Note from the Attorney General's Office:

1990 Op. Att'y Gen. No. 90-104 was overruled in part by 2009 Op. Att'y Gen. No. 2009-009.

OPINION NO. 90-104

Syllabus:

1. In computing the amount of vacation leave of municipal employees, all municipalities, statutory and charter, must provide credit for prior service at the minimum levels established in R.C. 9.44, except those municipalities which have entered collective bargaining agreements pursuant to R.C. Chapter 4117 that specifically exclude rights accrued under R.C. 9.44.

2. Pursuant to R.C. 9.44(A), all municipalities, statutory and charter, may provide for a deferral of the anniversary date of prior service of municipal employees, except those municipalities which have entered into a collective bargaining agreement pursuant to R.C. Chapter 4117 under which such a provision would be subject to the collective bargaining process.

3. Pursuant to Ohio Const. art. XVIII, §3, all municipalities, statutory and charter, may provide prior service credit in excess of the minimums required by R.C. 9.44, except those municipalities which have entered a collective bargaining agreement pursuant to R.C. Chapter 4117 under which such a provision would be subject to the collective bargaining process.

4. In a charter municipality not subject to a collective bargaining agreement under R.C. Chapter 4117, if the charter does not specifically provide for a deferral of the anniversary date of prior service or for the crediting of prior service in excess of the minimums required by R.C. 9.44, deferral or additional benefits may be established by ordinance or regulation, if such ordinance or regulation is within the scope of authority granted by applicable general language in the charter and is enacted in the manner required by the charter.

5. If neither the charter nor the ordinances or regulations authorized thereunder, of a charter municipality not subject to a collective bargaining agreement under R.C. Chapter 4117, specifically provide for the deferral of the anniversary date of prior service or for the crediting of prior service in excess of the minimums required by R.C. 9.44, such municipality is governed by the provisions of R.C. 9.44.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 31, 1990

I have before me your request for my opinion regarding the relationship between the grant of municipal home rule authority in Ohio Const. art XVIII, §3[1] and the provisions of R.C. 9.44 governing vacation leave. Specifically, you ask the following questions:

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[1] Ohio Const. art. XVIII, §3 states that "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary, and other similar regulations, as are not in conflict with general laws."

1. Must all municipalities follow Section 9.44, Revised Code, when determining vacation leave accumulation?

2. May a chartered municipality supersede Section 9.44, Revised Code?

3. If the answer to number [2 is] yes, should this be accomplished by a charter provision? If so, must the charter provision be specific or may general language, such as the following, be used[:]

> The government shall be vested with all powers which may now or hereafter be granted to municipalities by the Constitution or Laws of Ohio. Unless otherwise provided in the grant or in this Charter, all such powers, whether express or implied, shall be exercised in such manner as shall be provided by the Council created hereby[?]

4. If this general language is acceptable, would an ordinance also be required?

5. When auditing a chartered municipality for legal compliance and the charter is silent, does [R.C. 9.44] govern?[2]

The provisions of R.C. 9.44, upon which your questions are based, state in pertinent part:

> (A) Except as otherwise provided in this section, a person employed, other than as an elective officer, by the state or any political subdivision of the state, earning vacation credits currently, is entitled to have his prior service with any of these employers counted as service with the state or any political subdivision of the state, for the purpose of computing the amount of his vacation leave. The anniversary date of his employment for the purpose of computing the amount of his vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service.
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> (B) To determine prior service for the purpose of computing the amount of vacation leave for a person initially employed on or after July 5, 1987, by:
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> ....
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> (2) A municipal corporation, the person shall have only his prior service within that municipal corporation counted;...
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> ....
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> (C) An employee who has retired in accordance with the provisions of any retirement plan offered by the state and who is employed by the state or any political subdivision of the state on or after June 24, 1987, shall not have his prior service with the state or any political subdivision of the state counted for the purpose of computing vacation leave.

