procedure, if any, governing the body.

St. Charles Parish Council may adopt its own rules as to the right and method of reconsideration. Once adopted, the council must follow those rules; a vote for reconsideration which violates those rules is improper and without effect. See Burstein vs. Morial, 437 So.2d 1179 (La. App. 4th Cir 1983); *affirmed* 438 So.2d 554 (La. 1983).

As basis for your second question, you assert that "if the home rule charter is followed to the letter it would allow a council member to reconsider their vote before the ordinance or resolution becomes law." We have reviewed the provisions of your home rule charter and agree that this situation could occur and is in fact contemplated by the council's current Rule 31.[2] However, you suggest that if the ordinance is processed in

---

[1] Discussing the authority of the St. Charles Parish Council in Miller v. Oubre, 682 So.2d 231 (La. 1996), the Louisiana Supreme Court stated at page 236 (citations omitted):
St. Charles Parish adopted a home rule charter in January, 1978, under the authority of Art. VI, La. Const. of 1974. Under Article VI, "home rule" does not mean complete autonomy but rather it is a rule by which local government has the freedom and flexibility to manage its own local affairs without undue legislative influence. Under Article VI, the state is supreme on state-wide concerns but it allows a home rule government to exercise any necessary power or function except as may be expressly limited by its charter and the general laws, or as may be inconsistent with other provision of the Constitution. The power of a home rule charter government within its jurisdiction is as broad as that of the state, except when limited by the constitution, laws permitted by the constitution, or its own home rule charter. As we recently affirmed in St. Charles Gaming Company, Inc. v. Riverboat Gaming Commission, et al, 94-2697 (La.1/17/95), 648 So.2d 1310, 1317, the 1974 Louisiana Constitution grants to post 1974 home rule charter government such as St. Charles Parish immunity from state legislative control when exercising within their boundaries legislative powers consistent with the 1974 state constitution that are not denied by general law. Thus, powers of a home rule government can be limited by its own home rule charter, the state constitution, or general state laws.

[2] Article IV, Section B-3-d of the home rule charter provides:
d. After all persons have been given the opportunity to be heard, the council may pass the ordinance with or without amendments and the ordinance as finally adopted shall be published in full in the official parish journal within ten (10) days after it is approved by the parish president as provided in Section C hereof or within ten (10) days after council

the most expeditious manner possible the ordinance could become law before the next regular meeting, thereby denying any reconsideration under Rule 31. Your second and final question is requoted as follows:

> If the Home Rule Charter is followed as written, but the Parish President returns the documents signed the same day he receives them, do we hold the documents for the amount of days as prescribed by the Charter, which would allow for these to become law after the next Council Meeting, or is it required that we send [the ordinance] to the Official Journal immediately after receiving the documents signed by the Parish President, which then would [allow the ordinance to] become law before the next Council Meeting?

The charter provisions mandate the following: the council must present the ordinance or resolution to the parish president within two days; the parish president must return same to the council within six days; the ordinance must be published in the official parish journal within ten days after it is approved by the parish council. There is no charter requirement compelling the council to forward the ordinance signed by the president to the official journal should the president return it earlier than the time allowed. However, the council cannot act intentionally to avoid application of its own duly adopted rules. See Burstein, supra. It is suggested that the council act in such a manner as to give effect to Rule 31, until such time as the council adopts an appropriate revision.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: Kerry L. Kilpatrick
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams

---

action overriding a presidential veto. The vote on final passage shall be recorded in the minutes of the council by the individual vote of each council member. To comply with the provisions of this Subsection, approved ordinances shall be published either individually or as part of the minutes of the council meetings.

* * * * *

Article IV, Section C-1 and C-2 provide:

1. Every ordinance and resolution, except those hereinafter enumerated, adopted by the parish council shall be signed by the council secretary and chairman of the council and presented to the parish president within two (2) days after adoption.
2. The parish president, within six (6) calendar days of the adoption of an ordinance or resolution, shall return it to the council secretary with or without his approval, or with his disapproval. If the ordinance or resolution has been approved or is not specifically disapproved it shall become effective as provided therein, or if not provided therein, on the fifth day following its publication in the official Parish Journal; if the ordinance or resolution is disapproved, the parish president shall submit to the parish council through the council secretary a written statement of the reasons for his veto. The council secretary shall record upon the ordinance or resolution the date of its delivery to and receipt from the parish president.

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
Baton Rouge
70804

March 17, 1981

Rec. 3/18/81

OPINION NUMBER 81-350

94...SCHOOLS & SCHOOL DISTRICTS - ADMIN., GOVERNMENT & OFFICERS
90-B-4...PUBLIC MEETINGS - STATE & GOVERNING BODIES

School board operates as represen body, no requirement that board p individuals to address governing at board meeting.
Art. I §7, Constitution
Art. I §9, Constitition
R.S. 42:14

Mr. J. Donald Cascio
Attorney at Law
Post Office Box 667
Denham Springs, Louisiana 70726

Dear Mr. Cascio:

In your letter of March 13, 1981, you requested an opinion of this office as to whether a school board is legally required to permit individuals to address the governing body at a school board meeting.

Most governing bodies of political subdivisions serve in a representative capacity. That is to say, the members of such bodies are delegates of the public or electorate. In some areas, New England for example, the entire community may participate in the government as in the case of the "town meeting", where there is a pure democracy in action.

The school board in Louisiana is composed of representatives of the electorate and a representative democracy or republican form of government is the mode of operating. In Louisiana, the public may participate in government directly in certain instances such as referenda or bonds, taxes and local option elections. In The Law of Municipal Corporations, Eugene McQuillin, 3d Edition, the statement is made as follows:

> "It is clear that the public has no common-law right to attend meetings of governmental bodies. Consequently, such right is derived from statutes or ordinances, usually denominated as 'open meetings laws.' Thus under some statutes and ordinances, any session of a board or commission must be open to the public where any action is taken which is required by law, rule or regulation to be recorded in the minutes, the journal or any other official record of the board or commission." (4 McQuillin Mun. Corp. 13.07. P. 522)

Thus, if the authority to attend a meeting of a public governing body is dependent upon such right or privilege being granted by a constitutional provision, or statute, we must examine those bodies of law to discern whether there is such a mandate and what parameters or bounds are provided to guide what must or may occur at a public meeting.

Article I Section 7 of the 1974 Louisiana Constitution provides as follows:

> "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom."

Article I Section 9 of the 1974 Louisiana Constitution provides as follows:

> "No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances."

R.S. 42:14 et seq. establishes the "Open Meeting Law" in Louisiana and provides that except in extraordinary or unusual circumstances, citizens are entitled to attend the meetings of governing bodies. Nowhere in the Constitution or statutes of Louisiana is there any requirement that a governing body go beyond permitting citizens to attend their meetings. Thus, the authority to permit citizens to directly participate in any meeting of a public governing body or committee thereof is vested within that body.

> "In the absence of legal provisions or restrictions a municipal legislative body may, from time to time, adopt and change its own rules or parliamentary usage as to procedure. The charter or a statute applicable may prescribe rules for the government of the proceedings of councils, municipal boards, etc., and

> oftentimes the organic law provides that the council or representative body may adopt its own rules of action. The council may abolish, suspend, modify or waive its own rules. This also may be done by implication, when action is had not in accordance therewith. Of course, it cannot disregard mandatory charter or statutory provisions. Furthermore, although it may be otherwise as to rules springing from the inherent authority of the council, rules adopted under ample grants of power are said to be as binding upon the council as charter or statutory provisions."

If a local governing body, such as a school board, desires not to allow citizens to address its membership, it is our opinion that such action is not violative of any constitutional provision or statute.

Very truly yours,

WILLIAM J. GUSTE, JR.
Attorney General

BY: Kenneth C. DeJean
KENNETH C. DEJEAN
Assistant Attorney General

KCD:lg

Court of Appeal of Louisiana,
Fourth Circuit.

Carole H. BURSTEIN, Elizabeth D. O'Neal,
Citizens and Taxpayers of the City of
New Orleans
v.
Ernest N. MORIAL, et al.

Nos. C 1178, CA 1179.

Aug. 16, 1983.
Writ Granted Aug. 25, 1983.

City residents filed petition for declaratory and injunctive relief to have vote of city council to override mayor's veto of ordinance declared invalid. The Civil District Court, Parish of Orleans, Richard J. Ganucheau, J., entered judgment rejecting the request, and residents applied for writs of certiorari, prohibition, mandamus or review. The Court of Appeal, held that city council's attempt to override mayor's veto was invalid for lack of two-thirds vote where councilman-at-large while serving as acting mayor voted to override contrary to provision in home rule charter prohibiting such councilmen from voting while serving as acting mayor.

Judgment declared null, void and without any legal effect whatsoever and preliminary injunction issued.

Writ granted, 438 So.2d 566.

West Headnotes

[1] Municipal Corporations ⇐94
268k94

Provision in home rule charter prohibiting councilmen-at-large from voting as councilman while serving as acting mayor was not unconstitutional as unwarranted interference with legislative authority of councilmen-at-large to vote as council member where councilmen's right to vote was also contained in home rule charter and was expressly made subject to limitations subsequently set forth in the charter, including the provision prohibiting councilmen-at- large from voting while serving as acting mayor.

[2] Municipal Corporations ⇐107(3)
268k107(3)

Home rule charter city council's attempt to override mayor's veto of ordinance calling for election to submit to voters proposal to amend home rule charter to allow for unlimited mayoral terms was invalid where charter required two-thirds vote to override mayoral veto and prohibited councilmen-at-large from voting while serving as acting mayor and where vote of councilman-at-large serving as acting mayor in favor of the override should have been disregarded.

