



**Auditor of State
Betty Montgomery**

VILLAGE OF NEW ROME
FRANKLIN COUNTY

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INDEPENDENT ACCOUNTANTS' REPORT

Village Council
James Mueller, Mayor
Village of New Rome
30 Maple Drive
New Rome, Ohio 43228

Substitute House Bill No. 24, 125th Ohio General Assembly [hereinafter, HB 24] amended Ohio Rev. Code Section 703.201 (B) to read, in pertinent part:

If the auditor of state finds in an audit report issued under division (A) or (B) of Section 117.11 of the Revised Code of a village that has a population of one hundred fifty persons or less and consists of less than two square miles, that the village meets at least two conditions for surrendering corporate powers, the auditor of state shall send a certified copy of the report together with a letter to the attorney general requesting the attorney general to institute legal action to dissolve the village...

The audit report transmitted to the village shall be accompanied by a notice to the village of the auditor's intent to refer the report to the attorney general for legal action in accordance with this section.

Ohio Rev. Code Section 117.11(B) provides:

(B) In addition to the annual or biennial audit provided for in division (A) of this section, the auditor of state may conduct an audit of a public office at any time when so requested by the public office or upon the auditor of state's own initiative if the auditor of state has reasonable cause to believe that an additional audit is in the public interest.

Ohio Rev. Code Section 703.201 (A), subsections (1) through (6) provide criteria for conditions for "surrendering corporate powers".

Pursuant to HB 24 and Ohio Rev. Code Section 117.11(B), we have performed the procedures summarized below as of October 9, 2003. These procedures were performed solely to determine if the Village of New Rome (the Village) meets criteria for surrendering corporate powers pursuant to HB 24. The procedures we performed and the results of those procedures are summarized as follows:

ISSUE 1: Analysis of HB 24 applicability to the Village

Ohio Rev. Code Section 703.201 (D) and (E), as amended, provide criteria to determine population for purposes of determining whether a village has a population of one hundred fifty persons or less. HB 24 provides no criteria for determining whether the village consists of less than two square miles.

PROCEDURES:

1. Inquired with the Franklin County Engineer's Office.
2. Reviewed the 2000 Federal census and population estimate from the Ohio Department of Development.

RESULTS:

The Village size was determined by the Franklin County Engineer's office to encompass .02 square miles.

The 2000 federal census indicated the Village population to be 60 residents. The most recent population estimate provided from the Ohio Department of Development (July 1, 2002) indicated a population estimate of 59 Village residents.

ISSUE 2: Analysis of six criteria for surrendering corporate powers pursuant to HB 24

We reviewed the six criteria for villages subject to House Bill 24 to determine if the Village met at least two of the conditions to subject them to surrender of corporate powers.

CRITERION 1:

The Village has been declared to be in a fiscal emergency under Chapter 118 of the Ohio Revised Code and has been in fiscal emergency for at least three consecutive years with little or no improvement on the conditions that caused the fiscal emergency declaration. (Ohio Rev. Code Section 703.201(A)(1))

PROCEDURES:

1. Reviewed the Auditor of State website for all entities that have been declared in fiscal emergency, www.auditor.state.oh.us/fiscal_watch_emergency/local_governments_in_fiscal_watch_emergency.pdf.
2. Inquired with Chief Auditor of Auditor of State Local Government Services.
3. Reviewed released audit reports from 1978 to 2001.

RESULTS:

The Village has not been declared to be in fiscal emergency in any fiscal year.

CRITERION 2:

The Village has failed to properly follow applicable election laws for at least two consecutive election cycles for any one elected office in the Village. (Ohio Rev. Code Section 703.201(A)(2))

PROCEDURES:

1. Reviewed the minutes of the Village from January 1, 1991 to September 22, 2003.
2. Reviewed the Ballot Histories of New Rome compiled by the Election Processing Coordinator with the Franklin County Board of Elections from Ballot Histories from the Abstract of Votes (1983 – 2001).
3. Inquired with the Election Processing Coordinator with the Franklin County Board of Elections.
4. Reviewed Certificates of Appointment filed with the Franklin County Board of Elections.
5. Reviewed released New Rome Village audit reports from 1978 to 2001.

RESULTS:

Elected Offices in the Village of New Rome								
<i>Term of Office</i>	<i>Mayor</i>	<i>Clerk/ Treasurer</i>	<i>Council Seat 1</i>	<i>Council Seat 2</i>	<i>Council Seat 3</i>	<i>Council Seat 4</i>	<i>Council Seat 5</i>	<i>Council Seat 6</i>
'00-'03 ('02-'05)	X	X			X			
'96-'99 ('98-01)			X	X		X		X
'92-95 ('94-'97)			X	X		X		X
'88-'91 ('90-'93)	X	X	X	X	X	X		X
X denotes potential Election Law violation (see below)								

MAYOR:

- **Term 1/1/00 through 12/31/03:** James Mueller was elected in the municipal election of November 2001. On November 28, 2001, Mr. Mueller was certified by the Franklin County Board of Elections, and a Certificate of Election was issued. Mr. Mueller has served as Mayor from January 1, 2002, to the present date.

