

CHAPTER III

THE 1923 MUNICIPAL MANAGER FORM OF GOVERNMENT

The Council-Manager Form of government is the most widely used form of government in the United States, despite limited use in New Jersey. The National Municipal League endorsed the Council-Manager Form of government as the most desirable form of local government in the United States. To thousands of communities scattered all over the United States, the Council-Manager form has brought professional management that would have been unavailable under any other known governmental system.

The Council-Manager Form of government was first adopted in Sumter, South Carolina in 1912, at the height of the Progressive reform era in this country. It was based on a few simple but powerful ideas. The most important one was that politics and government could be separated. The Council-Manager form attempted to extract ward based partisanship from municipal government and create professional management with non-partisan, at-large elections, eliminating elected administrative positions and concentrating executive powers in a professional manager. The Council-Manager form separated the legislative functions (council) from the execution of policy (manager).

In New Jersey the Faulkner Act Council-Manager form with 38 municipalities, four special charter municipalities, and the 1923 Municipal Manager forms with eight municipalities are modelled on this act. To a much lesser degree the 159 traditional municipalities, which have added an ordinance administrator to their government, are utilizing at least a portion of this concept.

In 1923, New Jersey passed the Municipal Manager Law, which was part of the early 20th century movement toward more nonpolitical and businesslike municipal government with more professional administration. In 1950, eight municipalities were operating under the 1923 Municipal Manager Form of government. Previous to Lodi Borough recently joining this form in 1991, Garfield City was the last municipality to join in 1972 (Fair lawn had joined in 1979, but left in 1984). As of January 1991, eight municipalities remain in the 1923 Municipal Manager Form of government (see Table 8 and Map 4). In the last twenty years, Keansburg Borough, Fair Lawn Borough, and Teaneck Township have left this form of government.

Under the 1923 Municipal Manager form, the voters elect three, five, seven, or nine, members of a council. Clifton City and Lodi Borough utilize the seven