[3] Municipal Corporations ⇐107(3)
268k107(3)

Home rule charter city council's attempt to override mayor's veto of ordinance calling for election to submit to voters proposal to amend charter to allow for unlimited mayoral terms was invalid where council's first attempt to override veto was invalid for lack of two-thirds vote and where charter permitted council only one opportunity to override mayor's veto.

*1180 Barham & Churchill, Mack E. Barham, Charles F. Thensted and David R. Richardson, New Orleans, for plaintiffs-appellants.

Murray, Murray, Ellis, Braden & Landry, Stephen B. Murray, Jones, Nabonne & Wilkerson, Olka Jones, II and Ronald P. Nabonne, Galen Brown and Michael Bagneris, City Attys, Ronald C. Davis and Maureen J. Feran, New Orleans, for defendants-appellees.

Before CHIASSON, LANDRY and SWIFT, JJ., AD HOC.

PER CURIAM.

Plaintiffs herein have applied for supervisory writs, and, alternatively, have appealed from judgment of the trial court rejecting their request for declaratory judgment decreeing the nullity of the vote of defendant, Council of the City of New Orleans (Council) taken July 7, 1983 overriding the Mayoral veto of Municipal Ordinance 9237, which submits to the electorate of the City of New Orleans (City) a proposed change in the office of Mayor. Injunction is sought against the individual members of the Council, the Council, the Mayor, the State Commissioner of Elections and the Secretary of State, State of Louisiana, proposing inclusion of the

allegedly invalid proposal from being included on the ballot in the forthcoming election scheduled for October 22, 1983.

The trial court held the assailed ordinance valid and declined to enjoin its inclusion on the ballot to be prepared for the October 22, 1983, election. We find the ordinance invalid for failure of the Council to follow pertinent provisions of the Home Rule Charter of the City of New Orleans (Charter) and the rules of the Council. Accordingly, we reverse.

In applying for writs, Appellants maintain that a similar ordinance has already been scheduled for inclusion on the October 22, 1983, election ballot and that inclusion of the ordinance in question will serve only to confuse the electorate. Since the matter is before us and we are in position to decide the matter on its merits and issue the requested injunction which will be effective immediately, subject only to possible Supreme Court review on writs, we prefer to and do consider the matter on appeal rather than issue supervisory writs.

FACTS

An excellent and accurate statement of the case and pertinent facts is contained in the brief of counsel for Plaintiffs, which we adopt as follows:

"Plaintiffs-appellants are citizens, voters, and taxpayers of the City of New Orleans, who filed a Petition for Declaratory and Injunctive Relief on July 20, 1983, seeking a judgment declaring the vote of the Council of the City of New Orleans on July 7, 1983, to override the Mayor's veto of Ordinance No. 9237 M.C.S., to be ineffective, and to enjoin the Mayor, the City Council, five individual Council members, the Clerk of Council, the Commissioner of Elections, and the Secretary of State from taking any action in furtherance of the invalid Ordinance. On July 22, 1983, the Petition was amended to join the City of New Orleans as a defendant and to delete the name of one of three original plaintiffs.

The subject ordinance called for an election to submit to the voters of the City of New Orleans a proposal to amend Article IV of the Home Rule Charter of the City of New Orleans (the "Charter" or the "Home Rule Charter") to allow for unlimited mayoral terms beginning in 1987. The effect of the proposed amendment would be to allow unlimited terms to anyone except the current mayor. It was passed by the Council on June 16, 1983.

*1181 On June 24, Mayor Morial vetoed the proposed Ordinance, pursuant to Section 4-206(2)(d) of the Home Rule Charter, which Section gives the mayor the power to veto ordinances. Proposed Ordinance 9237 M.C.S. was again presented to the Council at its next regular meeting, July 7, 1983, pursuant to Section 3-113(3) of the Home Rule Charter, which provides that:

Ordinances vetoed by the Mayor shall be presented by the Clerk to the Council at its next regular meeting and should the Council then or at its next regular meeting adopt the ordinance by an affirmative vote of two-thirds of all its members, it shall become law. (emphasis supplied)

Since the Council consists of seven members, five votes are required to override a veto.

At the July 7 meeting of the Council, Mayor Morial appeared and delivered his veto message on proposed Ordinance No. 9237 M.C.S., responded to a question by Councilman Boissiere, and left the Council Chambers, nineteen minutes before the override vote on Ordinance 9237 M.C.S. Immediately upon leaving the Council Chambers, the Mayor stepped into a waiting automobile and was driven directly to New Orleans International Airport where he took the first available flight to Dallas, Texas. He returned on July 8.

Shortly after the Mayor had left the Council Chambers, Councilman Giarrusso gave a speech, during the course of which Ann Wheeler, an employee of the Mayor's office, handed Councilman Barthelemy a letter informing the Councilman of the Mayor's absence and of the Councilman's appointment as Acting Mayor. Thereafter, Ms. Wheeler distributed copies of the letter to the other Councilmen and it was read into the record of the Council.

At that point the Clerk announced the reconsideration of Ordinance 9237 M.C.S., and the Council voted on the question: "Shall the Ordinance pass the objection of the Mayor notwithstanding?"

Sections 3-107 and 4-204(3) of the Home Rule Charter prohibit a councilman who has been appointed Acting Mayor from voting, and Councilman Barthelemy was so advised at the time by City Attorney Salvador Anzelmo. Nevertheless, Acting Mayor Barthelemy voted on Ordinance 9237. His vote, subsequently held invalid by the Trial Court, appeared to give the proponents of the override a 5 to 2 margin. Later

that afternoon, after conducting further business, the Council adjourned.

On July 21, 1983, the day after the present suit was filed, the Council met again. The minutes of the July 7 meeting were approved and adopted. After conducting some preliminary business, the Council began discussing another vote to override the Mayor's veto, as insurance against the possibility that the July 7 vote might be held invalid. Councilman Boissiere moved that the Council "go to reconsider the vote on last week's override of the vetoed Ordinance." That motion to reconsider carried 5 to 1. Mr. Anzelmo advised the Council that the override vote could not be reconsidered again because the Council's Rules forbade reconsideration of a motion to reconsider. At that point, Councilman Early moved to suspend the Rules and Regulations of the Council (the "Rules"). The motion passed, 5 to 1. Councilman Boissiere then moved "to reconsider the vote on this override of the vetoed ordinance". The vote was 5 to 1 in favor of the override.

On the morning of trial, the Council, five individual Council members, and the Clerk of Council, filed an Answer, Exceptions of No Cause or Right of Action, and a Motion to Dismiss. The Answer denied that the Mayor had indeed been absent from the City at the time the vote was taken, urged that Councilman Barthelemy's appointment as Acting Mayor was therefore invalid and consequently that the July 7 vote was valid, so that the veto was successfully overridden on July 7. In the alternative, the Answer alleged that Sections 3-107 and 4- 204(3) (the Acting ***1182** Mayor provisions) of the Home Rule Charter are unconstitutional.

The following provisions of the City's Charter and rules are pertinent:

Charter Section 3-113 (3):

Ordinances vetoed by the Mayor shall be presented by the Clerk to the Council at its next regular meeting and should the council then or at its next regular meeting adopt the ordinance by an affirmative vote of two-thirds of all its members, it shall become law.

Rule 45 states:

Ordinances returned with the disapproval of the Mayor shall immediately stand as reconsidered...

Rule 40 provides:

A vote or question may be reconsidered at any time during the same meeting, or at the first regular or special meeting held thereafter. *A motion for reconsideration having been once made and decided in the negative, shall not be renewed, nor shall a motion to reconsider be reconsidered.* (Emphasis by the court).

Charter Section 4-204(2) provides:

In the absence or disability of the Mayor, his office shall be filled by an Acting Mayor who shall be appointed by the Mayor from the two Councilmen-At- Large. If within ten days the Mayor should fail to so appoint an Acting Mayor the district Councilmen shall, by majority vote, appoint one of the Councilmen- At-Large as Acting Mayor.

Charter Section 3-104(3) states:

The appointment of a Councilman as Acting Mayor shall not be deemed to create a vacancy in the office of Councilman-At-Large but while serving as Acting Mayor he shall not perform his duties as a member of the Council. His only compensation shall be that of a Councilman.

Charter Section 3-101(1) provides:

All legislative powers of the City shall be vested in the Council and exercised by it in the manner and *subject to the limitations hereinafter set forth.* (Emphasis by the court)

Charter Section 3-102 recites:

The Council shall consist of seven members of whom five shall be elected from districts and two from the City at large.

Charter Section 3-107 states in part:

... All Councilmen, including the President, shall have the right to vote in the Council at all times, except when serving as Acting Mayor.

Rule 19 of the Council's rules permits the Council to suspend its rules.

ALLEGED UNCONSTITUTIONALITY OF CHARTER SECTION 3-104(3)

[1] As contended by defendants this provision prohibits a Councilman from voting while serving as Acting Mayor. It is contended simply that this provision is unconstitutional in that it is contrary to Charter Section 3- 101(1) which vests all legislative power in the Council and to deprive a Councilman of his vote while serving as acting Mayor is an unwarranted and impermissible restriction upon and invasion of this right.

We find the answer to this contention to be contained in the provisions of Section 3-101(1) itself which clearly recites that the legislative authority

granted is expressly made subject to limitations subsequently set forth in the Charter. Section 3-104(3) is an express limitation on the authority granted in 3-101(1). The Charter was submitted to and approved by the electorate of the City with this limitation as part of its intrinsic provision. This being a Home Rule Charter, its provisions may include any rule not contrary to express law. No such violation has been shown the Court. In adopting the Charter the electorate saw fit to place limitations on the exercise of legislative authority by Councilmen under circumstances clearly set forth. Councilmen have only such authority as was delegated to them.

We find Sections 3-107 and 3-104(3) are not invalid for unwarranted interference with the legislative authority of Councilmen-At-Large.