Chris Gamble (the President Pro Tempore of the Council) was appointed by Village Council as the acting Mayor on November 6, 2001, and served until December 31, 2001.

Charles Chapman, who was elected to the Mayor position in the general election of 1995, served as a "hold-over" in the Mayor position from January 1, 2000, until November 6, 2001. There is no evidence of a candidate for Mayor at the general election of 1999.

R.C. § 3.01 provides that a "person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state." Nevertheless, it has been held that, where the Ohio Constitution provides for a fixed term of office, that the legislature has no power to provide that an incumbent may hold over. *State ex rel. Attorney Gen. v. Brewster* 9 N.E. 849 (1887).

Accordingly, because there was no candidate for Mayor at the 1999 general election, that office was vacant on January 1, 2000. According to R.C. § 733.25, when the office of the Mayor is vacant, the president pro tempore of the legislative authority shall be acting mayor. Charles Chapman, however, was not the president pro tempore of the Village Council, nor was he properly appointed to the position of Mayor for this term.

- **Term 1/1/96 through 12/31/99:** Charles Chapman was elected as the Mayor in the general election of 1995. He served the entire term.
- **Term 1/1/92 through 12/31/95:** Charles Chapman was elected as the Mayor in the general election of 1991. He served the entire term.
- **Term 1/1/88 through 12/31/91:** On March 18, 1991, Charles Chapman (the President Pro Tempore of the Village Council) became the acting Mayor, and served until the end of the term on December 31, 1991.

Bob Lee, who served as Mayor from January 1, 1984, through December 31, 1987, served as the "holdover" Mayor until February 28, 1991. There is no evidence of a candidate for Mayor at the general election of 1987.

R.C. § 3.01 provides that a "person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state." Nevertheless, it has been held that, where the Ohio Constitution provides for a fixed term of office, that the legislature has no power to provide that an incumbent may hold over. *State ex rel. Attorney Gen. v. Brewster* 9 N.E. 849 (1887).

Accordingly, because there was no candidate for Mayor at the 1987 general election, that office was vacant on January 1, 1988. According to R.C. § 733.25, when the office of the Mayor is vacant, the president pro tempore of the legislative authority shall be acting mayor. Bob Lee, however, was not the president pro tempore of the Village Council, nor was he properly appointed to the position of Mayor for this term.

CLERK/TREASURER:

- **Term 1/1/00 through 12/31/03:** Connie Tucker, the person currently acting as the Village's Clerk/Treasurer, was appointed by the Village Council on January 14, 2000, after the previous Clerk/Treasurer Nancy Chapman (who was improperly holding the office) "resigned" on January 14, 2000.

The term began with the previously elected Clerk/Treasurer Nancy Chapman, whose previous term ended on December 31, 1999, occupying the office of Village Clerk/Treasurer. Ms. Chapman was neither elected to the office for this term, nor was she appointed.

R.C. § 733.31(A)(3) requires that, in the event of a vacancy in the office of village clerk or treasurer, the mayor may appoint a person to serve as an acting officer to perform the duties of the office until a permanent officer is appointed to fill the vacancy. (Emphasis supplied)

In this case, the Village Clerk/Treasurer was appointed by the Village Council, and not the Mayor, as is required by statute.

Moreover, R.C. § 3.02(B) requires that, when an elective office becomes vacant and is filled by appointment, the appointing authority shall, immediately but no later than seven days after making the appointment, certify the appointment to the board of elections and to the secretary of state.

The Village, however, did not provide certification of Ms. Tucker's appointment to the Franklin County Board of Elections until January 28, 2002. The Franklin County Board of Elections has not issued a Certificate of Appointment. Accordingly, Ms. Tucker was not properly appointed as the Clerk/Treasurer of the Village of New Rome.

In addition, R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Connie Tucker was appointed, albeit improperly, to the Clerk/Treasurer position more than one year before the next regular election at which the Clerk/Treasurer position was to be on the ballot, O.R.C. § 3.02(A) mandates that a successor to Ms. Tucker was to be elected for the unexpired term of the office at the first general election. A successor, however, was never elected to the position, and Ms. Tucker continues to serve as Clerk/Treasurer at the present time.

- **Term 1/1/96 through 12/31/99:** Nancy Chapman was elected to the position of Clerk/Treasurer for this term in the 1995 general election, and served the entire term.
- **Term 1/1/92 through 12/31/95:** Nancy Chapman was elected to the position of Clerk/Treasurer for this term in the 1991 general election, and served the entire term.
- **Term 1/1/88 through 12/31/91:** Nancy Chapman was appointed to the position of Clerk/Treasurer the Mayor on April 4, 1990, and served until the end of the term on December 31, 1991. Because Ms. Chapman was appointed to the Clerk/Treasurer position more than one year before the next regular election at which the Clerk/Treasurer position was to be on the ballot, O.R.C. § 3.02(A) mandates that a successor to Ms. Chapman was to be elected for the unexpired term of the office. A successor, however, was never elected.