Your first question asks whether all municipalities are bound by these provisions. Your second question, asking whether charter municipalities may supersede R.C. 9.44, is a variation on the first inquiry. I will, therefore, consider

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[2] As originally submitted, your request asked this series of questions with respect to several different areas of statutory law. After consultation with members of your staff, it has been decided, for purposes of clarity, to analyze each of these areas in a separate opinion. Accordingly, your questions have been rephrased slightly to reflect the focus of this opinion on R.C. 9.44.

these two questions together. I note initially that the terms of a collective bargaining agreement entered into by a municipality pursuant to R.C. Chapter 4117 may specifically exclude rights accrued under R.C. 9.44. *State ex rel. Caspar v. City of Dayton*, 53 Ohio St. 3d 16, 558 N.E.2d 49 (1990); *accord North Olmsted Fire Fighters Ass'n v. City of North Olmsted*, No. 58968, slip op. (Ct. App. Cuyahoga County Sept. 10, 1990), *notice of appeal filed* (Ct. App. Cuyahoga County Oct. 9, 1990). Thus, when, pursuant to R.C. Chapter 4117, a municipality has entered a collective bargaining agreement that provides for the use of prior service credit in a manner that directly conflicts with R.C. 9.44, that municipality is not bound by R.C. 9.44 but is bound instead by the terms of the collective bargaining agreement.

The courts in *Caspar* and *North Olmsted Fire Fighters* found that the collective bargaining agreements therein did not specifically exclude R.C. 9.44(A) rights and that the municipalities were, therefore, bound by the duty imposed by R.C. 9.44(A) to credit prior service with the state or other political subdivisions in computing the amount of vacation leave of the municipal employees involved. *See generally State ex rel. Clark v. Greater Cleveland Regional Transit Auth.*, 48 Ohio St. 3d 19, 548 N.E.2d 940 (1990) (syllabus) ("R.C. 9.44 imposes a mandatory duty on any political subdivision of the State of Ohio to credit employees with prior service vacation credit, absent a collective bargaining agreement entered into pursuant to R.C. Chapter 4117"). Although *Caspar* and *North Olmsted Fire Fighters* did not directly address whether charter municipalities could supersede the provisions of R.C. 9.44(A) by exercise of home rule authority,[3] this issue had been previously determined in the cases of *State ex rel. Villari v. City of Bedford Heights*, 11 Ohio St. 3d 222, 465 N.E.2d 64 (1984) (involving a charter city with no ordinance deferring R.C. 9.44) and *State ex rel. Adkins v. Sobb*, 26 Ohio St. 3d 46, 496 N.E.2d 994 (1986) (involving a charter city with ordinances limiting prior service credit to time served continuously with the city).

The court in *Villari* held that R.C. 9.44 addresses a matter of statewide concern and therefore supersedes municipal home rule authority. In the *Adkins* case, the court affirmed this holding, stating:

> Because municipalities are political subdivisions of the state, this provision applies to municipal employees who have previously worked for the state or for any political subdivision....
>
> The city argues that it is entitled to regulate the vacation leave of its employees pursuant to its powers of local self-government under Sections 3 and 7, Article XVIII of the Ohio Constitution. State law must govern, however, when a statute addresses a matter of general and statewide concern in an area otherwise subject to municipal regulation. *See, e.g., State, ex rel. Evans, v. Moore* (1982) 69 Ohio St. 2d 88, [431 N.E.2d 311]. Further, the constitutional home-rule powers of municipalities are subject to the requirement that municipal regulations "not [be] in conflict with general laws." Section 3, Article XVIII. In *State, ex rel. Villari, v. Bedford Hts.* (1984), 11 Ohio St. 3d 222, 225, [465 N.E.2d 64, 67,] this court held that R.C. 9.44 addresses a matter of general and statewide concern.[4]