[2] The trial court held the July 7, 1983, attempt to override the Mayor's veto was *1183 invalid for lack of a two-thirds vote. We find this ruling to be correct. The trial court further held, however, that the Council's authority to suspend its rules and again vote on the matter is authorized by Charter Section 3-113(3) above, which permits two opportunities to override a mayoral veto. In this holding the trial court erred.

[3] The plaintiffs contend that Section 3-113(3) of the Charter permits the Council only *one opportunity* to override the Mayor's veto, either by voting upon and adopting the Ordinance at the next regular meeting after the veto or by doing so at its following regular meeting, but not through a favorable vote at either meeting. On the other hand, the defendants' position is that the Council is authorized to vote to override at both meetings, and if the vote is favorable at either meeting the ordinance becomes the law.

The latter interpretation is contrary to the Council's own Rules 40 and 45, which are quoted above. Although the Council attempted to suspend these rules retroactively at the second meeting, apparently they were adopted by the Council long prior to the present incident, and certainly reflect the Council's own interpretation of Section 3-113(3) of the Charter. It is clear that if this section of the Charter is interpreted by us as defendant's wish, Rule 40 would be invalid. It specifically provides that there be only one vote upon consideration of a veto.

The authorities from other states that have been cited to us also appear to support the plaintiffs' position that there can be no legislative reconsideration of a vote which fails to override an executive's veto.

We agree that such is the proper interpretation of this section of the Charter as it establishes only a time frame within which the Ordinance may be adopted by a two-thirds vote and does not authorize voting on the Ordinance more than once.

We might also add that in our opinion the Council's action at the second meeting in suspending its rules and voting to reconsider its prior vote was improper and without effect. Rules 40 and 45 were in effect when the vote to override failed at the first meeting. Therefore, the action was no longer subject to reconsideration under these rules, and it became final after the vote was tallied. This view is fortified by the adoption of the minutes of the first meeting before any attempt was made to suspend the Council's rules. Consequently the Council's subsequent step to suspend the rules was an invalid attempt to do so retroactively.

For these reasons we conclude that the Ordinance in question was validly vetoed by the Mayor and is of no effect.

IT IS ORDERED, ADJUDGED AND DECREED that judgment be and the same is hereby rendered herein, declaring the vote of the Council of the City of New Orleans on July 7, 1983, and on July 21, 1983, to override the Mayor's veto of Ordinance No. 9237 M.C.S. to be null, void and without any legal effect whatsoever;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a preliminary injunction issue herein, enjoining defendants herein from placing on the October 22, 1983 ballot, a proposition to amend Section 4-201 of the Home Rule Charter, pursuant to Ordinance No. 9237 M.C.S.; enjoining and prohibiting the Honorable Ernest N. Morial, Mayor, from directing city employees from performing functions necessary to the holding of the election on the proposed amendment; enjoining and prohibiting the Council of the City of New Orleans and its members, individually and collectively, from performing any act in furtherance of the invalid Ordinance No. 9237 M.C.S., including, but not

limited to, placing on the October 22, 1983 ballot of the proposed amendment; enjoining and mandating the Honorable Lea Siegel, Clerk of the Council of the City of New Orleans, to expunge Ordinance No. 9237 M.C.S. from the current and comprehensive index of all ordinances; enjoining and ordering Jerry M. Fowler, Commissioner of Elections, to refrain from taking or ordering any action in aid or furtherance of the election on the proposed amendment.

*1184 Costs in this matter are assessed against defendants, governmental entities and officials, as authorized by law, the amount to be determined by rule to tax costs upon the finality of this judgment.

437 So.2d 1179

END OF DOCUMENT

Supreme Court of Louisiana.

Carole H. BURSTEIN, Elizabeth D. O'Neal, Citizens and Taxpayers of the City of New Orleans, Respondents,
v.
Ernest N. MORIAL, In his Capacity as Mayor of the City of New Orleans, Bryan Wagner, Individually and In His Capacity as Councilman of the City of New Orleans, Lambert C. Boissiere, Jr., Individually and In His Capacity as Councilman of the City of New Orleans, Mike Early, Individually and In His Capacity As Councilman of the City of New Orleans, Wayne M. Babovich, Individually and In His Capacity as Councilman of the City of New Orleans, Lea Siegel, Clerk of the Council of the City of New Orleans, Jerry M. Fowler, Commissioner of Elections of the State of Louisiana, Sidney J. Barthelemy, Individually and In His Capacity As Acting Mayor of the City of New Orleans, the Council of the City of New Orleans, and James H. Brown, Secretary of State,
Relators.

No. 83-CC-1842.

Sept. 6, 1983.

Certiorari was granted to the Court of Appeal, Fourth Circuit, Parish of Orleans, 437 So.2d 1179, to consider two important questions arising from interpretation of city's **home rule charter**. The Supreme Court, Dennis, J., held that: (1) city's **home rule charter** does not permit more than one attempt by city council to override mayor's veto, and (2) appointment of councilman to serve as acting mayor does not effectively reduce size of city council by one member so as to diminish number of votes required to override mayor's veto.

Affirmed.

Dixon, C.J., dissented and filed opinion in which Calogero, J., joined.

Lemmon, J., dissented and will assign reasons.

West Headnotes

[1] Municipal Corporations ⇐107(4)
268k107(4)

City's **home rule charter** does not permit more than one attempt by city council to override mayor's veto.

[2] Municipal Corporations ⇐107(4)
268k107(4)

Appointment of councilman to serve as acting mayor does not effectively reduce size of city council by one member so as to diminish number of votes required to override mayor's veto.

*555 Stephen B. Murray, Murray, Murray, Ellis, Braden & Landry, Ronald Nabonne, Okla Jones, II, Nabonne & Wilkerson, New Orleans, for relators.

Mack E. Barham, Charles F. Thensted, David R. Richardson, Barham & Churchill, New Orleans, Salvador Anzelmo, City Atty., Galen Brown, Michael Bagneris, Asst. City Attys., Ronald C. Davis, Maureen J. Feran, Asst. Attys. Gen., for respondents.

DENNIS, Justice.

We granted certiorari to consider two important questions which have arisen in the interpretation of the Charter of the City of New Orleans: (1) whether the Charter permits more than one attempt by the Council to override a Mayor's veto; and (2) whether the appointment of a councilman to serve as acting mayor effectively reduces the size of the Council by one member so as to diminish the number of votes required to override a mayor's veto.

There is more at stake, of course, than the fate of the particular ordinance which stirs the present controversy. Unless the Charter is subsequently amended, the fundamental balance of power between the legislative and executive branches of government, and the basic safeguards surrounding the city's legislative process, depend on our efforts to discern the meaning of the Charter. Moreover, it is equally clear that the wisdom of the particular ordinance and the procedure followed in its enactment are not the concern of the courts. If a challenged action does not violate the Charter or other pertinent law, it must be sustained; and, by

the same token, the fact that a given ordinance or procedure is efficient, fair, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Charter.

The facts in this case, which are not in dispute, were well stated by the trial court and repeated by the court of appeal, as follows:

Plaintiff-appellants are citizens, voters, and taxpayers of the City of New Orleans, who filed a Petition for Declaratory and Injunctive Relief on July 20, 1983, seeking a judgment declaring the vote of the Council of the City of New Orleans on July 7, 1983, to override the mayor's veto of Ordinance No. 9237 M.C.S., to be ineffective, and to enjoin the Mayor, the City Council, five individual Council members, the Clerk of Council, the Commissioner of Elections, and the Secretary of State from taking any action in furtherance of the invalid Ordinance. On July 22, 1983, the Petition was amended to join the City of New Orleans as a defendant and to delete the name of one of three original plaintiffs.

The subject ordinance called for an election to submit to the voters of the City of New Orleans a proposal to amend Article IV of the **Home Rule Charter** of the City of New Orleans (the "Charter" or the "**Home Rule Charter**") to allow for unlimited Mayoral terms beginning in 1987. The effect of the proposed amendment would be to allow unlimited terms to anyone except the current mayor. It was passed by the Council on June 16, 1983.

On June 24, Mayor Morial vetoed the proposed Ordinance, pursuant to Section 4-206(2)(d) of the **Home Rule Charter**, which Section gives the mayor the power to veto ordinances. Proposed Ordinance 9237 M.C.S. was again presented to the *556 Council at its next regular meeting, July 7, 1983, pursuant to Section 3-113(3) of the **Home Rule Charter**, which provides that:

Ordinances vetoed by the Mayor shall be presented by the Clerk to the Council at its next regular meeting and should the Council then or at its next regular meeting adopt the ordinance by an affirmative vote of two-thirds of all its members, it shall become law. (emphasis supplied).

Since the Council consists of seven members, five votes are required to override a veto.

At the July 7 meeting of the Council, Mayor Morial appeared and delivered his veto message on proposed Ordinance No. 9237 M.C.S., responded to a question by Councilman Boissiere, and left the Council Chambers, nineteen minutes before the override vote on Ordinance 9237 M.C.S. Immediately upon leaving the Council Chambers, the Mayor stepped into a waiting automobile and was driven directly to New Orleans International Airport where he took the first available flight to Dallas, Texas. He returned on July 8.

Shortly after the Mayor had left the Council Chambers, Councilman Giarrusso gave a speech, during the course of which Ann Wheeler, an employee of the Mayor's office, handed Councilman Barthelemy a letter informing the Councilman of the Mayor's absence and of the Councilman's appointment as Acting Mayor. Thereafter, Ms. Wheeler distributed copies of the letter to the other Councilmen and it was read into the record of the Council.

At that point the Clerk announced the reconsideration of Ordinance 9237 M.C.S., and the Council voted on the question: 'Shall the Ordinance pass the objection of the Mayor notwithstanding?'