COUNCIL SEAT 1:

- **Term 1/1/02 through 12/31/05:** Nancy Chapman started this council term as a "holdover" from the previous term, which ended on December 31, 2001. She was sworn in, solely by the Mayor, and not appointed, on December 4, 2001. She resigned on February 14, 2002. She was then re-appointed, solely by Council Member Daniel Plants, that same day (February 14, 2002) to the same council seat, and has served to the present. There is no evidence, however, that she was issued a Certificate of Appointment by the Franklin County Board of Elections.

In addition, R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Nancy Chapman was appointed to this seat on February 14, 2002, and continues to serve today. Because Ms. Chapman was appointed to this seat more than one year before the next regular election at which this seat was to be on the ballot, O.R.C. § 3.02(A) mandates that a successor to Ms. Chapman was to be elected for the unexpired term of the office. A successor, however, was never elected.

- **Term 1/1/98 through 12/31/01:** Nancy Chapman was appointed by the Mayor to this council seat on April 11, 2000. She served until October 10, 2000, (her last meeting); however, there was never a formal resignation. Nancy Chapman was somehow sworn in again by the Mayor (but not appointed) on December 4, 2001.

The term began with Connie Tucker being sworn in, solely by the Mayor, but not appointed, to the council seat on January 6, 1998. Ms. Tucker served until January 14, 2000, at which time she resigned to serve in the position of Clerk/Treasurer. There is no evidence of a candidate for this council seat at the general election in 1997.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because there was no candidate for this seat at the 1997 general election, that office is deemed vacant as of January 1, 1998. Connie Tucker was sworn in by the Mayor thirteen days later. That seat, however, should have been filled by election by the legislative authority, because the requisite 30 days had not passed.

In addition, R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Nancy Chapman was appointed to this seat on April 11, 2000, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Ms. Chapman should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

- **Term 1/1/94 through 12/31/97:** Connie Tucker was appointed by Motion of Village Council to this council seat on December 3, 1996, and served until the end of the term on December 31, 1997.

Sally Frazier was appointed by Motion of Village Council to this council seat on January 4, 1994. She served until January 1, 1996. There is no evidence of a candidate for this council seat at the general election in 1993.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because more than thirty days passed between the vacancy created by Sally Frazier's resignation (January 1, 1996) and Connie Tucker's appointment (December 3, 1996) without any action by the Village Council, that vacancy should have been filled by the Mayor.

- **Term 1/1/90 through 12/31/93:** Carolyn Nix was sworn in, solely by the Mayor, but not appointed, to this council seat on March 18, 1991, and resigned on December 7, 1993. There is no evidence of a candidate for this council seat at the general election in 1989.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Carolyn Nix was appointed to this seat on March 18, 1991, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Ms. Nix should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

COUNCIL SEAT 2:

- **Term 1/1/02 through 12/31/05:** Jeannie Frazier was appointed by the Mayor on August 6, 2002, and has served to the present.

Sherry Seiler was appointed to this seat, solely by Council Member Daniel Plants, on February 14, 2002, and resigned on June 4, 2002.

The term began with Patricia McCormick serving as a "holdover" in this council seat. She resigned on February 14, 2002. There is no evidence of a candidate for this council seat at the general election in 2001.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Jeannie Frazier was appointed to this seat on August 6, 2002, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Ms. Frazier should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

- **Term 1/1/98 through 12/31/01:** Patricia McCormick was sworn in, solely by the Mayor, but not appointed, to this seat on August 6, 1998, and served until February 14, 2002, even though the term ended on December 31, 2001. There is no evidence that the Franklin County Board of Elections has issued her a Certificate of Appointment.

Harold Nagorski was sworn in by the Mayor (he was not appointed) to this seat on January 6, 1998. There is no record of him attending another Council meeting, nor is there any record of his resignation. There is no evidence of a candidate for this council seat at the general election in 1997.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because there was no candidate for this seat at the 1997 general election, that office is deemed vacant as of January 1, 1998. Accordingly, that vacancy (which was filled by appointment by the Mayor on January 6, 1998) should have been filled by election by the legislative authority for the unexpired term because the requisite thirty days (per R.C. § 731.43) had not yet passed.