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3 I note, however, that the statement of facts in *State ex rel. Caspar v. City of Dayton*, 53 Ohio St. 3d 16, 17, 558 N.E.2d 49, 51 (1990) includes a description of the appellate court finding on this issue. The appellate court held that a municipality entering a collective bargaining agreement prior to the enactment of R.C. Chapter 4117 did so as an exercise of home rule authority. Therefore, based on the holding of *State ex rel. Villari v. City of Bedford Heights*, 11 Ohio St. 3d 222, 465 N.E.2d 64 (1984), discussed *infra*, the municipality could not avoid the application of R.C. 9.44 through such a bargaining agreement. This holding was not at issue in the case before the Ohio Supreme Court.

4 This discussion in *State ex rel. Adkins v. Sobb*, 26 Ohio St. 3d 46, 496 N.E.2d 994 (1986) utilizes two theories of home rule analysis. Under the

Adkins at 48, 496 N.E.2d at 995-96 (footnote added); *accord Kelly v. City of Akron*, No. 13612, slip. op. at 1 (Ct. App. Summit County Dec. 7, 1988) ("in *Adkins*, the Ohio Supreme Court held that R.C. 9.44 was a matter of statewide concern, applicable to both statutory and chartered cities, and that these political subdivisions could not avoid the requirements of the statute through the application of local laws"); 1974 Op. Att'y Gen. No. 74-088.

The *Adkins* court also clarified that the language of R.C. 9.44(A) allowing a deferral of anniversary date does not permit municipalities to avoid giving credit for prior service:

> Under R.C. 9.44, a municipal employee's "anniversary date" for purposes of computing vacation leave, "unless deferred pursuant to the appropriate law," is the anniversary date of his prior service. We decline to adopt the city's interpretation of this language that R.C. 9.44 may be avoided entirely. The word "defer" is not equivalent to "avoid." Also, the statute only allows deferral of an "anniversary date." The legislature could have provided in straightforward language for political subdivisions to completely circumvent R.C. 9.44. It did not do so and we will not stretch the language of the statute to give it

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statewide concern doctrine, only the exercise of municipal police power is subject to the limitation of Ohio Const. art XVIII, §3, that it not be in conflict with general laws of the state. Thus, an exercise of the municipal power of local self-government will ordinarily supersede a conflicting statute, *State ex rel. Canada v. Phillips*, 168 Ohio St. 191, 151 N.E.2d 722 (1958) (syllabus, paragraph 4), unless the statute is of statewide concern, in which case the statute governs, *see generally State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 431 N.E.2d 311 (1982); *State Personnel Bd. of Review v. City of Bay Village Civil Serv. Comm'n*, 28 Ohio St. 3d 214, 503 N.E.2d 518 (1986). An alternative home rule theory, also relied on in *Adkins*, is that the phrase "as are not in conflict with general laws" in Ohio Const. art. XVIII, §3 limits both the municipal power of local self-government and municipal police power. Thus, a conflicting statute will ordinarily prevail regardless of the characterization of the municipal power involved.

The discussion of home rule in *City of Rocky River v. State Employment Relations Bd.*, 43 Ohio St. 3d 1, 12-13, 539 N.E.2d 103, 113 (1989) strongly suggests that this latter analysis of home rule has now completely superseded the statewide concern doctrine. The effect of the court's criticism of the statewide concern doctrine in *Rocky River*, however, is unclear because the court also held therein that the home rule provisions of the Ohio Constitution are not applicable at all to state legislation enacted under Ohio Const. art II, §34 ("[l]aws may be passed...providing for the comfort, health, safety and general welfare of all employes; and *no other provision of the constitution shall impair or limit this power*") (emphasis added). *Rocky River* at 12-13, 539 N.E.2d at 113-14.

