



S.B. 236

123rd General Assembly
(As Introduced)

Sen. Gardner

BILL SUMMARY

- Appears to codify the existing right of a noncharter municipal corporation to deviate by ordinance from the substantive statutory requirement that certain municipal officers be municipal residents or electors.

CONTENT AND OPERATION

Existing law

Existing law provides that each officer of a municipal corporation, or of any department or board of a municipal corporation, generally must be an elector of the municipal corporation and must take an oath of office before commencing official duties. The law states that deputies also must take an official oath of office but need not be electors. The requirement of being an elector means that the person must be a resident of the municipal corporation. (Sec. 733.68; sec. 3503.01, not in the bill.)

Despite the language stated in the statute as an *apparent mandate* on municipal corporations, the home rule provision of the Ohio Constitution authorizes municipal corporations to exercise all powers of local self-government. (Section 3 of Article XVIII.) Section 7 of Article XVIII of the Ohio Constitution further provides that a municipality may frame and adopt or amend a charter to exercise local self-government home rule powers. A charter is not necessary, however, in order to exercise all aspects of local self-government. The Ohio Supreme Court has held that a noncharter municipal corporation must follow the *procedure* prescribed by state statutes in matters of local self-government, but may enact an ordinance that is *substantively* at variance with state law in self-government matters. *Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375. Thus, under current law, any municipal corporation, charter or noncharter, may deviate

from the statutory substantive requirement of "officer residency," despite section 733.68's apparent mandate to the contrary.¹

Changes made by the bill

The bill provides that except as otherwise provided in its new provision or another section of the Revised Code (see **COMMENT 1**), each officer of a municipal corporation, or of any department or board of a municipal corporation, must be an elector and, before entering upon official duties, take an oath of office for the office to which the person is elected or appointed. The bill's exception to these requirements states that the fire chief or fire prevention officer of a municipal corporation need not be a resident or elector of the municipal corporation "if an ordinance of the municipal corporation provides otherwise." (Sec. 733.68.) (See **COMMENT 2**.)

COMMENT

1. As explained in the second paragraph of the body of this analysis, existing law's use and the bill's continued use of an exception *only* to the Revised Code is technically incorrect because of the operation of the home rule provisions of the Ohio Constitution, which clearly supersede statutory law. For the substantive requirement of "officer residency," any municipal corporation can deviate from the current statutory requirement.

2. Apparently, the quoted language of proposed section 733.68(B) is intended to mean that the fire chief or fire prevention officer need not be a resident or elector *unless* an ordinance of the municipal corporation *requires* the person to be a resident or elector. However, a literal interpretation of the quoted language--if an ordinance requires residency, the fire chief or fire prevention officer need not be residents--appears to be a clear violation of the home rule provisions of the Ohio Constitution. Therefore, assuming the quoted language is given the presumed intended meaning explained above, the bill merely codifies the operation of current home rule analysis for matters of substantive local self-government, such as an officer residency requirement.

HISTORY

ACTION

DATE

JOURNAL ENTRY

¹ A noncharter municipal corporation would have to comply with the statute's procedural requirement for taking an oath of office, but a charter municipal corporation could deviate by charter from that and other statutory procedural requirements.

Introduced

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