In addition, R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Patricia McCormick was appointed to this seat on August 6, 1998, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Ms. McCormick should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

- **Term 1/1/94 through 12/31/97:** Harold Nagorski was appointed to this seat by Motion of Village Council on January 4, 1994, and served until December 31, 1997. There is no evidence of a candidate for this council seat at the general election in 1993.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Harold Nagorski was appointed to this seat on January 4, 1994, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Mr. Nagorski should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

- **Term 1/1/90 through 12/31/93:** David Nix was, according to Council minutes, sworn in by the Mayor to this seat on March 18, 1991, and resigned on December 7, 1993. There is no evidence, however, that Mr. Nix was properly appointed to this seat as is required by R.C. § 731.43. It does not appear that there was a candidate for this council seat at the general election in 1989.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because David Nix took this seat on March 18, 1991, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Mr. Nix should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

COUNCIL SEAT 3:

- **Term 1/1/00 through 12/31/03:** David Tisler was sworn in solely by the Mayor (he was not appointed) on July 20, 2001, and resigned on February 14, 2002. On that same day, he was appointed by Council Member Daniel Plants to this seat, and has served to the present day. There is no evidence that Mr. Tisler was properly appointed to this seat as is required by R.C. § 731.43. There is no record of a candidate for this council seat at the general election in 1999.

Moreover, R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because David Tisler took this seat on February 14, 2002, 1991, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Mr. Tisler should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

- **Term 1/1/96 through 12/31/99:** Jean Hunt was sworn in solely by the Mayor (she was not appointed) to this seat on November 2, 1999, and served until December 21, 1999.

Sherry Seiler was elected in the 1995 general election. She served until September 9, 1998.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because more than thirty days passed between the vacancy created by Sherry Seiler's resignation (September 9, 1998) and Jean Hunt's appointment (November 2, 1999) without any action by the Village Council, that vacancy should have been filled by the Mayor.

- **Term 1/1/92 through 12/31/95:** Sherry Seiler was elected in the 1991 general election. She served the entire term.
- **Term 1/1/88 through 12/31/91:** Sherry Seiler was appointed by Village Council to this seat on March 6, 1990. She served until the end of the term.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Sherry Seiler was appointed to this seat on March 6, 1990, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Ms. Seiler should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

COUNCIL SEAT 4:

- **Term 1/1/02 through 12/31/05:** Both Karen Anthony (appointed by the Mayor) and Brenda Adkins (appointed by Motion of Village Council) were appointed to this seat on July 1, 2003.

Melissa Garay was appointed by Village Council to this seat on February 5, 2003, and resigned on July 1, 2003.

Daniel Richard Plants was appointed by Village Council to this seat on January 22, 2002. He resigned on February 5, 2003.

Currently the seat is vacant, awaiting a decision by the Franklin County Board of Elections.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Both these sections have been violated.

- **Term 1/1/98 through 12/31/01:** Charles Chapman, Jr., was sworn in solely by the Mayor (he was not appointed) to this seat on January 6, 1998. He resigned on December 4, 2001. There is no evidence that Mr. Chapman was properly "appointed" to this seat pursuant to R.C. § 731.43. There is no record of a candidate for this council seat at the general election in 1997.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Charles Chapman took this seat on January 6, 1998, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Mr. Chapman should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because there was no candidate for this seat at the 1997 general election, that office is deemed vacant as of January 1, 1998. Accordingly, that vacancy (which was filled by the Mayor on January 6, 1998) should have been filled by election by the legislative authority because the requisite thirty days (per R.C. § 731.43) had not yet passed.

- **Term 1/1/94 through 12/31/97:** Charles Chapman, Jr., was sworn in solely by the Mayor (he was not appointed) to this seat on January 4, 1994. He served until the end of the term. There is no evidence, however, that there was a candidate for this seat at the general election in 1993.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because there was no candidate for this seat at the 1993 general election, that office is deemed vacant as of January 1, 1994. Accordingly, that vacancy (which was filled by the Mayor on January 4, 1994) should have been filled by election by the legislative authority because the requisite thirty days (per R.C. § 731.43) had not yet passed.

- **Term 1/1/90 through 12/31/93:** Charles Chapman, Jr., was sworn in by the Mayor (he was not appointed) to this seat on January 9, 1990. He resigned on March 18, 1991, to become Mayor. There is no record of a candidate for this council seat at the general election in 1989.

James Hill was appointed by Village Council to this seat on August 6, 1991, and never attended another Council meeting.

Charles Chapman, Jr., was again appointed by Village Council to this seat on July 7, 1992, and served until the end of the term. As cited numerous times above, these actions violate R.C. § 3.02.

In addition, according to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because there was no candidate for this seat at the 1989 general election, that office is arguably deemed vacant as of January 1, 1990. Accordingly, that vacancy (which was filled by the Mayor on January 9, 1990) should have been filled by election by the legislative authority because the requisite thirty days (per R.C. § 731.43) had not yet passed.

COUNCIL SEAT 5:

- **Term 1/1/00 through 12/31/03:** Valerie Gamble was first appointed by the Mayor to this seat on November 10, 2000. She was "reappointed" by the Mayor on January 22, 2002. She resigned on February 14, 2002. There is no record, however, of a candidate for this council seat at the general election in 1999.