Section 3-107 and 4-204(3) of the **Home Rule Charter** prohibit a councilman who has been appointed Acting Mayor from voting, and Councilman Barthelemy was so advised at the time by City Attorney Salvador Anzelmo. Nevertheless, Acting Mayor Barthelemy voted on Ordinance 9237. His vote, subsequently held invalid by the Trial Court, appeared to give the proponents of the override a 5 to 2 margin. Later that afternoon, after conducting further business, the Council adjourned.

On July 21, 1983, the day after the present suit was filed, the Council met again. The minutes of the July 7 meeting were approved and adopted. After conducting some preliminary business, the Council began discussing another vote to override the Mayor's veto, as insurance against the possibility that the July 7 vote might be held invalid. Councilman Boissiere moved that the Council 'go to reconsider the vote on last week's override of the vetoed Ordinance.' That motion to reconsider carried 5 to 1. Mr. Anzelmo advised the Council that the override vote could not be reconsidered again because the Council's Rules forbade reconsideration of a motion to reconsider. At that point, Councilman Early moved to suspend the Rules and Regulations of the Council (the "Rules"). The motion passed, 5 to 1. Councilman Boissiere then moved 'to reconsider the vote on this override of the vetoed ordinance.' The vote was 5 to 1 in favor of the

override.

On the morning of trial, the Council, five individual Council members, and the Clerk of Council, filed an Answer, Exceptions of No Cause or Right of Action, and a Motion to Dismiss. The Answer denied that the Mayor had indeed been absent from the City at the time the vote was taken, urged that Councilman Barthelemy's appointment as Acting Mayor was therefore invalid and consequently that the the July 7 vote was valid, so that the veto was successfully overridden on July 7. In the alternative, the Answer alleged that Sections 3- 107 and 4-204(3) (the Acting Mayor provisions) of the **Home Rule Charter** are unconstitutional.

The trial court found that the mayor was in fact absent from the city on July 7, 1983 when the vote to override the veto was taken and held that this attempt to override failed because Councilman Barthelemy's vote was invalid. The trial court concluded, *557 however, that the ordinance was properly adopted over the veto at the council's July 21, 1983 meeting and therefore could be submitted to the voters at the October 22, 1983, election. The Court of Appeal reversed, holding that the ordinance had not been validly adopted at either meeting because a councilman is prohibited by the Charter from voting while he is serving as acting mayor, and because the Charter authorized but one attempt by the Council to override a mayor's veto. We granted writs to consider the relators' two principal arguments against the court of appeal's decision.

1.

First, the relators argue that because the Charter does not expressly prohibit more than one attempt to override the Mayor's veto, the Council may take as many votes as it desires in an attempt to muster the two-thirds majority required to override, so long as the votes are taken at one of two prescribed regular meetings and in accordance with the Council's rules, or during a suspension of the rules. Relators base this argument on Section 3-113(3) which provides:

> Ordinances vetoed by the Mayor shall be presented by the Clerk to the Council at its next regular meeting and should the Council then or at its next regular meeting, adopt the ordinance by an affirmative vote of two-thirds of all its members, it shall become law. [FN1]

FN1. Implicitly relators' argument also applies to any item of appropriation vetoed or reduced by the Mayor, because the Charter provides that such an item may be passed over the Mayor's veto by the same procedure. Section 3-113(4) provides: "The Mayor may disapprove or reduce any item or items of appropriation in any ordinance except any such item or items appropriated for the purpose of auditing or investigating any part or all of the Executive Branch. Subject only to the foregoing exceptions, the approved part or parts of any ordinance making an appropriation shall become law and the part or parts disapproved shall not become law unless subsequently passed by the Council over the Mayor's veto as provided herein."

The inevitable consequence under relators' theory is that the Council would have an indefinite number of opportunities to override a Mayor's veto of any particular ordinance. By suspending or changing its rules, the Council could take several votes during each of the two regular meetings. Moreover, the Council could prolong each such meeting for more than one day by recessing or adjourning from day to day. Thus, the logical result of relators' interpretation would permit the Council an indefinite number of attempts to override the executive veto.

Although we agree that, when read in a vacuum, section 3-113(3) may be interpreted as relators propose, we also find that the section reasonably may be interpreted in isolation to provide for but one attempt to override a Mayor's veto during either of two regular meetings of the City Council. Furthermore, when we consider the probable source, history, and purpose of all of the Charter provisions pertaining to the adoption of ordinances, we conclude that the framers and voters who adopted the Charter intended for there to be only one attempt to override a Mayor's veto.

The City Charter's design for the separation of powers and provisions for maintaining a balance between the legislative and executive branches is clearly based on our federal constitution. The similarity of the basic governmental structures, presentment clauses, and qualified veto procedures set forth in the two documents is too consistent to be coincidental. Only a brief survey of the federal constitutional convention's history indicates that these features were selected from among a wide variety of other conceivable devices which were proposed and rejected. See, A.R. Serven, The Constitution and the "Pocket Veto" 7 N.Y.U.L.Rev.

495 (1929).

Accordingly, we find instructive the United States Supreme Court's description of the purposes and reasons for the presentment clause and qualified veto in *INS v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). Art. I, section 7, clause 2 of the federal Constitution gives the President an important but qualified role in the law enacting process. It requires that all bills be presented to the President for his approval or veto. Presentment to the President *558 and the presidential veto were considered so imperative that the draftsmen took special pains to assure that these requirements could not be circumvented. The President's role in the lawmaking process also reflects the Framers' careful efforts to check whatever propensity a particular Congress might have to enact oppressive, improvident, or ill- considered measures. The President's veto role in the legislative process was described later during public debate on ratification:

> It establishes a salutary check upon the legislative body calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.... The primary inducement to conferring the power in question upon the executive, is to enable him to defend himself; the secondary one is to encrease the chances in favor of the community, against the passing of bad laws, through haste, inadvertence, or design.

The Federalist No. 73, at 458 (J. Cooke ed. 1961) (A. Hamilton).

See also *Okanogan v. United States*, 279 U.S. 655, 678, 49 S.Ct. 463, 466, 73 L.Ed. 894 (1929); *Myers v. United States*, 272 U.S. 52, 123, 47 S.Ct. 21, 27, 71 L.Ed. 160 (1926). The Court also has observed that the Presentment Clauses serve the important purpose of assuring that a "national" perspective is grafted on the legislative process:

> The President is a representative of the people just as the members of the Senate and of the House are, and it may be at some times on some subjects that the President elected by all the people is rather more representative of them all than are the members of either body of the legislature whose constituencies are local and not countrywide....

Myers v. United States, supra, 272 U.S., at 123, 47 S.Ct. at 27.

INS v. Cadha, 103 S.Ct. 2782.

In similar fashion, the framers of the City Charter provided that every act of the Council which is to become law shall be by ordinance, Section 3-111, that every ordinance adopted by the Council shall be presented to the Mayor, Section 3-113(1), and that the Mayor may prevent the ordinance from becoming law by his veto, Section 3-113(2), although any veto is subject to the prescribed legislative override. Sections 3-113(3) and (4).

[1] We believe that this scheme strikes a careful and deliberate balance between the executive and legislative powers that would be seriously undermined if either were permitted repeated attempts to thwart the other. Implicit in the Charter is the intention that each branch be given one full and fair opportunity to overrule the other. The Mayor is given one ten day period to consider an ordinance and a single veto with which to prevent a particular ordinance from becoming law. By the same token, the Council is given two regular meetings to reconsider a vetoed ordinance and a single attempt to override a veto. The Framers could not have intended to restrict the Mayor to one vote to veto, while affording the Council an unspecified number of voting opportunities to override an executive veto. This would confound the Mayor's important role in the lawmaking process and unduly qualify the utility of the veto as a defense of legitimate executive power and as a check against the passing of bad laws through haste, inadvertence or design.

Our interpretation of the charter is consistent with the Council's previous construction, judging from its rules and past practices.

Rule 45 provides:

> Ordinances returned with the disapproval of the Mayor shall immediately stand as reconsidered. The Clerk shall enter the objections of the Mayor thereto at large upon the Journal and the Council shall proceed to consider the question:
> 'Shall the Ordinance pass, the objection of the Mayor thereto notwithstanding.'
> The vote shall be taken by yeas and nays and entered upon the Journal. If *559 two-thirds of all the members vote to pass the ordinance, the presiding officer shall certify the fact thereon over his signature.

Rule 40 provides:

> A vote or question may be reconsidered at any time during the same meeting, or at the first regular or special meeting held thereafter.
>
> A motion for reconsideration, having been once made and decided in the negative, shall not be renewed, nor shall a motion to reconsider be reconsidered.

These rules clearly provide that a vetoed ordinance stands as a matter to be reconsidered, and that having been once decided in the negative, shall not be renewed or further reconsidered. There is no evidence that the Council has ever before this case attempted to reconsider a vetoed ordinance twice or to deviate from the practice suggested by these rules.

We have found only one case in which a court decided this issue after careful consideration of the history, purpose and function of the qualified veto. In *Sank v. City of Philadelphia,* 8 Phila. 117, 119, 4 Brewster 133 (Pa.1871), the Pennsylvania Supreme Court at nisi prius, after noting that "its design was to protect minorities and to prevent or correct hasty or improvident legislation," concluded that "after a veto of the President of the United States, or of the Governor of the State, and a vote reconsidering the bill had passed sustaining the veto that that was a finality as to that measure. The same result must, of course, follow upon a similar provision in the city charter." *Id.* 8 Phila. at 119. The court graphically described the erosive action of multiple reconsiderations, and one possible source of persistent efforts to override a veto, as follows:

> If a second, third, or more reconsiderations of a vetoed ordinance be allowed, it is plain that in the end the veto will be overruled, especially so if it provides for large expenditures of money. Parties hoping to have the handling of it, by the aid of "Rings," a term descriptive of combinations which are known to infest legislative bodies everywhere in this country, will be very sure in the end to overthrow the veto, be it ever so well grounded in sound principles, or convincing in argument. This will be the inevitable result of repeated reconsiderations of the question, and thus a great constitutional conservation of the rights of minorities, and safeguard against inconsiderate legislation, be set at naught.