Because R.C. 9.44 arguably concerns the general welfare of public employees, as did the collective bargaining statutes under consideration in *Rocky River*, the court's holding therein suggests that Ohio Const. art II, §34 may preclude all municipalities from altering the provisions of R.C. 9.44 and that this analysis may supplant the home rule analysis used in *Adkins*. There are no cases however, specifically addressing the relationship between Ohio Const. art II, §34 and R.C. 9.44 and, therefore, the application of home rule principles to R.C. 9.44 under *Adkins* controls. I note further that nothing in either the home rule analysis or the analysis of Ohio Const. art II, §34 used in *Rocky River* would lead to a result different from that reached by the *Adkins* court.

> this effect. We, therefore, reject the statement noted in *Villari, supra*, at 225, [465 N.E.2d at 67,] which implies such a construction of R.C. 9.44.

Adkins at 48, 496 N.E.2d at 996.[5]

When *Villari* and *Adkins* were decided, R.C. 9.44 was composed entirely of the language now appearing at R.C. 9.44(A). *See* 1969-70 Ohio Laws, Part II, 1917 (Sub. H.B. 202, eff. Aug. 27, 1970). Divisions (B) and (C) were added in 1987 to provide exceptions from the mandate of division (A) for persons entering their current employment after certain dates.[6] In light of the court's holding that R.C. 9.44 addresses a matter of statewide concern, I must next consider the relationship between R.C. 9.44(B) and (C) and municipal home rule authority. The court's analysis of an analogous statute, R.C. 124.38, in *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980) is instructive on this issue.

R.C. 124.38(A) provides that county, municipal and civil service township employees "shall be entitled for each completed eighty hours of service to sick leave of four and six-tenth hours with pay...." The *Ebert* court stated that this language "neither establishes nor limits the power of a political subdivision. Rather it ensures that the employees of such offices will receive at least a *minimum* sick leave benefit or *entitlement*." *Ebert* at 32, 406 N.E.2d at 1099-1100. Thus, while the county board was required to recognize the minimum entitlement to sick leave established by state law, the court held that the board's express power to employ and compensate under R.C. 5126.03(C)[7] included the authority to provide credits in excess of the minimum. *Id.* at 33, 406 N.E.2d at 1100; *accord Cataland v. Cahill*, 13 Ohio App. 3d 113, 114, 468 N.E.2d 388, 390 (Franklin County 1984) ("[s]ick leave and vacation leave prescribed by statute are minimums only and, where the appointing authority is authorized to establish compensation of employees, either sick-leave or vacation-leave benefits in addition to the minimums prescribed by statute may be granted as part of compensation"); *see also State ex rel. Randel v. Scott*, 95 Ohio App. 197, 200, 118 N.E.2d 462, 428 (Summit County 1952) ("municipality would not have the power to reduce the [sick leave] allowance so provided,[8] and since it did not increase the allowance,...[the employee] is subject

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5 I note that after the court's ruling in *Adkins*, the municipality involved did not credit its employees with the leave granted by the court, but instead enacted a retroactive "deferral" ordinance "which had the practical effect of nullifying the operation of R.C. 9.44." *State ex rel. Adkins v. Sobb*, 39 Ohio St. 3d 34, 36, 528 N.E.2d 1247, 1249 (1988) ("*Adkins II*"). The court held the municipality in contempt for its failure to credit the leave awarded by the first *Adkins* case, on the grounds the municipality could not evade a lawful court order through subsequent, retroactive legislation. *Adkins II* at 35, 528 N.E.2d at 1248-49. The issue of whether the ordinance, applied prospectively, constituted a valid deferral or an impermissible avoidance of R.C. 9.44 was not before the court.

6 As originally enacted, R.C. 9.44(B)(1) contained an exception from R.C. 9.44(A) that pertained to state agencies. *See* 1987-88 Ohio Laws, Part II, 2564 at 2565-66 (Am. Sub. H.B. 178, eff. June 24, 1987). In 1989, the state agency exception was deleted and the remaining provisions were renumbered as they currently appear. *See* Am. H.B. 552, 118th Gen. A. (1989) (eff. July 14, 1989)

7 This provision now appears at R.C. 5126.05(L). *See* 1987-88 Ohio Laws, Part I, 695 (Sub. S.B. 155, eff. June 24, 1988); 1979-80 Ohio Laws, Part I, 577 (Am. Sub. S.B. 160, eff. Aug. 1, 1980).