Patricia McCormick was appointed by Council Member David Plants to this seat on February 14, 2002, and has served to the present.

- **Term 1/1/96 through 12/31/99:** Larry Tucker was sworn in (he was not appointed) by the Mayor on July 10, 1997. He was "reaffirmed" by the Mayor on November 13, 1998. The last meeting he attended was on October 5, 1999; however, there is no evidence of a resignation.

Larry Seiler was elected to this seat in the general election of 1995. He resigned on April 10, 1997.

- **Term 1/1/92 through 12/31/95:** Larry Seiler was elected to this seat in the general election of 1991. He served the entire term.

- **Term 1/1/88 through 12/31/91:** Larry Seiler was sworn in to this seat solely by the Mayor (he was not appointed) on April 4, 1990, and served until the end of the term. There is no evidence of a candidate for this Council seat at the general election in 1987.

COUNCIL SEAT 6:

- **Term 1/1/02 through 12/31/05:** Edward Anthony was appointed by the Mayor on February 14, 2002, and has served until the present. There is no evidence of a candidate for this Council seat at the general election in 2001.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Edward Anthony was appointed to this seat on February 14, 2002, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that a successor to Mr. Anthony should be elected for the unexpired term of the office at the first general election. A successor, however, has not been properly elected to the position.

- **Term 1/1/98 through 12/31/01:** Chris Gamble was sworn in solely by the Mayor (he was not appointed) on March 6, 2001. He served in this seat until November 6, 2001, at which time he was selected by Village Council to act as the Mayor. (Chris Gamble was apparently the President Pro Tempore of the Village Council.)

Alisa Chapman was sworn in solely by the Mayor (she was not appointed) on January 6, 1998. The last meeting she attended was on October 10, 2000; however, there is no evidence of a resignation. There is no evidence of a candidate for this seat at the election of 1997.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because there was no candidate for this seat at the 1997 general election, that office is deemed vacant as of January 1, 1998. Accordingly, that vacancy (which was filled by the Mayor on January 6, 1998) should have been filled by election by the legislative authority because the requisite thirty days (per R.C. § 731.43) had not yet passed.

- **Term 1/1/94 through 12/31/97:** Alisa Chapman was sworn in solely by the Mayor (she was not appointed) on January 4, 1994. She appears to have served until the end of the term. There is no evidence of a candidate for this Council seat at the general election in 1993.

According to R.C. § 731.43, when the office of a member of the legislative authority of a village becomes vacant, the vacancy is filled by election by the legislative authority for the unexpired term. If the legislative authority fails within 30 days to fill the vacancy, the mayor fills it by appointment.

Because there was no candidate for this seat at the 1993 general election, that office is arguably deemed vacant as of January 1, 1994. Accordingly, that vacancy (which was filled by the Mayor on January 4, 1994) should have been filled by election by the legislative authority because the requisite thirty days (per R.C. § 731.43) had not yet passed.

Moreover, R.C. § 3.02, discussed above several times, has been violated.

- **Term 1/1/90 through 12/31/93:** Alisa Hill (Chapman) was appointed by Village Council to this seat on September 4, 1990, and served until the end of the term. There is no evidence of a candidate for this Council seat at the general election in 1989.

R.C. § 3.02(A) states that, when an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term. (Emphasis supplied)

Because Alisa Hill (Chapman) was appointed to this seat on September 4, 1990, (more than one year before the next regular election at which the position was to be on the ballot), O.R.C. § 3.02(A) mandates that her successor should have been elected for the unexpired term of the office at the first general election. A successor, however, was never properly elected to the position.

CRITERION 3:

The Village has been declared during an audit conducted under section 117.11 of the Ohio Revised Code to be unauditible under section 117.41 of the Revised Code in at least two consecutive audits. (Ohio Rev. Code Section 703.201(A)(3))

PROCEDURES:

1. Inquired with Auditor of State Clerk of the Bureau.
2. Reviewed released New Rome Village audit reports from 1978 to 2001.

RESULTS:

The Village was declared unauditible in one audit covering the audit period August 10, 1981 through October 31, 1983.

CRITERION 4:

The Village does not provide at least two services typically provided by municipal government [examples omitted]. "Services" does not include any administrative service or legislative action. (Ohio Rev. Code Section 703.201(A)(4))

PROCEDURES:

1. Inquired with the Mayor (James Mueller), Council Members (Patricia McCormick, David Tisler, Nancy Chapman, Ed Anthony, and Jeannie Frazier), and Clerk / Treasurer (Connie Tucker) as to the services provided by the Village.
2. Inquired with the Village Customer Service Representative at American Electric Power (AEP).
3. Inquired with the Franklin County Sheriff's Department Patrol Division.
4. Inquired with the Prairie Township Clerk.
5. Inquired with the Prairie Township Fire Chief.
6. Inquired with the Franklin County Auditor's Office.
7. Reviewed the Village's appropriation ledgers from January 1, 2002 through August 27, 2003.
8. Reviewed the Village's invoices relating to identified disbursements from January 1, 2002 through August 27, 2003.