Id. 8 Phila. at p. 120.

Courts in Massachusetts, New York and South Carolina have reached the opposite conclusion. *Board of Education of City School District of City of New York v. City of New York,* 41 N.Y.2d 535, 394 N.Y.S.2d 148, 362 N.E.2d 948 (1977); *State ex rel. Coleman v. Lewis,* 181 S.C. 10, 186 S.E. 625 (1936); *Kay Jewelry Co. v. Board of Registration in Optometry,* 305 Mass. 581, 27 N.E.2d 1 (1940); *Nevins v. City Council of City of Springfield,* 227 Mass. 538, 116 N.E. 881 (1917). These courts failed to consider, however, the source, history and function of the qualified executive veto and the very important role it must play in assuring that the legislative power is "exercised in accord with a single, finely wrought and exhaustively considered, procedure." *INS v. Chadha,* 103 S.Ct. at 2784. These courts take the position that a legislative branch impliedly has the power to reconsider vetoed legislation an infinite number of times unless there is an express constitutional or charter prohibition. We disagree, however, because a limitation upon the legislative power is clearly implied when a constitution or charter expressly requires that all legislation is subject to presentment and a qualified veto by the executive. Moreover, the New Orleans city charter expressly provides that the legislative power of the council is "subject to the limitations hereinafter set forth." Those charter limitations include the express presentment and veto clauses.

The weight of legislative precedents also supports the view that a vote on the reconsideration of a vetoed bill cannot be reconsidered again. The United States Constitutional Provision regarding passage of a bill over a veto has been consistently interpreted *560 since 1844 to mean that a motion to reconsider cannot be applied to the vote on reconsideration of a bill returned with the objections of the president Jefferson's Manual and Rules of House of Representatives § 106 (1973); Cannon's Procedure in House of Representatives 468 (1963), 8 Cannon, Precedents of House of Representative § 2778 (1936); 5 Hinds, Precedents of House of Representatives § 5644 (1907). See *Board of Education v. City of New York, supra,* 394 N.Y.S.2d at 158, 362 N.E.2d at 958 (Cooke, J. dissenting). Parliamentary writers seem to have accepted this precedent as controlling and are agreed against a reconsideration of a vote once taken upon a vetoed bill. Cushing's Law of Legislative Assemblies § 2388; Barclay's Digest 190; Fish's Manual § 82; Spofford's Practical Manual 139;

Wilson's Digest Parliamentary Law § 2151 at 292. Contra, See *Nevins v. City Council*, 227 Mass. 538, 116 N.E. 881, 885 (1917).

2.

The second issue that we granted writs to consider is whether the size of the Council is effectively reduced by the appointment of a councilman as acting mayor because the charter prohibits him from acting as a member of the council during such an appointment. Section 4-204(3). The first vote to override the mayor's veto would have been effective if the appointment of Councilman-at- Large Barthelemy as acting mayor reduced the Council membership to six, because an affirmative vote of four would have constituted a sufficient two-thirds vote.

[2] The clear wording of the Charter leads to but one reasonable interpretation. The appointment of a councilman as acting mayor "shall not be deemed to create a vacancy in the office of council-man-at-large," Section 4- 204(3), "but while serving as acting mayor he shall not perform his duties as a member of the council", Id., and a vetoed ordinance cannot become law unless the Council adopts it "by an affirmative vote of two-thirds of *all its members.* " Section 3-113(3) (Emphasis added). The only acceptable construction of these provisions is that the membership of the council is not altered because of the appointment of a councilman to serve as acting mayor and that two-thirds of the entire membership of the Council must affirmatively vote to adopt an ordinance in order to override a veto. Affirmative vetos by two-thirds of the members are required because it is less likely that improper views will govern so large a portion of the legislative branch in defiance of the counterpoising weight of the executive, than that such views should taint the resolutions and conduct of a bare majority. See the Federalist No. 73, at 498 (J. Cooke, Ed.1961) (A. Hamilton). Consequently, a councilman's failure to vote, whether due to his absence, appointment as acting mayor or other reason, does not serve to reduce the council's membership or the proportion of it required to overcome the qualified executive veto. See, *Kubik v. City of Chicopee*, 353 Mass. 514, 233 N.E.2d 219. ("There can be no doubt that 'all the members of the city council' means the full membership.")

Relators contend that these charter provisions violate the principle of separation of powers but are unable to cite any particular constitutional or statutory law which they violate. The city charter was recognized and maintained in existence by Article 6, § 4 of the 1974 Louisiana Constitution. We are not aware of any legal bar to the effectiveness of the challenged provisions.

The Charter's provisions express the intention of the framers and voters too clearly for us to construe it otherwise. Furthermore, we do not believe the charter is so defective as to permit a mayor to circumvent the will of the council, as relators contend. In the present case, for example, if two-thirds of the council wished to override the mayor's veto, they were aware of Councilman Barthelemy's temporary voting disqualification and easily could have waited until he was eligible to vote, by either recessing the July 7th meeting until a later date or by not taking the matter up until their next regular meeting. In most cases, a failure to override will not be fatal to the council's objectives because a new ordinance *561 can always be introduced and passed again. Ultimately, however, it is not for us to say whether the charter is defective, since the provisions complained of are not unlawful; this is a question which must be resolved by the charter amendment process.

Decree

For the reasons assigned, the judgment of the Court of Appeal is affirmed.

AFFIRMED.

DIXON, C.J., dissents with reasons.

CALOGERO, J., dissents for reasons assigned by DIXON, C.J.

LEMMON, J., dissents and will assign reasons.

DIXON, Chief Justice (dissenting).

I respectfully dissent.

This action was brought to contest the validity of the vote of the City Council to override the Mayor's veto of a City Ordinance. The trial court upheld the Council's override of the veto. The court of appeal reversed, upholding the veto, declaring

invalid the efforts of the Council to override. On the application of the Council, we granted writs.

The matter is one of pure statutory interpretation. Twice the City Council voted to override the veto. The City Charter and the Council's rules do not prohibit what the Council did, and can reasonably be interpreted to permit the Council's action. Since five of the seven Council members have voted twice to override the Mayor's veto, the will of that majority should be given effect if its action can be reasonably interpreted to comply with the City Charter and the Council rules. To hold otherwise is to ignore the realities of the case and thwart the democratic process.

THE CHARTER

The **Home Rule Charter** of the City of New Orleans is the municipality's equivalent to a constitution. Every action taken by either the Mayor or Council must conform to the mandate of the Charter. It is in light of the Charter, therefore, that the July 21 vote must be judged.

The relevant part of the Charter is § 3-113(3), which reads:

"Ordinances vetoed by the Mayor shall be presented by the Clerk to the Council at its next regular meeting and should the Council then or at its next regular meeting, adopt the ordinance by an affirmative vote of two-thirds of all of its members, it shall become law."

There is no question about the timeliness of the presentation of the veto. The only thing at issue is the meaning of the phrase "then or at its next regular meeting." [FN1] This clause is subject to two interpretations. The first, urged by the plaintiffs, is that the Council may decide to override the veto at either of the two meetings, but not at both. The second interpretation, presented by the defendants, and accepted by the court of appeal, is that "this section of the Charter ... establishes only a time frame within which the Ordinance may be adopted ..." *Burstein v. Morial,* 437 So.2d 1179, 1183 (La.App. 4th Cir.1983) (per curiam).

FN1. The "all of its members" clause also was at issue in this case. It was argued that, since Acting Mayor Barthelemy was prohibited from performing any of his councilmanic functions, Charter §§ 3-107 and 4- 204(3), his position on the Council should be considered as legally nonexistent during his tenure as Acting Mayor. If this view were adopted, then only two-thirds of six members would be required instead of two-thirds of the usual seven members.

This second interpretation of the Charter, is the correct one. The court of appeal's conclusion, however, that the Charter "does not authorize voting on the Ordinance more than once," is incorrect. The Charter states only that the Council may, at either of the two meetings, adopt the ordinance. It does not purport, in any way, to determine the number of votes which may, or should, be taken on the veto; it establishes only a two-meeting time period within which the veto must be considered. If the veto is not considered by the end of the second meeting, it may never be considered.

There is no prohibition in the Charter to the Council's second vote on the veto. Since the July 21 meeting was the next *562 regular meeting of the Council, the action taken on the veto was within the Charter's two-meeting time limit, and, therefore, "constitutionally" sound.

THE COUNCIL RULES

Since there is no "constitutional" barrier to the Council's second vote to override the Mayor's veto of the proposed ordinance, this court should look to the **internal rules** of the Council. If, by the Council's own rules, the Council was prohibited from voting a second time on the veto, the override of the veto must fall.

The pertinent rules are Rules 40 and 45.

"Rule 40. A vote or question may be reconsidered at any time during the same meeting, or at the first regular or special meeting held thereafter.

A motion for reconsideration, having been once made and decided in the negative, shall not be renewed, nor shall a motion to reconsider be reconsidered."

"Rule 45. Ordinances returned with the disapproval of the Mayor shall immediately stand as reconsidered. The Clerk shall enter the objections of the Mayor thereto at large upon the Journal and the Council shall proceed to consider the question:

'Shall the Ordinance pass, the objection of the Mayor notwithstanding?'