**TABLE 8
MUNICIPALITIES OPERATING UNDER
THE 1923 MUNICIPAL MANAGER
FORM OF GOVERNMENT
(AS OF 1 JANUARY 1992)**

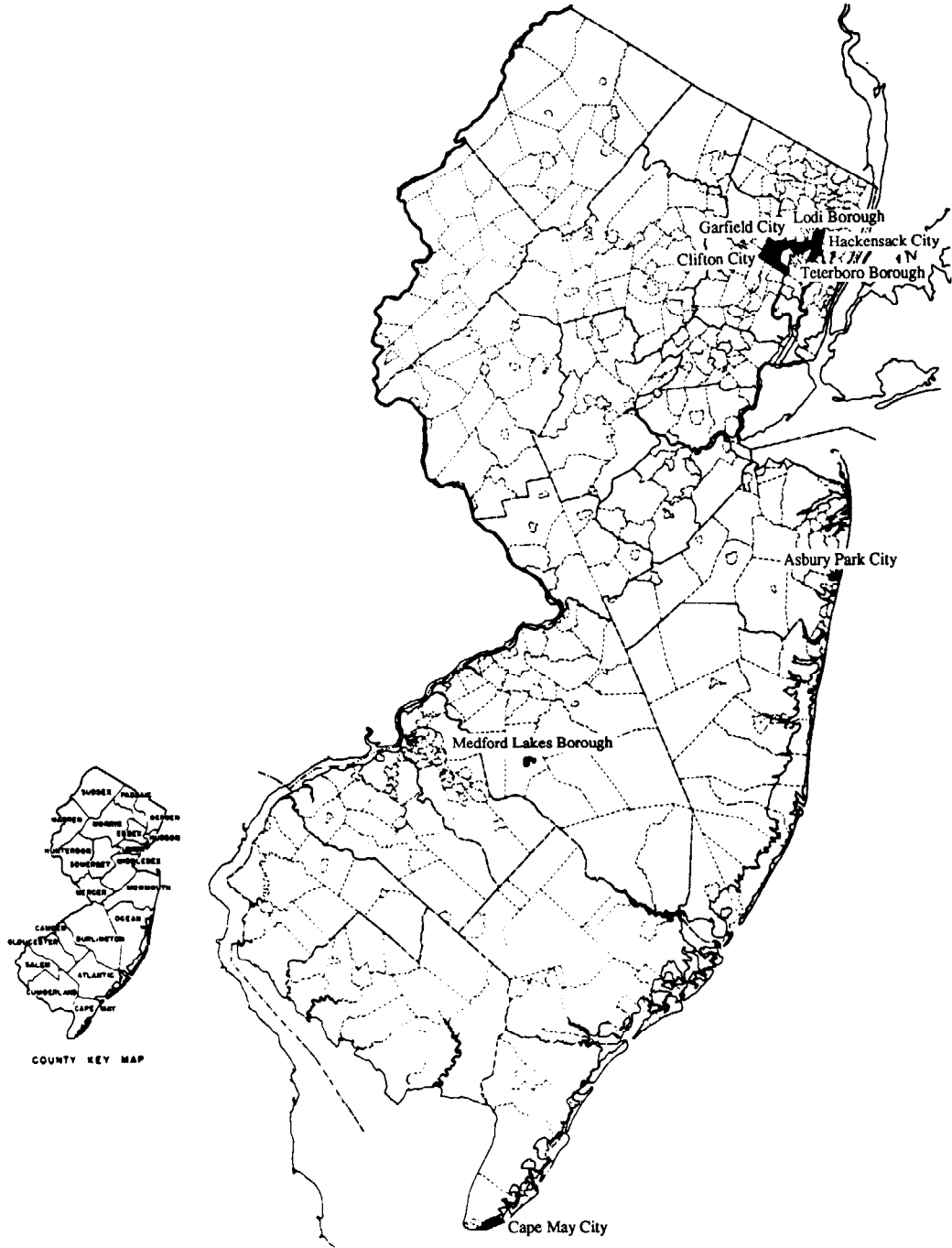
NAME OF MUNICIPALITY	TYPE OF MUNICIPALITY	COUNTY	1990 CENSUS POPULATION
Clifton	City	Passaic	71,742
Hackensack	City	Bergen	37,049
Garfield	City	Bergen	26,727
Lodi	Borough	Bergen	22,355
Asbury Park	City	Monmouth	16,799
Cape May	City	Cape May	4,668
Medford Lakes	Borough	Burlington	4,462
Teterboro	Borough	Bergen	22

Source: State Commission on County & Municipal Government.

member option for council while Asbury Park, Garfield City, Hackensack City, and Teterboro Borough utilize the five-member option for council. Only Cape May City and Medford Lakes Borough utilize the three-member option. The council is elected at-large in non-partisan elections. The law originally only allowed four-year concurrent elections, but the law was changed in 1981, to allow municipalities, by petition and referendum, to have four-year staggered elections (N.J.S.A. 40:81-5.1). Seven municipalities operating under the 1923 Municipal Manager Form of government use four-year concurrent terms, while Lodi Borough uses four-year staggered terms. Runoff elections may be included in case no candidate receives a majority of the votes cast. Seven municipalities operating under the 1923 Municipal Manager Form of government do not use the runoff option. Lodi Borough, however, uses the runoff option.

The council functions strictly as a legislative body and administrative duties are prohibited. The council may investigate the administration, may determine internal organization, and may create and abolish boards and departments. The council appoints a municipal manager, a tax assessor, a treasurer, an auditor, a municipal clerk, and an attorney. The council may appoint an acting manager during the manager's absence. The council does not appoint the treasurer in the Optional Municipal Charter Law's Council-Manager Form of government. This power of appointment is under the manager.

MAP 4
MUNICIPALITIES OPERATING UNDER THE 1923
MUNICIPAL MANAGER FORM OF GOVERNMENT
(AS OF JANUARY 1, 1992)



Clifton City is one of the owner-operators of the Passaic Valley Water Commission. It was decided in the 1965 case of *Bingham vs. Mayor and Council of City of Clifton*, 43 N.J. 556, that the appointment of Clifton's representative to Passaic Valley Water Commission should have been made by the city manager and not the council.