9. Reviewed the Village's payroll ledgers from January 1, 2002 through August 27, 2003.
10. Reviewed the minutes of the Village from January 1, 1991 to September 22, 2003.
11. Reviewed the Village contracts with AEP.
12. Reviewed the Village contract with Cumberlander Refuse.
13. Reviewed address information for the Village officials.
14. Reviewed a copy of the refuse notification flier.
15. Reviewed Resolution 9-02 from Prairie Township, which established the billing of EMS charges for services provided by the Township.

RESULTS:

Street Services:

- Street Lighting:

The AEP Customer Service Representative indicated that monthly bills include the lease payment on the lights, electricity, and maintenance fees for street lights.

For fiscal year 2002, the Village paid \$2,793 for these services. From January 1, 2003 to August 27, 2003 the Village paid \$1,369 for these services.

The AEP Customer Service Representative indicated that the Village has no formal contract for services with AEP.

The AEP Customer Service Representative indicated that there are 17 street lights within the Village of New Rome boundaries.

The last established Village contract with AEP was in 1992.

- Traffic Signals:

The AEP Customer Service Representative indicated that monthly bills include only the electricity for the traffic signal lights.

For fiscal year 2002, the Village paid \$1,777 for this service. From January 1, 2003 to August 27, 2003 the Village paid \$677 for this service.

The AEP Customer Service Representative indicated that the Village has no formal contract for services with AEP.

The last established Village contract with AEP was in 1992.

- Snow Removal:

The Village paid John Carmony, an active police officer of the Village at the time, \$150 in 2002 for one day of snow removal.

The Village paid \$825 for snow removal from the Village streets in 2003. \$75 of the disbursements went to the Clerk/Treasurer of the Village (Connie Tucker), with no invoice or supporting documentation. \$750 of the disbursements went to John Carmony, an active police officer of the Village at the time, for 5 days of snow removal.

- Road Repair:

The Village paid \$153 for the salary of a Street Commissioner from January 1, 2002 through May 7, 2002.

From June 4, 2002 to December 31, 2002 the Village paid Roger Almond on an hourly contractual basis for various maintenance services of the Village. The nature of the various maintenance services could not be determined from the invoices. The total amount that was expended to Roger Almond in 2002 was \$483. Although disbursements were made from maintenance and repair expenditure codes, there was no evidence to document that street maintenance work was performed.

From January 1, 2003 to August 27, 2003 the Village paid Roger Almond on an hourly contractual basis for various maintenance services of the Village. The nature of the various maintenance services could not be determined from the invoice. The total amount that was expended to Roger Almond in during this period was \$25. Although disbursements were made from maintenance and repair expenditure codes, there was no evidence to document that street maintenance work was performed.

Garbage Collection:

The Village approved the collection of garbage for certain Village residents to be paid for by the Village by approval of the contract with Cumberlander Refuse at the July 1, 2003 Village Council meeting.

Cumberlander Refuse will service 10 residences of the Village for \$170 a month. The contract period began September 1, 2003 and will end September 1, 2004. Commercial businesses and commercial rental properties will not receive garbage collection under this contract.

The Village residents do not pay for this service.

Village residents eligible to receive this benefit were notified by a flier that was distributed to eligible houses.

Police Protection:

The Village police force was in place in 2002 and in 2003 until June 6, 2003, at which point it became a suspended operation by action of the Mayor.

The Village Chief of Police resigned from the Village on July 1, 2003 and was not replaced.

The Village Council voted down a motion on July 1, 2003 to completely dissolve the police department.

The Mayor's Court of the Village, which presided over traffic cases, was dissolved by motion of the Village Council on July 1, 2003.

The Franklin County Sheriff's Department has no specific contract for patrolling the Village.

Fire and EMS:

Fire and EMS services are provided to the residents of the Village by Prairie Township.

Prairie Township provides these services from funds derived through a fire levy. The fire levy is assessed on all Village residents since they reside in the 242 - Prairie Township - New Rome Corporation taxing district. The fire levy proceeds are directly paid to Prairie Township by the County Auditor.

The Village has no agreement with Prairie Township for Fire or EMS services.

CRITERION 5:

The Village has failed for any fiscal year to adopt the tax budget required by Section 5705.28¹ of the Ohio Revised Code. (Ohio Rev. Code Section 703.201(A)(5))

PROCEDURES:

1. Inquired with the Franklin County Auditor's Office.
2. Reviewed tax budgets submitted to the County Budget Commission from 1993 to 2003.
3. Reviewed released audit reports from 1978 to 2001.
4. Reviewed the minutes of the Village from January 1, 1991 to September 22, 2003.