The vote shall be taken by yeas and nays and

entered upon the Journal. If two-thirds of all the members vote to pass the ordinance, the presiding officer shall certify the fact thereon over his signature."

It is argued that there can be only one consideration of the Mayor's veto by the Council, because, by operation of Rule 45, the veto stands as "reconsidered," and Rule 40 says a motion for reconsideration, once decided in the negative, cannot be reconsidered. Reading the two Rules together, it is argued, the Council is restricted to one vote to override a veto. This argument is not supported by either the Rules or by the facts.

The "reconsideration" contemplated by Rule 45 merely tracks the language of Charter § 3-113(3), which compels the Mayor to return his veto to the Council, and allows the Council to consider the veto. It only ensures that the issue will be addressed by the Council a second time. See, e.g., *Board of Education v. City of New York*, 41 N.Y.2d 535, 394 N.Y.S.2d 148, 152, 362 N.E.2d 948, 952 (1977). It does not mean that the issue is a procedural "reconsideration." This is borne out by the rest of the text of Rule 45, which states "the Council shall proceed to *consider* the question: 'Shall the Ordinance pass, the objection of the Mayor notwithstanding?' " Thus, when the Council first voted on the veto at its July 7 meeting, it merely considered the issue for the first time. The question was not reconsidered until there was an affirmative vote on Councilman Boissiere's motion to reconsider on July 21.

Furthermore, Rule 40 only provides that a "*motion* for reconsideration" once defeated cannot be reconsidered. There is no evidence in the record to indicate that there was ever a motion to reconsider the veto raised at the July 7 meeting. Consequently, the motion to reconsider, raised by Councilman Boissiere on July 21, was the first motion for reconsideration, and that motion was not defeated.

It has been argued that Robert's Rules of Order allow a motion to reconsider to stand only if it is made at the same meeting at which the first vote was taken, and, since no such motion was raised at the July 7 meeting, the Council could not reconsider the veto. This argument is without merit. There is no provision in the Council's Rules which require that a motion to reconsider be raised at the same meeting as the first vote; in fact, the Rules provide two opportunities to reconsider. "A vote or question may be reconsidered at any time during the same meeting, or at the first regular or special meeting held thereafter." Rule 40. No other formal procedure is required for a reconsideration.

An additional fact merits attention. At the July 21 meeting, Councilman Early moved to suspend the Rules, pursuant to Rule 19. This motion passed. By so suspending the Rules, Rules 40 and 45 became ***563** inoperative. As a result of this suspension of the Rules, the Council removed any remnant of Rule-founded prohibition against a reconsideration. The only limitation on the Council at that point was the Charter itself. And, as already discussed, the Charter does not bar multiple votes in an attempt to override a veto. Once the Rules were suspended, the Council could determine what procedures it would follow. This is a legislative body's prerogative. See *State v. Gray*, 221 La. 868, 60 So.2d 466, 468 (1952).

The only serious contention is that the suspension of the Rules at the July 21 meeting was applied retroactively to the July 7 meeting. It is argued that there was a "vesting" in the public of the knowledge that the veto was not overridden. This argument lacks merit for several reasons. First, according to the Charter, there is no reasonable expectation of finality on a veto until the adjournment of the second meeting after the presentation of the veto to the Council. It should be noted, however, that had the Council successfully overridden the veto at the first meeting, the ordinance would have become law at noon of the following day. Charter § 3-113(5). The Council, at the conclusion of its July 7 meeting, believed that the ordinance had been adopted, notwithstanding the Mayor's veto. Thus, any expectation of finality was that the veto was overridden, and not that the veto was sustained. Second, according to the Rules themselves, as already discussed, the Council could reconsider the vote even in the absence of the suspension of the Rules. There could not be a reasonable expectation of finality when everyone was on notice that the Council still had the opportunity to reconsider the vote to override the veto at its next meeting.

I would hold that the actions of the Council were within the bounds of their own Rules, and that there

is no meritorious issue of unlawful retroactive effect. Because the Council's actions were not prohibited by the Charter, or by their Rules, the vote of July 21, 1983, to override the Mayor's veto of M.C.S. Ordinance Number 9237 should be upheld. I would reverse the decision of the court of appeal.

438 So.2d 554

END OF DOCUMENT

Supreme Court of Louisiana.

Henry R. MILLER, Jr., Julie Carmouche and Milton Cambre
v.
Charles J. OUBRE, Jr., in His Capacity as Clerk of Court for St. Charles Parish, Janice Z. Hymel in Her Capacity as Registrar of Voters for St. Charles Parish and W. Fox McKeithen, in His Capacity as Louisiana Secretary of State.

No. 96-CA-2022.

Oct. 15, 1996.

Action was brought for temporary restraining order and permanent and preliminary injunction, seeking to stop qualification and election of justices of peace and constables on ground that home rule parish lacked authority to enact ordinances to redraw justice of peace and constable district lines and to create additional justice of peace and corresponding constable district. The District Court, Parish of St. Charles, held ordinances unconstitutional and ordered election to be held in accordance with ward and precinct lines that existed prior to 1974 Constitution, but subsequently amended its order to provide that elections would be conducted in accordance with district lines established in 1991. The Court of Appeal granted plaintiffs' writ application, found ordinances unconstitutional, and enjoined elections until such time as Legislature acted upon matter. Parish's emergency writ application was granted. The Supreme Court, Calogero, C.J., held that: (1) writ application was properly before Court of Appeal; (2) parish lacked authority to enact ordinances; and (3) incumbent justices of peace and constables would remain in office until Legislature acted upon matter, provided, however, that parties would have right to apply for rehearing if Legislature failed to act in its next session.

Court of Appeal's judgment affirmed.

West Headnotes

[1] Elections ⇐12(9.1)
144k12(9.1)

Statute setting forth 24-hour time limit for writ applications in actions objecting to candidacy or contesting election did not apply to action challenging Home Rule parish government's authority under 1974 Constitution to redraw justice of peace and constable district lines and to create additional justice of peace and corresponding constable district; there was no objection to candidacy of particular person, and no suit by candidate or other interested person contesting results of election. LSA-R.S. 18:1409, subds. A, D.

[2] Elections ⇐12(9.1)
144k12(9.1)

Court of Appeal had jurisdiction to consider appeal from trial court's order that election of justices of peace and constables be conducted according to district lines that trial court had declared unconstitutional; plaintiffs did not seek review of district court's declaration of unconstitutionality of ordinances pursuant to which district lines were established, but rather, plaintiffs' only quarrel was with order for election to proceed along those lines.

[3] Elections ⇐12(6)
144k12(6)

Under 1974 Constitution, Home Rule parish government does not have power concurrent with state legislature to redraw justice of peace and constable district lines and to create additional justice of peace and corresponding constable district. LSA-Const.1974, Art. 5, § 20; St. Charles Parish, La. Ordinances, Nos. 96-6-4, 96-6-5.

[4] Municipal Corporations ⇐65
268k65

Although state is supreme on statewide concerns, home rule government is permitted to exercise any necessary power or function except as expressly limited by its charter and general laws, or as would be inconsistent with other provisions of Constitution. LSA-Const.1974, Art. 6, § 1 et seq.

[5] Elections ⇐12(6)
144k12(6)

Because incumbent justices of peace and constables in illegally drawn districts had been neither impeached nor suspended, they would remain in office until their successors were elected from districts legally drawn by Legislature, provided, however, that parties would have right to apply for rehearing in event that Legislature failed to act on that matter in its next session. LSA-R.S. 42:2; LSA-Const.1974, Art. 5, § 20.

*232 Randell O'Neil Lewis, Luling, for Applicants.

Thomas P. Anzelmo, Sr., Metairie, A. Mark Flake , New Orleans, Robert Louis Raymond, Destrehan, Sheri Marcus Morris, Baton Rouge, Campbell McCranie, Sistrunk, Anzelmo & Hardy, Metairie, Angie Rogers LaPlace, Baton Rouge.

CALOGERO, Chief Justice. [FN*]

FN* Lemmon, J. not on panel; recused. See Rule IV, Part II, § 3.

The question presented in this case is whether a post-1974 Home Rule parish government has the authority to redraw justice of the peace and constable district lines and to create an additional justice of the peace and corresponding constable district. We find that certain ordinances passed by the St. Charles Parish Council to redraw justice of the peace and constable district lines and to create an additional district are unconstitutional. Under our state constitution, only the Louisiana Legislature has the power to change justice of the peace courts which existed on the effective date of the 1974 constitution, including the power to redraw district lines and create additional justice of the peace and constable districts.

Prior to 1971, the St. Charles Parish Police Jury established ward and precinct lines for justice of the peace and constable districts in accordance with Art. VII, § 46, La. Const. of 1921. [FN1] In 1978, after the effective date of the Louisiana Constitution of 1974, St. Charles Parish adopted a Home Rule Charter in which a Parish Council was created as the parish governing authority in place of a preexisting police jury. In 1982, the St. Charles Parish Council adopted ordinances which redrew the boundaries of the six existing justice of the peace and constable districts along the same lines as the district boundaries of the Parish Council. In 1991, the St. Charles Parish Council adopted an ordinance which redrew the St. Charles Parish Election District boundaries to create an additional seventh district. The ordinance was silent on whether it applied to the offices of justice of the peace and constable.

FN1. Art. VII, § 46, La. Const. of 1921. read in part:

Any parish of the state, the parish of Orleans excepted, may be divided by the police jury thereof into not more than six nor fewer than three justice of the peace wards, from each of which there shall be elected one justice of the peace; provided, that the Legislature may reduce such number or even abolish the office of justice of the peace throughout the state.

The number of justice of the peace wards in the several parishes shall remain as now fixed until rearranged, or until the office of justice of the peace may be abolished, as herein provided; ...