8 Since the court's analysis of R.C. 124.38 in *Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 31, 406 N.E.2d 1098 (1980), appellate courts have split on the issue of whether home rule powers allow municipalities to provide less than the minimums established in R.C. 124.38.

Like R.C. 124.38, R.C. 9.44 provides a benefit to public employees through language of entitlement rather than as a direct grant or restriction of the power of the compensating authority. *See* R.C. 9.44(A) ("a person employed...is entitled to have his prior service...counted"); R.C. 9.44(B)(2) ("the person shall have only his prior service within that municipal corporation counted"); R.C. 9.44(C) ("an employee who has retired...shall not have his prior service...counted"). I note further that both *Caspar* and *Clark* refer to "rights accrued under R.C. 9.44." *Caspar* at 18, 558 N.E.2d at 52; *Clark* at 19, 548 N.E.2d at 940 (syllabus). Thus, R.C. 9.44(A) establishes a minimum prior service credit benefit to which certain municipal employees are entitled as a matter of state law, while R.C. 9.44(B)(2) and (C) lessen or remove the minimum entitlement established in R.C. 9.44(A) with respect to the municipal employees to whom those provisions apply. The language of R.C. 9.44(B)(2) and (C) does not, therefore, operate to prohibit municipalities from counting more prior service than provided by either of these divisions. It simply removes the right of an employee covered by R.C. 9.44(B) or (C) to demand that a municipality do so as a matter of state law. Because R.C. 9.44(A), (B) and (C) all operate to establish minimum entitlements, in accord with the reasoning of *Ebert*, municipalities are free to exercise their constitutional home rule powers to provide for recognition of prior service credit in excess of the amounts established in R.C. 9.44(A), (B) or (C).

Based on the foregoing, I conclude that the provisions of R.C. 9.44 establish minimum entitlements to prior service credit that are binding on all municipalities, both statutory and charter, except those municipalities which have entered into a collective bargaining agreement pursuant to R.C. Chapter 4117 which specifically excludes rights accrued under R.C. 9.44. In municipalities where a collective bargaining agreement is not controlling, the municipality may, pursuant to R.C. 9.44(A), defer the anniversary date of such prior employment by appropriate law, ordinance or regulation. In addition, such municipalities may, pursuant to the home rule authority granted in Ohio Const. art. XVIII, §3, provide for prior service credit in excess of the minimums established in R.C. 9.44.

Your remaining questions deal with the manner in which a charter city may exercise its authority with respect to matters covered by R.C. 9.44. To the extent that no municipality may avoid the minimum prior service credit required by R.C. 9.44, except by specific terms of a collective bargaining agreement entered into pursuant to R.C. Chapter 4117, these questions do not apply. The questions are applicable, however, to the municipal authority to defer the anniversary date of prior employment or to grant prior service credit in excess of that required by R.C. to the limitations contained in the general laws of the state of Ohio") (footnote added).

See, e.g., Civil Personnel Assoc., Inc. v. City of Akron, 20 Ohio App. 3d 282, 485 N.E.2d 775 (Summit County 1984) (sick leave credit provisions of R.C. 124.38 are binding on home rule municipalities, but sick leave credit transfer provisions are not); *Doughton v. Village of Mariemont*, 16 Ohio App. 3d 382, 476 N.E.2d 720 (Hamilton County 1984) (R.C. 124.38 is a civil service statute, not a general law of the state, and is not binding on non-charter villages); *South Euclid Fraternal Order of Police v. D'Amico*, 13 Ohio App. 3d 46, 468 N.E.2d 735 (Cuyahoga County 1983) (municipal ordinance may not modify, amend or abridge the rights granted in R.C. 124.38); *see also* 1983 Op. Att'y Gen. No. 83-085 (both charter and non-charter municipalities may enact ordinances granting less sick leave than provided for by R.C. 124.38). I note that the court's analysis in *Adkins, Villari* and other subsequent home rule cases must be taken into account in resolving the conflict evidenced in the above authorities. You have not asked, however, whether all municipalities are governed by R.C. 124.38 and I, therefore, express no opinion on the effect of this subsequent case law on the conclusions reached in Op. No. 83-085 with respect to R.C. 124.38.