RESULTS:

The following table summarizes the Village's compliance with tax budget law from 1993 to 2003:

Tax Year	Tax Budget Submitted to County Budget Commission	Tax Budget submitted to the County Auditor signed by:	Passed in Minutes	Has the Village Failed to adopt the tax budget required under the Tax Levy Law
2004	8/6/03 declared invalid by the County Budget Commission	Clerk / Treasurer	- 8/5/03 – Passed by Motion only	Yes
2003	7/18/02	Clerk / Treasurer	- 7/2/02 – Passed by Motion only	Yes
2002	7/9/01	Clerk / Treasurer	- 6/5/01 – Passed by Motion only	Yes
2001	7/19/00	Clerk / Treasurer	- 7/10/00 – Passed by Motion only	Yes
2000	7/19/99	Clerk / Treasurer	- No Tax Budget approval	Yes
1999	7/8/98	Clerk / Treasurer	- 6/5/98 – Passed by Motion only	Yes
1998	7/25/97	Clerk / Treasurer	- No Tax Budget approval	Yes
1997	7/10/96	Clerk / Treasurer	- No Tax Budget approval	Yes
1996	7/21/95	Clerk / Treasurer	- 6/6/95 – Passed by Motion only	Yes
1995	7/16/94	Clerk / Treasurer	- 6/7/94 - Passed by Motion only	Yes
1994	7/20/93	Clerk / Treasurer	- 4/6/93 – Passed by Motion only - 7/6/93 – Passed by Motion only	Yes

The following table summarizes the Village's compliance with tax budget law from 1978 to 1992:

¹ The Auditor of State interprets Ohio Rev. Code 5705.28 to require the passage of the Tax Budget by ordinance or resolution, which requires three public readings for passage, with the absence of a resolution deeming the ordinance or resolution an emergency measure for immediate passage with only one reading.

Tax Year	Audit Report Period	Ohio Revised Code Tax Budget Citations Per Audit Report	Has the Village Failed to adopt the tax budget required under the Tax Levy Law
1993 1992	1991 – 1992	ORC 5705.28 citation ORC 5705.30 citation	Yes
1991 1990	1989 – 1990	ORC 5705.29 citation	Yes
1989 1988	1987 – 1988	ORC 5705.28 citation ORC 5705.30 citation	Yes
1987 1986	1985 – 1986	ORC 5705.28 citation	Yes
1985 1984	11/1/1983 – 12/31/1984	None	No
1983 1982	8/10/1981 – 10/31/1983	ORC 5705.30 citation	Yes
1981 1980 1979	10/1/1978 – 8/9/1981	None	No

CRITERION 6:

A Village elected official has been convicted of theft in office, either under section 2921.41 of the Revised Code or an equivalent criminal statute at the federal level, at least two times in a period of ten years. (Ohio Rev. Code Section 703.201(A)(6))

PROCEDURES:

1. Inquired with the Franklin County Prosecutor's Office.
2. Reviewed released audit reports from 1978 to 2001.
3. Reviewed the minutes of the Village from January 1, 1991 to September 22, 2003.

RESULTS:

Bob Lee who served the elected office of Village Mayor was denoted as being indicted on charges in the 1991 minutes of the Village. He was not convicted of any charges of theft in office.

Charles Chapman who served the elected office of Village Mayor was named in a finding for recovery in the 1991 – 1992 and 1995 -1996 audit reports. He was not convicted of any charges of theft in office.

Patricia Kinder who served the appointed office of Village Mayor's Court Clerk was denoted as being indicted on charges of theft in office in the 1990 minutes of the Village. She was convicted of a charge of theft in office.

Sandra Bell who served the appointed office of Village Mayor's Court Clerk was named in a finding for recovery in the 1991 – 1992 audit report in addition to denotation in the 1990 minutes of the Village. She was convicted of a charge of theft in office.

Tammy Vanscyoc who served the appointed office of Village Mayor's Court Clerk was named in a finding for recovery in the 1995 – 1996 audit report. She was not convicted of any charge of theft in office.

Joyce Johnson who served the appointed office of Village Mayor's Court Clerk was named in a finding for recovery in the 1999 – 2000 and 2001 audit reports in addition to denotation in the 2001 minutes of the Village. She was convicted of a charge of theft in office.

There were no elected officials that were convicted of theft in office.

CONCLUSION

Based upon the results of the procedures performed, the Auditor of State finds that the Village of New Rome meets at least two of the conditions enumerated in Ohio Revised Code Section 703.201.

We express no opinion on the Village's internal control system over financial reporting or any part thereof. Had we performed additional procedures, or had we conducted an examination of financial statements in accordance with auditing standards generally accepted in the United States of America, other matters might have come to our attention that would have been reported to you. This report relates only to transactions relating to the above procedures, and does not extend to any financial statements of the Village taken as a whole.

This report is intended for the use of the specified users listed above. Reports by the Auditor of State are a matter of public record and use by other components of state government or local government officials is not limited.