During the First Extraordinary session of the state Legislature in the spring of 1996, Senate Bill No. 64 was introduced to create an additional justice of the peace district and an additional constable district in St. Charles Parish (increasing the number of districts from six to seven) and to redraw the district lines to mirror the existing councilmanic lines. The bill failed.

Thereupon, in a renewed attempt to clarify the 1991 redistricting ordinance, in June, 1996, the St. Charles Parish Council adopted the ordinances at issue. Ordinance No. 96-6-4, adopted June 3, 1996, redrew the justice of the peace district boundaries and created a seventh justice of the peace district. Ordinance No. 96-6-5, adopted June 17, 1996, redrew the constable district boundaries and created a seventh constable district. Qualifying for the offices of justice of the peace and constable was scheduled to begin Wednesday, July 10, 1996. [FN2]

FN2. Perhaps in anticipation of litigation, on July 1, 1996, the St. Charles Parish Council adopted Ordinance No. 96-7-1 to amend the Home Rule Charter to provide for authority to reapportion Justice of the Peace and Constable districts. A copy of this ordinance is not in the court's record, but according to the brief filed by plaintiffs-appellees, it reads in part:

An ordinance to provide for the amendment of the St. Charles Parish Home Rule Charter, to provide for the reapportionment of Justice of the Peace and

Constable District lines.

* * * * * *

WHEREAS in order to establish the authority of the Parish Council to reapportion said Districts in the Home Rule Charter, an amendment is necessary....

*233 Plaintiffs Henry R. Miller, Jr. and Julie Carmouche, two justices of the peace, and constable Milton Cambre filed a Petition for Temporary Restraining Order, Preliminary and Permanent Injunction and Mandamus seeking to stop the qualification and election of justices of the peace and constables on grounds that the newly drawn and created districts were unconstitutional. The district judge agreed, and granted the requested restraining order, enjoining the elections from proceeding other than in accordance with the specifications under the constitution and law in effect on December 31, 1974. The district judge reasoned:

> ... La. Const. Art. 5, § 20 effectively enconstitutionalizes [sic] all details of mayor's and justice of the peace courts, providing "Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law," and apparently allows changes only by state law rather than by parish ordinance....

The district court also made a parenthetical reference to Art. VI, § 25 of the La. Const. of 1974 , which limits the power of Home Rule governments to affect courts, and also referred to St. Charles Parish Home Rule Charter Art. VII, § G, which states that the Charter shall not affect "Courts and their officers as provided in Article V of the Constitution; ...".

St. Charles Parish intervened prior to the hearing on the requested preliminary injunction. After the hearing, the district judge entered a preliminary injunction enjoining qualifications and elections other than in accordance with ward and precinct lines which were established by the St. Charles Parish Police Jury and which existed *in 1971*. However, the Registrar of Voters informed the court that it would be extremely difficult to conduct an election utilizing 1971 district lines. [FN3] The district court then amended its order to enjoin the conduct of the elections other than in accordance with the district lines established by the St. Charles Parish Council *in 1991*. [FN4]

> FN3. The Registrar of Voters indicated that it would be practically impossible to reconstruct districts along the same lines as existed in 1971 because of the Parish's increase in population and the present location of the population in areas previously uninhabited.

> FN4. The district judge reasoned that the St. Charles Parish Council had clear authority to redistrict its parish governing authority districts (the City Council) and had done so in 1991. Since the Justice of the Peace district lines had traditionally mirrored the boundaries of the governing authority wards (be it police jury or parish council), custom would dictate that a redistricting of the governing authority districts would effect a redistricting of the justice of the peace districts. Hence, the district judge concluded that an election along the 1991 governing authority district lines would be constitutional.
>
> Thereafter, in a Per Curiam opinion filed in this Court, the district judge expressed the additional opinion that the parish governing authority had separate districting authority for Justice of the Peace courts based upon Art. XIV, § 16, La. Const. of 1974, which explicitly continues as a statute the 1921 constitutional provision empowering police juries to redistrict Justice of the Peace wards. The district judge rejected the argument that this statute was subsequently repealed.

Upset with the district court's order that the elections should proceed along the 1991 councilmanic district lines, plaintiffs filed a writ application in the Court of Appeal. Their writ application was granted. The Court of Appeal found unconstitutional both the 1996 ordinances and the district court's ordering an election utilizing 1991 district lines. The Court of Appeal cited Article V, § 20 of the La. Const. of 1974 and *LeBlanc v. Altobello*, 497 So.2d 1373 (La.1986) for the proposition that only the state Legislature has the power to reapportion the justice of the peace districts. Further, the appellate court reasoned that Art. VII, § G of the St. Charles Parish Home Rule Charter prohibits the Council from taking any action which may affect the courts and officers provided for in Article V of the state constitution, which includes justice of the peace courts. The court of appeal set aside the 1996 ordinances as unconstitutional usurpations of legislative authority,

and enjoined the elections until such time as the Legislature should deem it appropriate to create a seventh district and redraw existing district lines for the offices of justice of the peace and constable. Justices of the peace and constables now *234 serving were retained in office until the Legislature acts.

Intervenor St. Charles Parish then filed an emergency writ application in this Court. Because the court of appeal explicitly declared the ordinances unconstitutional, the Parish's writ application was granted and docketed as an appeal.

[1] The Parish challenges the ruling of the Court of Appeal by first arguing that plaintiffs' writ application in that court was untimely because it was not filed within 24 hours of judgment, citing La. R.S. 18:1409(D). We find no merit in this argument because under La. R.S. 18:1409(A), the 24- hour time limit applies only to actions objecting to candidacy or contesting an election. This time constraint is not applicable in this case where there is no objection to the candidacy of a particular person, and no suit by a candidate or other interested person contesting the results of an election.

[2] The Parish also argues that the Court of Appeal was without jurisdiction to consider plaintiffs' writ application because under Art. V, § 5, La. Const. of 1974, the Supreme Court has original jurisdiction over appeals of a district court's declaration that a statute or ordinance is unconstitutional. We find no merit in the Parish's contention because plaintiffs in this case did not seek review of a district court's declaration of an ordinance's unconstitutionality. Plaintiffs' only quarrel with the district court's judgment was with the order for the election to proceed along 1991 district lines, and it was this order which was the basis of plaintiffs' writ application, not the district court's unconstitutionality finding. The Court of Appeal had jurisdiction over the issue plaintiffs presented to it. And in any case, this matter is before us now, in the proper court to review declarations of unconstitutionality.

[3] We now proceed to the crux of this case: the Parish's argument that as a post-1974 Home Rule government, it has power concurrent with the state Legislature to enact justice of the peace and constable redistricting ordinances. The Parish says that it is beyond dispute that Home Rule governments in existence on the effective date of the 1974 constitution possessed the power to redistrict justice of the peace and constable wards consistent with the redistricting power given to police juries in Art. VII, § 46 of the 1921 constitution. (see fn 1 supra). The Parish points out that in Art. XIV, § 16, the 1974 constitution specifically continued this 1921 constitutional provision as a statute, thereby preserving the police juries' redistricting power. [FN5] Arguably, the power of home rule governments consistent with the power of police juries was also preserved. While the statute continuing the terms of Art. VII, § 46, La. Const. of 1921 was repealed in 1975 by Act No. 95 of the Legislature, the Parish contends that the repeal affected only the power of police juries and not the power of home rule governments. [FN6] According to the Parish, the authors of the 1974 Constitution could have, but did not, specifically provide that only the Legislature may establish, divide or merge justice of the peace districts, as is the case for judicial districts; therefore, the absence of this specific language in the Constitution giving such power to the Legislature alone allows the Parish to exercise power concurrent with the Legislature to redistrict or reapportion justice of the peace districts.

FN5. Art. XIV, § 16, La. Const. of 1974, reads in pertinent part:

> (A) Provisions Continued as Statutes. Subject to change by law or as otherwise provided in this constitution, and except as any of them conflicts with this constitution, the following provisions of the Constitution of 1921 are continued as statutes, but restricted to the same effect as on the effective date of this constitution:
>
> . . . . .
>
> 5. Article VII, Sections ... 46 through 51, ...

FN6. Acts 1975, No. 95 reads:

> Section 1. Section 46 of Article VII of the Louisiana Constitution of 1921, which article XIV, Section 1, Louisiana Constitution of 1974 continues as a statute, is hereby repealed.

*235 We disagree. Under our state constitution (and incidentally under the St. Charles Parish Home Rule Charter as well), only the state Legislature has the power to reapportion justice of the peace

districts. Likewise, since a constable shall be elected "within the territorial limits of the justice of the peace ward of the court for which he is elected" (La. R.S. 13:2583), the Parish Council is also without authority to redistrict constable districts.

Article V, § 20 of the 1974 Constitution provides:

> Mayors' courts and justice of the peace courts existing on the effective date of this constitution are continued, subject to change by law.

Contrary to the arguments of plaintiff and the district judge, this article only continues the existence of justice of the peace courts, not the method or manner by which they are reapportioned. By including the phrase "subject to change by law", it is clear that the drafters of the Constitution intended that only the Legislature shall have the power to alter the justice of the peace courts in any way, including redistricting or reapportionment.

As originally drafted and passed by the Constitutional Convention, this article read:

> Mayors' courts and justice of the peace courts existing at the time of the adoption of this constitution are continued subject to change by the legislature. (emphasis added.)

However, after review by the Committee on Style and Drafting of the Constitutional Convention of 1973, the phrase "by the legislature" was changed to "by law". This was simply a stylistic change which was approved by the Judiciary Committee of the Constitutional Convention of 1973, and which was subsequently adopted by the full convention. [FN7] "Subject to change by law" means subject to change by the state Legislature and only by the state Legislature.