9.44. I turn now, therefore, to an examination of the issues raised by your third, fourth, fifth and sixth questions with respect to these two areas of municipal authority.

The first issue raised by your third question, thus, is whether deferral of the anniversary date or a grant of additional benefits should be accomplished by charter provision. As the preceding discussion has shown, neither of these actions conflict with the provisions of R.C. 9.44. While the provisions of a charter enacted pursuant to Ohio Const. art. XVIII, §7 may expand a municipality's authority to exercise its powers of local self-government in ways that conflict with state statutes, *see, e.g., State ex rel. East Cleveland Ass'n of Firefighters, Local 500 v. City of East Cleveland*, 40 Ohio St. 3d 222, 224, 533 N.E.2d 282, 284 (1988) (conflict between statutes and ordinances must be resolved in favor of city "whose express charter language enables the city to exercise local self-government powers in a manner contrary to state civil service statutes"); *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 109, 524 N.E.2d 447, 450 (1988) ("[c]ivil service commissions acting under home rule charters may be authorized to adopt such rules as may be necessary and proper....Nevertheless, some form of charter authorization is necessary to enable municipalities to adopt ordinances or administrative rules that will prevail over statutory provisions in case of conflict") (citation omitted), the authority to exercise nonconflicting powers of local self-government is part of the basic grant of home rule authority vested in both statutory and charter municipalities by the provisions of Ohio Const. art. XVIII, §3. *See Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N.E. 595 (1923) (syllabus, paragraphs 1 and 4) (municipalities derive powers of local self-government directly from Ohio Const. art. XVIII, §3 and the exercise of such powers is not dependent on the adoption of a charter under Ohio Const. art. XVIII, §7).[9] It follows, therefore, that deferral of the anniversary date of employment or a grant of additional prior service credits benefits need not be specifically provided for in the charter itself.

At the same time, it cannot be said that the terms of a charter are irrelevant when auditing a chartered municipality for compliance. A municipality may not exercise its home rule powers in a manner which conflicts with the terms of the charter. *Reed ex rel. City of Youngstown*, 173 Ohio St. 265, 181 N.E.2d 700 (1962) (syllabus, paragraph 2) ("[n]o ordinance can conflict with the provisions of a city charter"); *accord State ex rel. Craft v. Schisler*, 40 Ohio St. 3d 149, 151, 532 N.E.2d 719, 722 (1988). Thus, if a charter specifically provides or prohibits deferral of the anniversary date of employment or the grant of additional benefits, and I see no reason why a charter could not do so, such provisions cannot be superseded by conflicting municipal ordinances or regulations. If, on the other hand, the charter contains only general language describing the powers granted therein, it is necessary to examine that general language in order to determine whether an ordinance or regulation deferring an anniversary date or granting additional benefits conflicts with the general language of the charter. *See, e.g., State ex rel. Krieger v. City of Broadview Heights*, 11 Ohio St. 3d 139, 464 N.E.2d 152 (1984) (holding that the language of the charter required the municipal service commission to comply with the general law of the state in all matters not in conflict with the charter); *accord State ex rel. Pell v. City of Westlake*, 64 Ohio St. 2d 360, 415 N.E.2d 289 (1980). *See generally State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 168, 527 N.E.2d 807, 811 (1988) ("a municipal charter vesting broad powers in