NOTICE

It is the Auditor of State's intent to refer this report to the attorney general on November 17, 2003 for legal action in accordance with Ohio Rev. Code Section 703.201 as amended.



Betty Montgomery
Auditor of State

October 9, 2003

BACKGROUND INFORMATION

On May 7, 2003, the House of Representatives passed Substitute House Bill Number 24. The effective date of the pertinent section of this Bill was August 29, 2003.

The act created an additional way for a village to be dissolved and surrender its corporate powers (Ohio Rev. Code Section 703.201(E)). This new method is based upon the findings of the Auditor of State in an audit report and applies only to certain villages: those that have a population of 150 persons or less and consist of less than two square miles (hereafter, a covered village). Such a village must be found in an audit report to have met at least two of the following conditions (Ohio Rev. Code Section 703.201(A) and (B)):

- The village has been declared to be in a fiscal emergency under the Local Government Fiscal Emergency Law and has been in fiscal emergency for at least three consecutive years with little or no improvement on the conditions that caused the fiscal emergency declaration.
- The village has failed to properly follow applicable election laws for at least two consecutive election cycles for any one elected village office.
- The village has been declared to be unauditible in at least two consecutive audits by the Auditor of State.
- The village does not provide at least two services typically provided by municipal government, such as police or fire protection, garbage collection, water or sewer service, emergency medical services, road maintenance, or similar services, but not including any administrative service or legislative action.
- The village has failed for any fiscal year to adopt the tax budget required under the Tax Levy Law.
- A village elected official has been convicted of theft in office, either under the Ohio Criminal Code or an equivalent criminal statute at the federal level, at least two times in a period of ten years. The convicted official can be the same person or different persons.

If the Auditor of State finds in an audit report of a covered village that the village meets at least two of the above conditions, the Auditor of State must send to the Attorney General a certified copy of the report and a letter requesting the Attorney General to institute legal action to dissolve the village in accordance with the act. The report and letter must be sent within ten business days after the Auditor of State transmits the report to the village. The report transmitted to the village must be accompanied by a notice of the Auditor of State's intent to refer the report to the Attorney General for legal action.

The Attorney General may file in the court of common pleas, within 20 days after receipt of the Auditor of State's report and letter, a legal action requesting the dissolution of the village. If a legal action is filed, the court must hold a hearing within 90 days after the date of the filing. A notice of the hearing must be filed with the Attorney General, the clerk of the village, and each clerk of any township located wholly or partly within the village.

At the hearing to dissolve the village, the court must determine whether the village has a population of 150 persons or less and consists of less than two square miles (i.e. that is a covered village), and whether it meets at least two conditions for surrendering corporate powers. If the court makes these findings, it must order the dissolution of the village and provide for the surrender of its corporate powers in the same manner as occurs after a petition for dissolution and an approving vote of the electors. The Attorney General must file a certified copy of the court's order of dissolution with the Secretary of State and the county recorder of the county in which the village is located. The Secretary of State and the county recorder must make a record of the certified court order in their respective offices. The corporate powers of the village cease upon the recording in the county recorder's office.

BACKGROUND INFORMATION (Continued)

Upon receipt of an Auditor of State's audit report and the notice of the Auditor of State's intent to refer the report to the Attorney General for legal action, the legislative authority of a village generally cannot create any new liability until the court's decision in the legal action is declared. If the court orders dissolution, the village can no longer incur debt. All property remaining after the surrender of corporate powers and the settlement of debts belongs to the township or townships located in the village.

In August of 2003, the Auditor of State determined in the public interest to begin the analysis of the Village of New Rome in accordance with the criteria under House Bill 24 beginning the effective date of August 29, 2003.

On September 8, 2003 representatives of the Auditor of State met with the Clerk / Treasurer, Connie Tucker, to discuss the scope of our work under House Bill 24 and needed access to records.

On September 9, 2003 a representative of the Auditor of State spoke with the Mayor, James Mueller, to discuss the scope of our work under House Bill 24.

On September 12, 2003 a representative of the Auditor of State spoke with the Council Member, David Tisler, to discuss the scope of our work under House Bill 24.

On September 12, 2003 a representative of the Auditor of State spoke with the Council Member, Nancy Chapman, to discuss the scope of our work under House Bill 24.

On September 12, 2003 a representative of the Auditor of State spoke with the Council Member, Ed Anthony, to discuss the scope of our work under House Bill 24.

On September 12, 2003 a representative of the Auditor of State spoke with the Council Member, Jeannie Frazier, to discuss the scope of our work under House Bill 24.

On September 16, 2003 a representative of the Auditor of State spoke with the Council Member, Patricia McCormick, to discuss the scope of our work under House Bill 24.



**Auditor of State
Betty Montgomery**

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VILLAGE OF NEW ROME

FRANKLIN COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
NOVEMBER 17, 2003**