> FN7. Justice Albert Tate, Jr., Chairman of the Committee on Style and Drafting, explained:
> In Amendment No. 4 we made just stylistic changes of tense, and in line with the consistent philosophy throughout the constitutional provisions, when we spoke about the legislature, the general intent of the membership in every instance we could determine except once or twice was they meant "by law." They may pass a law, and when we say by two-thirds of the elected members, it was by law enacted by two-thirds of the members. So in order to carry out that consistent intent throughout the constitution, we so recommended these changes.
> State of Louisiana Constitutional Convention of 1973 Verbatim Transcript, January 9, 1974, Vol. IX, pg. 3239.

This rejection of the Parish's "concurrent power" argument is supported by the constitutional debates. According to Lee Hargrave, *The Judiciary Article of the Louisiana Constitution of 1974*, 37 La.L.Rev. 765, 782 (1977), the convention rejected an amendment that would have increased the power of local government agencies in regulating justices of the peace. Passage of the amendment was sought because the proposed language would "require that whenever any particular local government wanted to either decrease or increase the number of justices of the peace, they would have to go to the legislature and get an act." State of Louisiana Constitutional Convention of 1973 Verbatim Transcript, August 17, 1973 at 99. Other delegates made similar comments on the proposed unsuccessful amendment. [FN8] Thus, in voting to reject the amendment and thereby accepting the committee's proposal, the delegates certainly knew they were taking the power to redistrict justice of the peace districts out of the hands of local government, and that they were changing the 1921 Constitution in this regard.

> FN8. In speaking in opposition to the amendment, Delegate Rayburn commented: "So I don't see any need for this amendment, when you've got the broad language you have. You are leaving it subject to change by the legislature in the committee's proposal. You are leaving it subject to change by the police jury in this proposal, with certain restrictions." Transcript, August 17, 1973, p. 805. Delegate Perez stated: "So again, if you leave the section as it is [and reject the amendment], you will substantially be changing the law and require the local government to go to the legislature to get an act passed to change the number of the justices of the peace whereas, with [the amendment], it could be done on a local level by local government. That's the difference between the two." *Id.* at 806.

*236 Article VI, entitled "Local Government", is very lengthy and explicitly enumerates the powers of home rule charter governments and other local governmental subdivisions. It provides no support for the Parish's "concurrent power" argument. In fact, Article VI recognizes Art. V, § 20, La. Const. of the 1974, as the sole source of constitutional authority to redistrict justice of the peace boundaries. Art. VI, § 25 provides: "Notwithstanding any provision of this Article,

courts and their officers may be established or affected only as provided in Article V of this constitution." emphasis added.) [FN9]

FN9. In further support of their position that the ordinances are unconstitutional usurpations of exclusive legislative power, plaintiffs cite *LeBlanc v. Altobello*, 497 So.2d 1373 (La.1986) where this court held that a legislative statute establishing a new justice of the peace court without parish wide jurisdiction was constitutional. While the issue of a local government's concurrent jurisdiction over Justice of the Peace redistricting matters was not specifically before us in *LeBlanc*, we did note: "The legislature is specifically given the authority to make changes relative to justice of the peace courts." 497 So.2d at 1375.

We also find no merit in the Parish's argument that the power of the police jury to redistrict justice of the peace wards was continued as a statute by the 1974 constitution. In 1975, the state Legislature explicitly repealed Section 46 of Art. VII of the La. Const. of 1921 which had been continued as a statute. Any power of the police jury to redistrict was therefore repealed well before St. Charles Parish adopted a home rule charter system of government in 1978. Hence, redistricting power was not a power transferred to the Parish Council in 1978 by its predecessor, the St. Charles Parish Police Jury.

[4] An examination of the St. Charles Parish Home Rule Charter reveals additional flaws in the Parish's position. St. Charles Parish adopted a home rule charter in January, 1978, under the authority of Art. VI, La. Const. of 1974. [FN10] Under Article VI, "home rule" does not mean complete autonomy but rather it is a rule by which local government has the freedom and flexibility to manage its own local affairs without undue legislative influence. Kean, *Local Government and Home Rule*, 21 Loy.L.Rev. 63, 66 (1975). Under Article VI, the state is supreme on state-wide concerns, but it allows a home rule government to exercise any necessary power or function except as may be expressly limited by its charter and the general laws, or as may be inconsistent with other provisions of the Constitution. *Id.* The power of a home rule government within its jurisdiction is as broad as that of the state, except when limited by the constitution, laws permitted by the constitution, or its own home rule charter. *Francis v. Morial*, 455 So.2d 1168, 1171 (La.1984). As we recently affirmed in *St. Charles Gaming Company, Inc. v. Riverboat Gaming Commission, et al*, 94-2697 (La.1/17/95), 648 So.2d 1310, 1317, the 1974 Louisiana Constitution grants to post-1974 home rule charter governments such as St. Charles Parish immunity from state legislative control when exercising within their boundaries legislative powers consistent with the 1974 state constitution that are not denied by general law. Thus, powers of a home rule government can be limited by its own home rule charter, the state constitution, or general state laws.

FN10. Article I of the St. Charles Parish Home Rule Charter states:

St. Charles Parish is a local governmental subdivision as defined by Article VI, Section 44 of the Louisiana Constitution of 1974. The Parish shall operate under this Home Rule Charter under authority of Article VI, Section 5 of the Constitution.

In Article II of its Home Rule Charter, St. Charles Parish recognized the limitations on its power and provided that the Parish would only have such powers that were not denied by or inconsistent with the Charter. Specifically, Article VII, § G specifically provided that the Charter shall not affect "Courts and their officers as provided in Article V of the Constitution". [FN11] Article V of the state constitution*237 specifically encompasses justice of the peace courts in § 20. Contrary to the Parish's assertion of power concurrent with the state Legislature, its own Charter acknowledges that it has no authority to affect justice of the peace courts in any way, including redistricting.

FN11. Article VII, Section G of the St. Charles Parish Home Rule Charter states in its entirety:

This charter shall not affect the School Board, the offices of the District Attorney, Sheriff, Clerk of Court, Assessor, or Coroner, and shall not affect Courts and their officers as provided in Article V of the Constitution; nor shall the Parish Council enact any ordinance defining and providing for the punishment of a felony or, except as provided by law, enact an ordinance governing private or civil relationships. (emphasis added.)

We conclude that the 1996 redistricting ordinances are unconstitutional because only the state Legislature has the authority to alter existing justice of the peace and corresponding constable districts or create new offices or districts. Further (but not necessary to the disposition of this case), these

ordinances are also invalid because they violate the terms of the St. Charles Parish Home Rule Charter. [FN12]

> FN12. At first glance, it may appear that an argument could be made that it was unnecessary for us to reach the constitutionality issue because we could invalidate the ordinances on grounds that they violate the St. Charles Parish Home Rule Charter. However, as noted supra at fn. 2, the Parish Council has already taken steps to amend the Charter in an attempt to give the Council redistricting authority. Therefore, in the interest of judicial economy and because of the effect of our decision today on the offices of Justice of the Peace and constable throughout the state, we deem it appropriate and judicious to reach the issue of constitutionality.

[5] Having determined that these ordinances are unconstitutional, we turn now to the matter of the enjoined elections. For the reasons stated, any justice of the peace and constable district lines adopted by the St. Charles Parish Council subsequent to the effective date of the state constitution, including district lines drawn in 1982, 1991 and 1996, were and are constitutionally infirm, and the present justices of the peace and constables are sitting in unconstitutionally drawn seats. However, it would be contrary to our democratic system to remove these public officials from their elected positions at this juncture and deprive the electorate of its chosen representatives, especially considering that the six justice of the peace offices have long existed. It is only the districts as presently drawn and not the six justice of the peace offices that we have found to be invalid. The sitting justices of the peace and constables were duly elected, albeit in illegally drawn districts, and their elections were not challenged. Further, La. 42:2 provides: "Every public officer in this state except in case of impeachment or suspension, shall continue to discharge the duties of his office until his successor is inducted into office." As the incumbent justices of the peace and constables have been neither impeached nor suspended, they shall remain in office until such time as their successors are elected from legally drawn districts and are inducted into office.

Since it appears impossible to reconstitute the justice of the peace and constable districts along the lines drawn in 1971, it is appropriate that the Legislature be given a reasonable opportunity to reapportion these districts, bearing in mind that the present six justices of the peace and constables, holding existing offices, are occupying their offices notwithstanding that the districts from which they were elected have not been legally drawn.

Considering the particular circumstances of this case, we believe it is the duty of the Legislature to act swiftly to redraw the district boundaries to allow the calling of an election as soon as possible. The right of the citizens of St. Charles Parish to cast their vote for the offices of justice of the peace and constable should not be delayed longer than is absolutely necessary. Accordingly, we urge the Legislature to act expeditiously, preferably in its next session, to insure that the right of the citizens of St. Charles Parish to elect public officials of their choice can be exercised in the reasonably foreseeable future. In the event the Legislature fails to act at its next session, we reserve to the parties in this matter the right to apply for rehearing within fourteen days from the final day of the legislative session.

DECREE

For the foregoing reasons, we affirm the judgment of the Court of Appeal. St. Charles Parish Council Ordinances No. 96-6-4 and No. 96-6-5 are unconstitutional under the state constitution. Elections for these offices remain enjoined until such time as the Legislature is given a reasonable opportunity to reapportion these districts. Those justices *238 of the peace and constables now serving shall remain in office until constitutional districts are created by the Legislature, and their successors are duly elected from legally drawn districts and are inducted into office. If the Legislature fails to redistrict the boundaries for justices of the peace and constables during its next legislative session, the parties herein shall have the right to apply for rehearing within fourteen days of the final day of the legislative session.

AFFIRMED.

682 So.2d 231, 96-2022 (La. 10/15/96)

END OF DOCUMENT