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[9] I am aware that in his dissent in the case of *State ex rel. Bardo v. City of Lyndhurst*, 37 Ohio St. 3d 106, 117, 524 N.E.2d 447, 457 (1988), Justice Locher states that the majority's conclusion in *Bardo* is inconsistent with *Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N.E. 595 (1923). If *Bardo* does signal a departure from the syllabus law of *Perrysburg*, however, it is only with respect to differences in the authority of statutory and charter municipalities to enact local provisions which conflict with state law. As I have already stated, neither deferral of the anniversary date of employment nor a grant of additional benefits conflict with R.C. 9.44.

the legislative body of a municipality may also contain specific prohibitions and restrictions upon the exercise of those powers"); *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 98 N.E.2d 835 (1951) (syllabus, paragraph 1).

I turn now to an examination of the general language you have provided by way of example in your third question. This language vests the municipal government "with all powers which may now or hereafter be granted to municipalities by the Constitution or Laws of Ohio." This language clearly includes the power to defer anniversary dates pursuant to R.C. 9.44(A) and the constitutional home rule power to establish benefits above the R.C. 9.44 minimum. This charter language further provides, however, that "all such powers..shall be exercised in such manner as shall be provided by the Council created hereby." Thus the language of the charter does not itself establish a deferral or additional benefits, but instead requires that the power to do so must be exercised in some manner, *e.g.*, by ordinance or regulation. Additionally, it requires that the power be exercised in the manner provided by the Council. For purposes of auditing, therefore, it becomes necessary to examine the language of the applicable Council enactments, as well as the language of the charter itself.

I turn now to the issue of charter silence raised by your final question. Since R.C. 9.44 is a law of general and statewide concern, its provisions will govern in municipalities which have not established a deferral of anniversary date or increased benefits, absent a collective bargaining agreement pursuant to R.C. Chapter 4117 under which such provisions must be determined through the collective bargaining process. Accordingly, if the charter of a municipality not subject to such a collective bargaining agreement contains no specific language establishing a deferral of anniversary dates or establishing increased benefits and contains no general language providing authority for such enactments, or, if such general language exists but no municipal ordinance or regulation has been enacted pursuant thereto, the provisions of R.C. 9.44 will control.

It is, therefore, my opinion, and you are hereby advised, that:

1. In computing the amount of vacation leave of municipal employees, all municipalities, statutory and charter, must provide credit for prior service at the minimum levels established in R.C. 9.44, except those municipalities which have entered collective bargaining agreements pursuant to R.C. Chapter 4117 that specifically exclude rights accrued under R.C. 9.44.

2. Pursuant to R.C. 9.44(A), all municipalities, statutory and charter, may provide for a deferral of the anniversary date of prior service of municipal employees, except those municipalities which have entered into a collective bargaining agreement pursuant to R.C. Chapter 4117 under which such a provision would be subject to the collective bargaining process.

3. Pursuant to Ohio Const. art. XVIII, §3, all municipalities, statutory and charter, may provide prior service credit in excess of the minimums required by R.C. 9.44, except those municipalities which have entered a collective bargaining agreement pursuant to R.C. Chapter 4117 under which such a provision would be subject to the collective bargaining process.

4. In a charter municipality not subject to a collective bargaining agreement under R.C. Chapter 4117, if the charter does not specifically provide for a deferral of the anniversary date of prior service or for the crediting of prior service in excess of the minimums required by R.C. 9.44, deferral or additional benefits may be established by ordinance or regulation, if such ordinance or regulation is within the scope of authority granted by applicable general language in the charter and is enacted in the manner required by the charter.

5. If neither the charter nor the ordinances or regulations authorized thereunder, of a charter municipality not subject to a collective bargaining agreement under R.C. Chapter 4117, specifically provide for the deferral of the anniversary date of prior service or for the crediting of prior service in excess of the minimums required by R.C. 9.44, such municipality is governed by the provisions of R.C. 9.44.