The manager is the municipal chief executive and executes laws and policies. The manager prepares the budget for council consideration and attends meetings with a voice but no vote. The manager recommends improvements and implements those approved. The manager oversees contracts and franchises and reports violations. The manager appoints and removes department heads and makes all additional appointments not made by council.

The manager runs the municipality like a business. The manager does not make policy - he/she is ideologically neutral. The manager simply translates the wishes of the council into action, without concern for partisan or factional advantage. The council is the managers only constituency; he/she does not worry about the views or needs of the broader electorate unless the council instructs. The manager is not a public figure. The closer he/she comes to anonymity among ordinary citizens, the better the manager is doing his/her job.¹

The mayor is selected by the council from among its own members. The mayor's duties, as a result of the 1923 Municipal Manager Law, are mainly limited to presiding and voting as a member in council meetings and making appointments to the board of library trustees and the board of education where that board is not elective. The mayor appoints the board of education in two Type 1 schools, Clifton City and Hackensack City. The mayor's term of office is four years concurrent (N.J.S.A. 40:81-7).

The 1923 Municipal Manager Form of government and the Faulkner Act's Council-Manager Form of government are substantially identical and should be merged. Faulkner's Council Manager form is a little more modern, flexible, and better thought out. The 1923 Municipal Manager Form of government was used by a maximum of ten municipalities, during the late 1960s. Those who have left this form - Teaneck Township, Keansburg Borough, and Fair Lawn Borough - have changed to the Faulkner Act's Council-Manager Form of government. It has been almost twenty years since a municipality has joined the 1923 Municipal Manager form (with the exception of the recent addition of Lodi Borough in July 1991).

The 1923 Municipal Manager Form of Government has acquired a number of extra, unnecessary provisions during its 69 year history. In merging the two manager forms of government, a number of conflicting and obsolete provisions in the 1923 Act would be repealed. General law in Title 40 now applies to non-partisan elections, vacancies, officers and employees, contracts, ethics, and so on. The specialized laws in the 1923 Act are no longer necessary.

¹Governing, "The New City Manager", September 1990, p.41.

The Commission recommends that the 1923 Municipal Manager Form of Government law be merged into the Optional Municipal Charter Law's Council-Manager Form of government. In the enabling act merging the two forms of government together, language will be included that will recognize the conversion from 1923 Municipal Manager to OMCL Council-Manager.

Tenure was one of the most important reasons that discouraged the use of the 1923 Municipal Manager Form of government by many New Jersey municipalities. Until 1982, the law provided that the manager would acquire tenure in office after three years. After three years, the council could only remove the manager for "cause". The tenure provision created the possibility of a tenured "free agent", accountable to no one, serving as municipal chief executive as long as he/she did not violate the narrow bounds of "cause". In the State Commission on County and Municipal Government's report, *Forms of Municipal Government in New Jersey*, the Commission found it inappropriate for an appointed officer with substantial executive power to have tenure. In 1982, the Legislature removed the tenure provisions for new managers.

The Commission interviewed the two remaining tenured managers in Asbury Park and Cape May City. The two managers preceded the 1982 law which phased out tenure for new municipal managers. The two tenured managers agreed that merging the two forms of government was a positive concept. However, Cape May City's manager expressed apprehension if it meant losing his tenured position. ***The Commission recommends that the two managers with tenure be grandfathered into the OMCL Council-Manager Form of government.***

While there are many similarities in the 1923 Municipal Manager Form of government and the Faulkner Act's Council Manager Form of government, one major difference which was the source of extensive litigation, was the "recall" provision. Basically, the differences stem from problems in compliance.

Under the 1923 Municipal Manager form, any elective officer shall be subject to removal from office for cause connected with his/her office, after he/she has served at least *two* years. If the petition is sufficient, the municipal clerk notifies within two days the mayor, council member, or council members whose recall is sought. If the municipal clerk orders and fixes a date for holding a recall election, the election shall not be less than *forty* nor more than *fifty* days from the filing of the petition.

Under the Faulkner Act's Council-Manager Form, any elective officer shall be subject to removal from office for cause connected with his/her office, after he/she has served at least *one* year. If the petition is sufficient, the municipal clerk notifies within two days the mayor, council member, or council members whose recall is sought. If the municipal clerk orders and fixes a date for holding a recall election, the election shall not be less than *sixty* nor more than *ninety* days from the filing of the petition.

The 1923 Municipal Manager form's recall provision gives more time to the

elective officer before authorizing a recall campaign and less time for holding an election from the point the petition is filed. This issue has caused many problems in the City of Hackensack. On such case, *Pizza et. al. vs. City of Hackensack*, is a prime example of just how disjointed the recall provision is in the 1923 Municipal Manager form. A brief for the case states:

The recall statute governing municipalities like Hackensack was initially enacted in 1923 and, despite urgent judicial pleas to the Legislature from the New Jersey Supreme Court to clarify apparently significant issues, it has remained unamended to the present day.

The recall provision creates further puzzlement since N.J.S.A. 40:58-8 clearly requires the filing of nominating petitions 54 days prior to the election. This, in turn, means that in municipal manager municipalities, nominating petitions must be in fact filed prior to the filing of recall petitions. This statutory mandate makes it difficult for persons not associated with a recall movement, to file nominating petitions since only those involved in the recall will know when the recall petitions will be filed.

In the City of Hackensack it appears as though the use of the recall has become a political process. How else can one account for the fact that within the last quarter of a century, there have been at least *seven* recall campaigns in the City? One must question whether the drafters of the recall statutes ever envisioned such overuse.²

The confusing provision of recall in the 1923 Municipal Manager form coupled with the fact that this form of government is quite identical otherwise with the Faulkner Act's Council-Manager form, are substantial reasons for merging the two forms of government. Another important aspect is that Fair Lawn Borough has switched back and forth between the two forms of government so many times, municipal officials were occasionally unsure of which form the municipality was operating under in a given year.

The appointment power of the manager is slightly stronger under Faulkner's Council-Manager Form of government. The 1923 manager now will gain power to appoint the treasurer as a result of merging the two forms of government.

The 1923 Municipal Manager Form of government authorizes the power of recall by the local voters, but not the powers of initiative and referendum. The eight municipalities operating under the 1923 Municipal Manager Form of government will gain the powers of initiative and referendum as a result of merging the two manager forms of government.

Council size varies among the municipalities using the 1923 Municipal Manager Form of government. The majority utilize five or seven council members. The small size of the three-member council used in Cape May City and Medford

²*Pizza et. al. vs. City of Hackensack, October 1988.*

Lakes Borough is a weakness authorized in this form of government. A three-member council is more susceptible to violating the Open Public Meeting Act. No two members of a three-member council can get together for an informal discussion on municipal government under that act. This puts a strain on the governing body because of the law's strict requirement. Also the concept of representation, of getting more people involved in the activities of municipal government, makes five council members more desirable. The two affected municipalities both have a population of more than 4,000 persons and a large enough work load and budget to justify a five-member council. ***The Commission recommends that municipalities with three member governing bodies retain the right to remain at three, but be encouraged to go to five members by referendum.***

The primary reasons for merging the 1923 Municipal Manager Form of government and the Optional Municipal Charter Law's Council-Manager Form of government is that they are substantially identical now, the tenure and recall provisions discouraged municipalities from using the 1923 Act, initiative and referendum are offered under Faulkner's Council-Manager Form of government, and the Faulkner Act is newer and provides more flexibility to municipalities using it. There has been virtually almost no interest in moving to the 1923 version of the manager form for forty years. The Optional Municipal Charter Law's Council-Manager Form of government is growing in popularity and will continue to be the favorite form of government for those communities desiring a professional, nonpolitical form of government.

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